IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

LPA No. 56 of 2020
Date of Decision: 15.12.2020

Bihari Lal .....Appellant

Versus

State of H.P. and others .....Respondents

Coram
The Hon'ble Mr. Justice Sureshwar Thakur, Judge.
The Hon'ble Mr. Justice Chander Bhusan Barowalia, Judge.

Whether approved for reporting?[1] ***Yes.***

For the appellant:	Mr. Avinash Jaryal, Advocate.
For the respondents:	Mr. Ashwani Sharma, Addl. AG with Mr. J.S. Guleria, Dy. AG, for respondents No. 1 to 5.
	Mr. Sanjeev Bhushan, Sr. Advocate with Mr. Rajesh Chauhan, Advocate, for respondent No. 6.
	(Through Video Conferencing)

Sureshwar Thakur, Judge (oral)

Through the extant Letter Patents Appeal, the unsuccessful writ petitioner, one Bihari Lal, assails the verdict, rendered by the learned Single Judge of this Court, on 19.08.2020, upon, CWPOA No. 255 of 2019. Through Annexure P-1, appended with the afore petition, the respondents concerned, initiated the process for selecting and appointing, the aspirants concerned, viz-a-viz, the advertised post(s) of Gram Panchayat Sahayak. The petitioner, one Ravi Dutt alongwith the other aspirants concerned, participated in the relevant process, and after his selection, the petitioner was, through Annexure P-2, offered appointment, and thereafter he continued, to serve, as a Gram Panchayat Sahayak, in the Panchayat

[1] Whether reporters of Local Papers may be allowed to see the judgment?

concerned. However, his appointment became challenged by the aggrieved one Ravi Dutt, through the latter instituting an appeal thereagainst, before the learned Appellate Authority concerned, and the latter through an order made on 18.01.2010, upon, case No. 10/2006, hence accepted the afore appeal, and, hence obviously, it brought the consequence, of, the selection and appointment of one Bihari Lal becoming quashed and set aside. The afore Bihari Lal, challenged the afore order, as, made by the learned Appellate Authority, through his thereagainst casting CWPOA No. 255 of 2019, before this Court and thereons, the, impugned through the extant Letter Patents Appeal, hence verdict became pronounced, by the learned Single Judge of this Court.

2. The entire fulcrum of the lis engaging the contesting litigants is grooved in (i) whether one Neelam Kumari, who, in contemporaneity, viz-a-viz, initiation of the apposite recruitment process, was a member of the Panchayat concerned, and also who, in vernacular phraseology, is, the "*Bhabhi",* of, the afore Bihari Lal, rather, would render the afore Bihari Lal, to be construable to be her brother-in-law, hence, within the ambit, of, Rule 137 of H.P. Panchayati Raj Rules, 1997. For the purpose, of, making a decision thereon, it is imperative to extract the relevant portion of the apposite Rule, relevant provisions whereof become extracted hereinafter:

> ***"137. Other officers and servants of Panchayats (Section 135 of the Act)- (1) The Panchayats subject to the availability of funds in the budget, may by a resolution propose, to the Director or any other officer authorized, the number of employees required by it and salary and allowances to be paid to them and duties to be assigned to each of them. The Director or any other officer authorized by him may allow the appointment of such servant as he considers necessary for the efficient discharge of the duties with following conditions:***
>
> ***"No person shall be employed by a Panchayat, if he is a near relative (father, grandfather, father-in-law, maternal or paternal uncle, son, grandson, son-in-law, brother, nephew, brother-in-law, wife, sister, sister's***

> ***husband, mother, daughter, niece, mother-in-law, daughter-in-law and husband) of any of its members or if he has been convicted of any criminal offence involving moral turpitude. No employees of the Panchayat shall be retained in service after he has attained the age of 58 years."***

3. A reading of the afore extracted Rule, makes categorical disclosures, that therein, become(s) cast a statutory prohibition against the aspirant(s), selected or appointed concerned, to, hence hold the various prohibited categories/species, of, relation(s), cast therein, rather, with the member(s) of the Panchayat concerned, (a) or in other words, the aspirant(s) concerned is/are statutorily barred to constitute the afore categories/species of prohibited, or disqualifying, hence, relation with the members of the Panchayat concerned, (b) or the afore Rule, does not appertain, to the gender, of, the member(s) of the Panchayat concerned, with whom, the selectee/appointee purportedly holds the statutorily forbidden relationship, (c) or in other words, the apposite interpretation thereof is rested on the test, of, rather the determinative groove, of, all the afore relation(s), held by the aspirants, selectee or appointee concerned, with the member(s) of the Panchayat concerned, being the gender, of, the selectee or appointee concerned, and, therefrom the exhaustively enumerated therein disqualifying, "near relation(s)", with the member(s) concerned, becoming gauged. Though, the learned counsel for the appellant, argues that the prohibited categories/species of relations, as become cast therein, rather, prohibits the member concerned, from holding the afore statutorily barred, gender relation(s), with the aspirants concerned, inasmuch as, the application, of, the afore Rule, is to be initiated, from the member, of the Panchayat concerned, and hence therefrom, the gender category(ies), and/or, of, the statutorily enumerated prohibited gender relationship(s), rather, with the selectee or appointee concerned, is to be fathomed. However, the

afore manner, of, reading of the afore prohibiting clause, is, completely off the mark, (i) as the opening of the apposite portion therein, inasmuch as, **"**no person shall be employed by a Panchayat, if he is a near relative**"** (father, grandfather, father-in-law, maternal or paternal uncle, son, grandson, son-in-law, brother, nephew, brother-in-law, wife, sister, sister's husband, mother, daughter, niece, mother-in-law, daughter-in-law and husband), and also the ending of the opening sentence, inasmuch as, **"**of any of its members**"**, paves way to a conclusion that the afore categories of relationships, is, barred to be held by the aspirants, selectee or appointee concerned, with any member(s) of the Panchayat concerned. Upon, making the afore interpretation, and with uncontrovertedly, the afore Bihari Lal, being the brother-in-law, of, one Neelam Kumari, who at the relevant time, was a member of the Panchayat concerned, thereupon, upon making, a, translation, of, the afore vernacular phraseology, of, the relationship, *inter se* Bihari Lal, and one Neelam Kumari, begets, the sequel that the afore Bihari Lal becomes the brother-in-law, of, one Neelam Kumari, and thereupon, he became barred to be selected or to be appointed against the relevant post.

4. Even though, the learned counsel appearing for the appellant, contends with much force, before this Court, that the statutory appeal, was time barred, as, it became constituted beyond the period of one month, as becomes prescribed in the relevant statute, and hence, contends that the dismissal of the civil writ petition, is, interferable. However, the afore contention cannot become accepted by this Court, as, all the afore made reasons, rather, ensure the bolstering, of, a, firm conclusion, qua at its inception, the selection and appointment of the petitioner, being, *void ab initio*, (i) whereupon, the bar of limitation becomes not attracted, (ii) or if the afore argument, becomes accepted, thereupon, the gross statutory

transgression(s), hence visited by the selecting authority concerned, would become untenablly, condoned or vindicated. Moreover, since the copy of the reply, instituted by the writ petitioner to the statutory appeal, has not been, therebefore instituted, and rather, wherefrom the raising of the afore ground, was discernable. Consequently, the afore omission, rather, strikes the conclusion, that the appellant waived, or rather abandoned, the afore ground, before the Appellate Authority concerned, and thereupon, he is barred to raise the same, before this Court.

5. In view of the above, there is no merit in the extant Letter Patent(s) Appeal, and the same is accordingly dismissed. The impugned judgment passed by the learned Single Judge, is maintained and affirmed. No order as to costs. All pending applications are disposed of.

(Sureshwar Thakur)
Judge

(Chander Bhusan Barowalia)
Judge

15th December, 2020
(raman/CS)