

HIGH COURT OF CHHATTISGARH, BILASPUR**Order reserved on:2.9.2021****Order delivered on:15.9.2021****Writ Petition (S) No.3775 of 2012**

Mukesh Ahirwar, S/o Shri B.L. Ahirwar, aged about 27 years, R/o Civil Line, Ward No.20, Manendragarh, District Koriya (CG)

---Petitioner***Versus***

1. State of Chhattisgarh, Through Collector, Koriya, District Koriya (CG)
2. Tahsildar, Baikunthpur, District Koriya (CG)
3. Smt. Ashish Devi, W/o Shri Santosh Kumar Gadhwalia, aged about 24 years, C/o Shri R.P. Mongre, Industrial Training Institute, Chirimiri, Pondi, District Koriya (CG)

---Respondents

For Petitioner	: Mr. Varun Sharma, Advocate
For Respondents No.1 & 2	: Mr. Siddharth Dubey, Dy.G.A.
For Respondent No.3	: Mr. K.R. Nair, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal**C.A.V. Order**

1. The petitioner herein calls in question appointment of respondent No.3 on the post of Assistant Grade III by the Collector, Koriya-Baikunthpur.
2. It is the case of the petitioner that the Collector, Koriya-Baikunthpur issued an advertisement for appointment for various posts for District Administration, of which clause 2 provides that the candidate must be domicile of District Koriya, in which the petitioner as well respondent NO.3 both applied apart from other candidates and respondent No.3 submitted domicile of Koriya district showing her

father's name, who was at particular time working as Assistant Grade III in I.T.I. Chirimiri, District Koriya. Thereafter, on 5.1.2012 the Collector, Koriya Baikunthpur issued appointment order in favour of respondent No.3 and the petitioner was kept in waiting list, which the petitioner has challenged by filing this writ petition questioning the domicile certificate issued in favour of respondent No.3 on 22.9.2011 (Annexure P-8) and consequent selection of respondent No.3 on the post of Assistant Grade III on 5.1.2012 (Annexure P-13).

3. Respondents No.1 and 2 have filed their return stating inter-alia that the petitioner has called for objection against proposed selection, but the petitioner did not raise any objection. The petitioner can prefer an appeal against domicile certificate issued in favour of respondent No.3 under Section 44 of the provisions of the Chhattisgarh Land Revenue Code, 1959.
4. Respondent No.3 has also filed return relying upon the Executive Instructions dated 19.4.2002 and it is the case of respondent No.3 that her husband is stayed with her parents at District Koriya, therefore, domicile certificate has rightly been issued in her favour, as such, the writ petition deserves to be dismissed.

5. Mr.Varun Sharma, learned counsel for the petitioner, would submit that respondent No.3 has been married to Santosh Gadhwalia, who is resident of Bilaspur district and not of Koriya district and by virtue of Section 16 of the Indian Succession Act, 1925 (hereinafter called as 'the Act of 1925'), a wife's domicile during her marriage follows the domicile of her husband, as such, in the light of decision of the Rajasthan High Court in the matter of State of Rajasthan & Others v. Asha Devi¹, decision of the Uttarakhand High Court in the matter of Jyoti Bala v. State of Uttarakhand and another² and decision of the Allahabad High Court in the matter of Dr.Madhu Rana v. State of U.P. and others³, the writ petition deserves to be allowed.

6. On the other hand, Mr.K.R.Nair, learned counsel for respondent No.3 would submit that the petitioner did not raise any objection particularly with regard to domicile certificate of respondent No.3 right in time and after the time provided for raising objection, appointment of respondent No.3 has become final and objection raised thereafter cannot be entertained. He would further submit that the petitioner having participated in selection process cannot raise an objection thereafter particularly he has not alleged

1 2001 SCC OnLine Raj 321

2 (2009) 1 UC 546

3 ILR 1 Allahabad 323

that appointment of respondent No.3 is *mala fide* and it is contrary to statutory provisions and further that domicile certificate issued in favour of respondent NO.3 is accordance with the Executive Instructions dated 19.4.2002 (Annexure R-1).

7. Mr.Siddharth Dubey, learned Deputy Government Advocate for respondents No.1 and 2, would submit that the petitioner did not take objection right in time, as such, the writ petition deserves to be dismissed.
8. I have heard learned counsel for the parties, considered their rival submissions made hereinabove and also went through the records with utmost circumspection.
9. The Collector, Koriya-Baikunthpur by recruitment notice dated 5.9.2011 (Annexure P-1) invited applications for the post of Assistant Grade III incorporating a condition of original resident of District Koriya, Chhattisgarh as one of the condition for recruitment/appointment on the said post, in which apart from other candidates, the petitioner and respondent NO.3 both applied in SC category along with their domicile certificates. Respondent No.3 filed her domicile certificate issued by the competent authority on 22.9.2011 (Annexure P-8) and thereafter the recruitment process was further conducted and vide

Annexure P-11, list of eligible candidates for the post of Assistant Grade III was declared in which the name of the petitioner stood at Serial No.24 and name of respondent No.3 was stood at Serial No.70 and thereafter on 5.12.2011 original select list of SC category was declared in which the respondent No.3 was shown as selected candidate and petitioner was shown as wait listed candidate and immediately thereafter as per Annexure R-3, objections were invited stating that if any person has an objection with regard to select list, objection should be submitted on or before 12th December, 2011. The said notice was published in Nai Duniya, Bilaspur dated 7th Decmeber, 2012, Ambikawani, Baikunthpur dated 7th December, 2011 as well as Haribhoomi, Bilaspur dated 7th December, 2011, but since no objection was received from anyone including the petitioner, the appointment order was issued on 5.1.2012 in favour of respondent No.3 appointing her as Assistant Grade III in SC category. Thereafter it appears that the petitioner obtained certain information under Right to Information Act, 2005 qua the domicile certificate issued in favour of respondent No.3 and filed writ petition on 6.7.2012 before this Court, in which the petitioner has not only challenged the select list dated 05.12.2011 (Annexure P-12), but also called in question the appointment of respondent No.3 dated 5.1.2012

(Annexure P-13) on the post of Assistant Grade III (SC category) and also sought to question domicile certificate dated 22.9.2011 (Annexure P-8) issued in favour of respondent No.3 on the ground that she has married at Bilaspur and therefore, domicile certificate could not have been issued in her favour and consequently, domicile certificate (Annexure P-8) be quashed/cancelled and selection & appointment of respondent No.3 be also quashed as it is contrary to law, which has been opposed by the respondents stating inter-alia that the petitioner has already preferred an appeal before the Sub-Divisional Officer and he did not prefer any application and objection after publication of provisional select list and accepted select list without demur and protest and validity of waiting list dated 5.1.2012 has already been expired within a month and therefore, after expiry of select list, appointment has become final and the petitioner is not entitled for any relief.

10. From careful perusal of the record, it is quite apparent that the select list was issued on 5.12.2011 (Annexure P-12) and objections were invited by publication in three newspapers, which have been filed as Annexure R-3 inviting objections up to 12th December, 2011, but no objection was raised and thereafter appointment order was issued on 5.1.2012 in

favour of respondent No.3 appointing her on the said post.

11. The question is whether a person who has participated in selection process, but failed to succeed can be permitted to turn around and challenge the selection process as illegal and bad in law.
12. It is well settled that a person who has participated in selection process, but failed to succeed in selection process cannot be permitted to turn around and challenge the selection process finding the decision unpalatable.
13. In the matter of Union of India and others v. S. Vinodh Kumar and others⁴ their Lordships of the Supreme Court following its earlier and relying upon Om Prakash Shukla v. Akhilesh Kumar Shukla and others⁵ have held as under:

"18. It is also well settled that those candidates who had taken part in the selection process knowing fully well the procedure laid down therein were not entitled to question the same. (See *Munindra Kumar v. Rajiv Govil*⁶). [See also *Rashmi Mishra v. M.P. Public Service Commission*⁷.)

19. In *Chandra Prakash Tiwari v. Shakuntala Shukla*⁸, it was held: (SCC p. 148, para 32)

"32. In conclusion, this Court recorded that the issue of estoppel by conduct can only be said to be available in the event of there being a precise and unambiguous representation and it is on that score a

4(2007) 8 SCC 100
 5 1986 (Supp) SCC 285
 6 (1991) 3 SCC 368
 7 (2006) 12 SCC 724
 8 (2002) 6 SCC 127

further question arises as to whether there was any unequivocal assurance prompting the assured to alter his position or status - the situation, however, presently does not warrant such a conclusion and we are thus not in a position to lend concurrence to the contention of Dr. Dhawan pertaining the doctrine of estoppel by conduct. It is to be noticed at this juncture that while the doctrine of estoppel by conduct may not have any application but that does not bar a contention as regards the right to challenge an appointment upon due participation at the interview/selection. It is a remedy which stands barred and it is in this perspective in *Om Prakash Shukla v. Akhilesh Kumar Shukla* a three-Judge Bench of this Court laid down in no uncertain terms that when a candidate appears at the examination without protest and subsequently found to be not successful in the examination, question of entertaining a petition challenging the said examination would not arise."

It was further observed :

"34. There is thus no doubt that while question of any estoppel by conduct would not arise in the contextual facts but the law seem to be well settled that in the event a candidate appears at the interview and participates therein, only because the result of the interview is not 'palatable' to him, he cannot turn round and subsequently contend that the process of interview was unfair or there was some lacuna in the process."

14. In the matter of Anupal Singh and others v. State of Uttar Pradesh through Principal Secretary, Personnel Department and others⁹ relying upon its earlier judgment i.e. S. Vinodh Kumar (supra), it has been held by the Supreme Court that a person having consciously participated in interview cannot turn around and challenge the selection process.

15. However, there are certain exception to the aforesaid rules which has been laid down by their Lordships of the Supreme Court in the matter of Dr.(Major) Meeta Sahai v. State of Bihar and others¹⁰ holding that normally a candidate cannot challenge selection process after participating in process. However, it was held that said principle is differentiated insofar as the candidate by agreeing to participate it in selection process only accepts prescribed procedure and not the illegality in it and there where a candidate alleges misconstruction of statutory rules and discriminating consequences arising therefrom, the same cannot be condoned merely because a candidate has partaken in it. The constitutional scheme is sacrosanct and its violation in any manner is impermissible. It was further held that a candidate may not have locus to assail the incurable illegality or derogation of the provisions of the Constitution, unless he/she participates in the selection process
16. As such, in the instant case, the petitioner has participated in entire selection process with clear understanding and did not prefer any objection pursuant to the objections invited vide Annexure R-3 against selection of respondent No.3 on the post of Assistant Grade III (SC category) and allowed the appointment to be made on 5.1.2012 and thereafter this

writ petition was filed on 6.7.2012, in the considered opinion of this Court, the petitioner having taken a calculated chance to participate in the selection process and when the competent authority invited objections, if any, on the selection of respondent No.3 even by publication of notice in three newspapers, then also the petitioner did not consider it appropriate and expedient to make any objection on the selection of respondent No.3 and allowed the selection to become final by making her appointment and as such, in view of judgment rendered by the Supreme Court in the matter of Chandra Prakash Tiwari (supra) followed in S. Vinodh Kumar (supra), the petitioner is not entitled to question the selection and appointment of respondent No.3 on the post of Assistant Grade III in SC category as she is bound by doctrine of estoppel by conduct and it is not the case where she falls under any of the exception to the aforesaid principle and delineated in Dr.(Major) Meeta Sahai (supra).

17. The next question raised by learned counsel for the petitioner is that there was condition No.2 that the candidate for the post of Assistant Grade III (SC category) must be the original resident of district Koriya, which respondent No.3 is not resident of Koriya and therefore, her appointment is liable to be quashed relying upon Section 16 of the Act of 1925 and

also relying upon the judgment of the Rajasthan High Court in the matter of Asha Devi (supra) and the judgment of the Uttarakhand High Court in the matter of Jyoti Bala (supra).

18. In the aforesaid judgments (supra) relying upon Sections 15 and 16 of the Indian Succession Act, 1925 it has clearly been held that woman by her marriage acquired the domicile of her husband and wife cannot acquires different domicile from her husband during subsistence of her marriage.
19. The aforesaid proposition is not in dispute, but respondent No.3 has filed her return stating that respondent No.3 married at Bilaspur, but after her marriage to her husband, she did not change her residential status as she continued to be resident of Koriya district before and after her marriage as her husband has agreed to stay with her parents and they are living with her parents after her marriage in Koriya district. Merely because her husband was a resident of Bilaspur does not mean that respondent No.3 has ceased to be original resident of Koriya district.
20. The aforesaid statement has been made by respondent No.3 in her affidavit filed before this Court, but no rejoinder affidavit has been filed controverting the aforesaid fact and in absence of rejoinder affidavit,

it cannot be concluded that respondent No.3 has ceased to be bona fide resident of district Koriya. Not only this, respondents No.1 and 2 have filed copies of order-sheet dated 04.10.2012 by which the petitioner has made complaint against respondent No.3 before the Additional Collector, Koriya which was adjourned to 12.10.2012 and on 12.10.2012 it was again fixed for 9.11.2012, but on 9.11.2012 again it was adjourned awaiting the decision of this Court, but thereafter only on 17.8.2021 the petitioner has filed an application for closing the said proceeding before the Additional Collector, but nothing has been brought on record that such a proceeding has been closed by the Additional Collector. It appears that the petitioner has not disclosed this fact in this writ petition. It is only the State in its return disclosed the said fact. Even otherwise, domicile certificate was issued to respondent No.3 as back as on 22.9.2011 vide Annexure P-8, but the petitioner did not question it immediately thereafter and allowed respondent No.3 to participate in selection process and thereafter also did not make any objection on being invited after declaration of selection list dated 5.12.2011 despite objection having been invited by publication of notice in three newspapers and thereafter her appointment was made on 5.1.2012 and allowed her appointment to become final, then only this writ petition was filed on

6.7.2012 and her domicile certificate was sought to be questioned, which the petitioner is not entitled to question as she did not question the said certificate right in time and when the petitioner became unsuccessful in a fairly conducted selection process, then she decided to question her appointment which has become final. If objection could have raised right in time pursuant to the objections invited vide Annexure R-3, the competent authority could have inquired into and could have passed appropriate order qua domicile certificate of respondent No.3, but the petitioner failed to raise any question/objection qua the domicile certificate of respondent NO.3 at appropriate time.

21. A candidate appeared in examination is entitled to question the selection and appointment of the selected and appointed candidate in accordance with law on just and fair ground, but unsuccessful candidate cannot be permitted to question the selection and appointment of selected candidate on any impermissible ground / unfair ground.
22. There is one more ground for not interfering in selection and appointment of respondent No.3. Respondents No.1 and 2 have clearly mentioned in para-11 of their return that validity of waiting list dated 5.1.2012 on the post of Assistant Grade III was one month from the date of its issuance, which has

already been expired, however, this writ petition was filed on 6.7.2012 and as such, appointment of respondent No.3 has become final as it has been held by the Supreme Court that select listed candidates do not get indefeasible right to get appointment. (See State of Orissa & Anr. v. Rajkishore Nanda & Ors.¹¹, Uttar Pradesh Public Service Commission v. Surendra Kumar and others¹² and State of U.P. and others v. Harish Chandra and others¹³.)

23. As a fallout and consequence of the aforesaid discussion, I do not find any any merit in this writ petition. Accordingly, the writ petition deserves to be and is hereby dismissed leaving the parties to bear their own cost(s).

Sd/-

(Sanjay K. Agrawal)
Judge

B/-

11 AIR 2010) SC 2100
12 (2019) 2 SCC 195
13 (1996) 9 SCC 309