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**HIGH COURT OF CHHATTISGARH, BILASPUR****W.P.(227) No. 330 of 2009****Order Reserved on 22.10.2021****Order Delivered on 16.11.2021**

Umed Das, S/o Bisahu Das, Aged About 35 Years Caste - Manikpuri, R/o Chandipara, Tahsil Palmgarh, District Janjgir - Champa Chhattisgarh.

**---- Petitioner****Versus**

1. Santosh Kumar, S/o Gorelal (Adoptee Father - Anand Das) Aged About 40 Years R/o Village Chandipara, Tahsil - Palmgarh, District Janjgir - Champa Chhattisgarh., District : Janjgir-Champa, Chhattisgarh
2. Ashok Das, S/o Chhotelal Manikpuri, Aged About 38 Years R/o Village Chandipara, Tahsil - Palmgarh, District Janjgir - Champa Chhattisgarh., District : Janjgir-Champa, Chhattisgarh
3. Board Of Revenue, Chhattisgarh Bilaspur. Through The Chairman.
4. State Of Chhattisgarh, Through The Secretary, Department Of Revenue, D.K.S. Bhawan, Raipur Chhattisgarh., District : Raipur, Chhattisgarh

**---- Respondents**


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|---------------------------------|---|--------------------------------|
| For the Petitioner              | : | Shri H.V. Sharma, Advocate.    |
| For Respondent No.1             | : | Shri Abhijit Mishra, Advocate. |
| For Respondent No.2             | : | None.                          |
| For Respondents No.3 & 4/ State | : | Shri Ravi Kumar Bhagat, G.A.   |

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**Hon'ble Shri Justice Rajendra Chandra Singh Samant****CAV ORDER**

Heard.

1. This petition has been brought under Article 227 of the Constitution of India being aggrieved by the order dated 4.11.2008 passed by the Chhattisgarh Board of Revenue confirming the orders of the Courts below.

2. The brief facts of the case are these that Anand Das was the village Kotwar who was unable to perform duty because of old-age. After his

resignation, the petitioner was appointed as Kotwar by the order dated 18.8.2000 on temporary basis. The applications were invited for appointment of village Kotwar. The petitioner and respondents No.1 & 2 filed applications. The temporary appointment of the petitioner was challenged by respondent No.1 – Santosh Kumar before Sub-Divisional Officer. The SDO by order dated 14.12.2000 cancelled the temporary appointment and directed to initiate proceedings to make permanent appointment. The village Panchayat forwarded the proposal in favour of the petitioner. Respondent No.1 canvassed his eligibility on the ground that he is the adopted son of the earlier Kotwar Anand Das and a temporary appointment was given to respondent No.1 by order dated 20.2.2001. The petitioner then filed an appeal before SDO, which was allowed by order dated 10.5.2001 by remanding the case, with a direction to decide the case in accordance with the provision under Section 230 of the Chhattisgarh Land Revenue Code, 1959 (for short 'Code, 1959'). Respondent No.1 then preferred a revision before the Collector, which was dismissed. Subsequent to which, Tehsildar Palmgarh decided the case of appointment as Kotwar and recorded the finding that the petitioner is the most eligible candidate, hence, the petitioner he was appointed as permanent Kotwar by the order dated 19.3.2002.

3. Respondent No.1 preferred an appeal before SDO against the order of Tehsildar for appointing the petitioner as permanent Kotwar, which was dismissed by the order dated 29.8.2002 (Annexure-P/3). Second appeal before the Collector, Janjgir-Champa was also dismissed by the order dated 13.3.2006 (Annexure-P/4). The challenge of respondent No.1 before the Chhattisgarh Board of Revenue to these orders in revision petition by

preferring a revision petition was allowed in which the impugned order dated 4.11.2008 (Annexure-P/1) was passed.

4. It is submitted by counsel for the petitioner that the appointment of respondent No.1 has been made on illegal premises. The adoption as claimed by respondent No.1 cannot be regarded as lawful adoption. There being no such proof pleaded and brought by him, the procedure for appointment of Kotwar as provided under Section 230 of the Code, 1959 has not been strictly followed, therefore, the impugned order is unsustainable. The appointment of respondent No.1 has been made contrary to the resolution of Gram Panchayat. Relief be granted to the petitioner.

5. Learned counsel for respondent No.1 opposes the submissions made in the petition and submits that there is no infirmity in the impugned order. There is a clear rule present in the Rules Regarding Appointment, Punishment and Removal of Kotwar and the duties, framed under Section 230 of the Code, 1959, wherein is provided that in making of appointment of Kotwar, preference may be given to the near relative of the Ex-Kotwar and the other things being equal. The claim of respondent No.1 had been very clear that he was the adopted son of the previous Kotwar Anand Das, therefore, his appointment to the post of Kotwar is very clearly based on his entitlement and the impugned order passed is sustainable.

6. Learned State counsel opposes the submissions made and submits that the impugned order has been rightly passed, which cannot be interfered with.

7. In reply, it is submitted by counsel for the petitioner that respondent No.1 has no relation with the Ex-Kotwar and being the adopted son of Ex-Kotwar claimed by him is not lawful, therefore, his appointment as Kotwar is bad in law.

8. Heard counsel for both the parties and perused the documents present on record.

9. In the order dated 29.8.2002 passed by the SDO in first appeal there is mention of the submissions made by respondent No.1 that he was adopted by Kotwar Anand Das at the age of 9 years according to social customs. In the order dated 13.3.2006, in second appeal there is mention that when the Godnama was registered, the age of the petitioner was 39 years and therefore, a person of such an age cannot be adopted lawfully. There is also mention of the statement of Ex-Kotwar Anand Das supporting the case of the petitioner, however, emphasis was given on the resolution of the Gram Panchayat and the appeal was dismissed.

10. In the impugned order, the Chhattisgarh Board of Revenue has disagreed with the view taken by the orders of the Appellate Courts and the order is passed in favour of respondent No.1.

11. It appears that the enquiry has taken place, in which the Ex-Kotwar Anand Das has given statement in favour of respondent No.1. There is statement that the adoption ceremony of respondent No.1 has taken place in

customary manner when he was aged about 9 years. The complicated question regarding the validity of the adoption of respondent No.1 by Ex-Kotwar Anand Das cannot be enquired and answered in the proceedings under the Rules Regarding Appointment, Punishment and Removal of Kotwar and the Duties framed under Section 230 of the Code, 1959. The consideration on the question regarding the best entitlement of a person to be appointed was taken up and answered in negative by the two Appellate Courts below against respondent No.1 but that has been answered in positive in the impugned order by the Chhattisgarh Board of Revenue. It was a question of fact which has been decided in the impugned order and the Chhattisgarh Board of Revenue has given a finding that respondent No.1 is the best person who has entitlement to be appointed as Kotwar. Sub-rule 2 of Rule 4 of the Rules for Appointment of Kotwar clearly provides in making of appointment under Kotwar, preference may be given to the near relative of the Ex-Kotwar and the other things being equal. The other things being equal means that the person who is the relative of the Ex-Kotwar, must be qualified for appointment as provided under Rule 2 of the Rules for Appointment of Kotwar. In such a case, the resolution of the Gram Sabha cannot be regarded as a weighing factor, because under Sub-rule 1 of Rule 4 of the Rules for Appointment of Kotwar, the appointing authority has been empowered to reject the resolution of Gram Sabha. Hence, I am of this view that the order of the Chhattisgarh Board of Revenue does not suffer from any infirmity, however, the petitioner has liberty to challenge the validity of adoption of respondent No.1 by Ex-Kotwar in Gram Panchayat in Civil Court which is the competent forum to decide such an issue.

12. Hence, with the aforesaid observations, I do not find any substance in the present petition, which is dismissed and disposed of.

Sd/-

**(Rajendra Chandra Singh Samant)**  
Judge

Nimmi