

NAFR

HIGH COURT of CHHATTISGARH, BILASPUR**WPS No. 2788 of 2012**

- Laxmi Prasad Chandra S/o Vidyadhar Chandra, aged about 26 years, R/o village Kosir, Tahsil Sarangarh, District Raigarh, Chhattisgarh

-----Petitioner/Applicant**VERSUS**

1. Mahendra Kumar Lahare S/o Yog Ram Lahare R/o Vill. Kosir, Tah. Sarangarh, Distt. Raigarh, Chhattisgarh
2. Chhatrapal Chandra Ex-Secretary, Village - Kosir, At Present Village Kumhari, Tahsil Sarangarh Distt. Raigarh C.G.
3. Deputy Director Panchayat and Social Welfare, Raigarh Chhattisgarh
4. Smt. Prem Bai W/o Kheek R/o Vill. Kosir, Tah. - Sarangarh, Dist. Raigarh Chhattisgarh
5. Kiritram Ex-Panch, R/o Vill. Kosir, Tah. - Sarangarh, Dist. Raigarh Chhattisgarh
6. Bhagat Ram R/o Vill. Kosir, Tah. - Sarangarh, Dist. Raigarh Chhattisgarh
7. Rajesh Yadav R/o Vill. Kosir, Tah. - Sarangarh, Dist. Raigarh Chhattisgarh
8. Guharam R/o Vill. Kosir, Tah. - Sarangarh, Dist. Raigarh Chhattisgarh
9. Asharam Ex-Panch, R/o Vill. Kosir, Tah. - Sarangarh, Dist. Raigarh Chhattisgarh
10. Chandram Ex-Panch, R/o Vill. Kosir, Tah. - Sarangarh, Dist. Raigarh Chhattisgarh
11. Padma Ex-Panch, R/o Vill. Kosir, Tah. - Sarangarh, Dist. Raigarh Chhattisgarh
12. Ramkunwar Ex-Panch, R/o Vill. Kosir, Tah. - Sarangarh, Dist. Raigarh Chhattisgarh
13. Sukhlal Ex-Panch, R/o Vill. Kosir, Tah. - Sarangarh, Dist. Raigarh Chhattisgarh
14. Mikhad Ram Ex-Panch, R/o Vill. Kosir, Tah. - Sarangarh, Dist. Raigarh Chhattisgarh
15. Sahodri Ex-Panch, R/o Vill. Kosir, Tah. - Sarangarh, Dist. Raigarh Chhattisgarh
16. Kirtan Lal Ex-Panch, R/o Vill. Kosir, Tah. - Sarangarh, Dist. Raigarh Chhattisgarh
17. Kailash Bai Ex-Panch, R/o Vill. Kosir, Tah. - Sarangarh, Dist. Raigarh Chhattisgarh
18. Bimla Ex-Panch, R/o Vill. Kosir, Tah. - Sarangarh, Dist. Raigarh Chhattisgarh

19. Labhoram Ex-Panch, R/o Vill. Kosir, Tah. - Sarangarh, Dist. Raigarh Chhattisgarh
20. Shankar Lal Ex-Panch, R/o Vill. Kosir, Tah. - Sarangarh, Dist. Raigarh Chhattisgarh
21. Gram Panchayat Kosir Through The Secretary, Tah. - Sarangarh, Dist. Raigarh Chhattisgarh
22. The Commissioner Bilaspur Division, Bilaspur Chhattisgarh

-----**Respondents**

For Petitioner	: Mr. H.S. Patel, Adv.
For Respondent 1	: Mr. Sanjay Patel, Advocate
For Respondent 3 & 22/State	: Mr. Vimlesh Bajpai, Govt. Adv.

Hon'ble Shri Parth Prateem Sahu, Judge

ORDER ON BOARD

07/09/2021

1. This writ petition is filed challenging the order dated 25.05.2012 passed by Commissioner, Bilaspur zone whereby the appeal filed by petitioner challenging the recruitment process of appointment of Panchayat Karmi by village Panchayat, Kosir and appointment of Respondent 1 as PanchayatKarmi has been dismissed.
2. Facts of the case in nutshell are that village Panchayat, Kosir issued an advertisement for appointment of PanchayatKarmi on 13.03.2008 in pursuance of permission dated 11.03.2008 granted by Deputy Director, Social Welfare Department, Raigarh. Based on the advertisement issued by the village Panchayat, Kosir as many as 8 candidates have submitted their applications. Village Panchayat in its meeting dated 27.03.2008 after considering the candidature of all the 8 applicants passed resolution to appoint Respondent 1 as PanchayatKarmi of village Panchayat, Kosir. Based on the resolution passed by village Panchayat, appointed Respondent 1 as PanchayatKarmi, subsequently, Respondent 3 issued an order on 31.03.2008 declaring Respondent 1 to be Secretary of village Panchayat, Kosir. Petitioner challenged the

appointment of Respondent 1 as PanchayatKarmi as well as his declaring Panchayat Secretary by Respondent 3 by filing an appeal dated 16.04.2008 before the Director, Panchayat. Appeal was transferred to Commissioner, Bilaspur who upon considering the submissions made by the parties has dismissed the appeal observing that in Clause 3.4 of Panchayat Karmi Scheme, 1995 (for short "Scheme"), provides for giving preference, first it starts with Scheduled Caste (SC), Respondent 1 was appointed because he belongs to SC community; there is no illegality or irregularity committed at the time of appointing Respondent 1 as Panchayat Karmi and subsequently declaring him as Panchayat Secretary.

3. Mr. H.S. Patel, learned counsel for petitioner would submit that in the recruitment process of appointing Panchayat Karmi irregularities have been committed by village Panchayat. As per the Scheme of Panchayat Karmi 15 days time for submission of application after advertisement was not given. After passing of resolution by the village Panchayat, on the next day Gram Sabha has been conducted whereas as per procedure for convening Gram Sabha meeting under Rule 6, seven days time is required to be granted. He further submits that the qualifications as prescribed in Clause 3 under the Scheme, minimum qualification is prescribed as High School certificate or 10th class passed. Under Clause 3.4 though there is mentioned of preference to be given to candidates belonging to SC/ ST, OBC and women candidate but under the Scheme there is no mention that for the purpose of appointment candidate is to be selected on the basis of priority as mentioned under Clause 3.4 of paragraph 3. He submits that it only talks about the preference to

be given to the candidates belonging to the categories mentioned therein. He further submits that when under the Scheme it is provided for giving preference to the candidate belonging to categories mentioned therein then the preference can be given when all the candidates come within the same platform on their merit. Petitioner is a meritorious candidate as appearing from chart prepared by village Panchayat wherein the percentage secured by the petitioner has been shown to be 72% whereas Respondent 1 (selected candidate) has secured only 40%. Applicants including petitioner and Respondent 1 have submitted their applications for securing job which is public employment and therefore the merit of candidate/ applicant cannot be ignored. Selection is to be made on the basis of merit of candidate where more than one candidate has applied for the one post. He further pointed out that the Commissioner has not considered as to when the preference is to be given but only considered the wordings mentioned in clause 3.4 of the Scheme that preference is to be given to the candidate belonging to community/ category of person mentioned therein. Clause 3.4 starts with word SC category and only that basis Commissioner has arrived at a conclusion that under the Scheme it is provided that it is the SC candidate to be appointed above others which is erroneous and not sustainable in the eyes of law.

4. Mr. Sanjay Patel, learned counsel for Respondent 1 (selected candidate) submits that the village Panchayat has appointed Respondent 5 after issuing advertisement calling application from interested candidates and placing all the applications for consideration. In the meeting of village Panchayat, Respondent 1 has been appointed based on the resolution passed by said

village Panchayat. Under the Scheme of appointment of Panchayat Karmi, village Panchayat is the appointing authority and based on the recommendation of village Panchayat it is Respondent 3 who declared the recommended Panchayat Karmi as Secretary of village under Section 69(1) of Adhiniyam, 1993. He further pointed out that the qualifications prescribed is only the minimum qualification, it does not talk about the merit of candidate ie. the candidate who secured more marks is to be appointed, hence, there is no illegality or irregularity committed by the village Panchayat in appointing Respondent 1. He submits that since the date of his appointment Respondent 1 is continuing in the service, hence, at this stage his appointment may not be set aside. He further submits that other grounds raised by learned counsel for petitioner with regard to period/ time prescribed for issuance of notice and conducting Gram Sabha is not so relevant in this case as the appeal is not filed by any candidate who could not able to apply in the selection process due to period of time provided for submission of applications. He further submits that as per the Scheme for the meeting, the matter is to be placed before general committee, no prejudice is caused to the petitioner for any of the other grounds raised in the writ petition.

5. Mr. Vimlesh Bajpai, learned State counsel submits that Respondent 3 had declared Respondent 1 as Secretary of village Panchayat under Section 69(1) of Adhiniyam, 1993. Pursuant to appointment of Respondent 1 as Panchayat Karmi by the village Panchayat and recommendation of his name for declaring as Panchayat Secretary, Respondent 3 has passed order of declaring Respondent 1 as Panchayat Secretary. The appointing

authority is village Panchayat hence he is not making any submission with regard to procedure adopted by the appointing authority in appointing Respondent 1 to be Panchayat Karmi.

6. I have heard learned counsel for respective parties and also gone through the record.
7. Appointment of Panchayat Karmi is governed by the Scheme and guidelines formulated by the State Government. Post of Panchayat Karmi has been created after declaring post of Assistant village Panchayat Officer to be of dying cadre. Under the Scheme guidelines for appointment, qualifications and selection process are also provided. Village Panchayat is the authority to appoint Panchayat Karmi for his working with the village Panchayat. Clause 3 deals with the eligibility qualifications of the candidates and Clause 4 deals with process for selection/ appointment. Clause 3 and Clause 4 are extracted below for ready reference.

“3. अर्हताएँ— (1) उम्मीदवार 10+2 प्रणाली के अंतर्गत कक्षा दसवीं या हाईस्कूल सर्टिफिकेट परीक्षा उत्तीर्ण होगा ।
 (2) उम्मीदवार की न्यूनतम आयु 18 वर्ष होगी ।
 (3) संबंधित ग्राम पंचायत उक्त वर्णित अर्हताओं के अलावा अन्य वांछनीय अर्हता प्रस्ताव पारित कर सम्मिलित कर सकेगी ।
 (4) अनुसूचित जाति, जनजाति, पिछड़ा वर्ग तथा महिला उम्मीदवार को प्राथमिकता दी जावेगी ।
 (5) ऐसा उम्मीदवार यथा संभव स्थानीय हो. इससे कार्य कर पाने में आसानी होगी ।
 (6) ग्राम पंचायत द्वारा निर्दिष्ट कार्यों को संपादित करने हेतु उम्मीदवार के पास पर्याप्त समय उपलब्ध हो, यह सुनिश्चित किया जाए ।

4. चयन प्रक्रिया— (1) पंचायत कर्मों की नियुक्ति के लिए आवेदन पत्र आमंत्रित करने की सूचना ग्राम पंचायत के सरपंच द्वारा जारी की जावेगी तथा यह सूचना ग्राम पंचायत कार्यालय, जनपद पंचायत कार्यालय एवं तहसील कार्यालय के सूचना पटल पर प्रकाशित की जावेगी ।

- (2) सूचना के प्रकाशन की तिथि से 15 दिन तक आवेदन पत्र पंचायत कार्यालय में जमा किए जा सकेंगे।
- (3) आवेदन पत्र सादे कागज पर शैक्षणिक योग्यता एवं जाती संबंधी जानकारी के साथ प्रस्तुत किए जाएंगे।
- (4) समस्त आवेदन पत्र ग्राम पंचायत की सामान्य सभा के समक्ष विचारार्थ प्रस्तुत किए जाएंगे. ग्राम पंचायत की सामान्य सभा प्राप्त आवेदन पत्रों पर विचार कर उम्मीदवार का चयन करेगी. एक उम्मीदवार का नाम प्रतीक्षा सूची में रखेगी।
- (5) पंचायत अपने प्रस्ताव के माध्यम से ऐसी नियुक्ति करेगी, ऐसी नियुक्ति निर्धारित समयावधि के लिए पूर्णकालिक/ अंशकालिक अथवा संविदा पर हो सकेगी। नियुक्त व्यक्ति को सरपंच द्वारा नियुक्त पत्र जारी किया जावेगा। इसकी प्रति मुख्य कार्यपालन अधिकारी, जनपद पंचायत को रिकॉर्ड हेतु भेजी जावेगी। इसमें पंचायत कर्मों की संक्षिप्त जानकारी दी होगी। जनपद पंचायत में एक पंजी संधारित की जाकर तद्विषयक प्रविष्टियाँ रखी जावेगी।
- (6) यदि चयनित उम्मीदवार नियुक्ति पत्र जारी होने के 7 दिन के भीतर कार्यभार ग्रहण नहीं करता है तो प्रतीक्षा सूची से अन्य व्यक्ति की नियुक्ति की जा सकती है।”

8. Perusal of Clause 3 of the guidelines issued for recruitment of Panchayat Karmi would show that the minimum qualification prescribed is Class 10th or High School Certificate; candidate should be less than 18 years of age and preference be given to SC/ST, OBC and women candidate. It does not talk about the reservation of seat or appointment to be done on priority basis. It only speaks about preference to the candidates belonging to categories mentioned therein. The stage of giving preference to any of the candidate comes only when more than one candidate comes on one platform.
9. In the case at hand, it is not a case that the petitioner and Respondent 1 secured same marks. Their educational qualifications considered by the village Panchayat is class 12th. In class 12th examination petitioner secured 72% and Respondent 1 secured 40% of marks. Even if the submission of learned counsel for Respondent 1 is to be considered that it is the minimum

qualification of Class 10th marks to be considered and not Class 12th, perusal of record of writ petition would show that in class 10th also petitioner secured 238 marks whereas Respondent 1 secured 210 marks, hence even if considering the submission of learned counsel for Respondent 1, Respondent 1 could not come on merit better than the petitioner. The word “preference” has been considered by hon'ble Supreme Court in the case of **Abdul Hamid and others v. Union of India** reported in **(2017) 16 SCC 346** and held thus:

“10. It is apparent that there is a policy of the Railways to grant regularization to these fresh face substitutes. We need not refer to all the circulars issued in this behalf, but a perusal of the documents especially those filed as additional documents clearly show that the Railways has a policy of regularizing these fresh face substitutes. This, in our opinion, is a clear indicator that while making appointment of fresh face substitutes, the field of choice should be wide and all citizens who are qualified and eligible should be given a chance to take part in the selection process. Though these appointments may be termed as short term appointments, the facts placed on record reveal that thousands of fresh face substitutes have been regularized and have become employees of the Railways because of the policy of the Railways. It is, therefore, imperative that while appointing fresh face substitutes, a transparent system of appointment is followed. It would be much better if the Railways follows the regular system of appointment rather than making appointments on ad hoc basis of fresh face substitutes. However, as and when exigencies of service require that fresh face substitutes have to be appointed, then also the field of choice cannot be limited only to those who have undergone their apprenticeship training with the Railways since that would patently violate Article 14 and 16 of the Constitution of India depriving those who have not undergone apprenticeship training with the Railways of an equal opportunity for applying for these posts.

11. Reliance has been placed by learned counsel appearing for the Railways trained apprentices on the judgment of this Court passed in the case of U.P. State Road Transport Corporation and Another v. U.P.

Parivahan Nigam Shishukhs Berozgar Sangh and Others. In Para 12 of the judgement, it has been held that all other things being equal, the trained apprentices should be given preference upon direct apprentices. This judgment does not help the appellants at all. What has been held is that if the non-Railway trained apprentice is equal to the Railways trained apprentice on merit, then preference can be given to the Railways trained apprentice. The word “preference” does not mean that the Railways trained apprentice will have an exclusive right to the exclusion of all others to be considered for appointment. Both the Tribunal and the High Court were justified in deciding this issue against the Railways and in favour of the original applicants.”

10. In view of aforementioned ruling of Hon'ble Supreme Court, facts of the case and also Clause 3.4 of the Scheme, finding recorded by Commissioner in the impugned order that as under Clause 3.4, the word Schedule Caste (SC) is mentioned first, therefore, it is the Respondent 1 who is to be appointed giving preference above all, overlooking the merits is not correct, hence, it is not sustainable in the eyes of law and it is hereby set aside.
11. For the forgoing reasons, appointment of Respondent 1 on the post of Panchayat Karmi vide Panchayat resolution dated 27.03.2008 and consequently order passed by Respondent 3 on 31.03.2008 declaring Respondent 1 as Panchayat Secretary is hereby set aside. The village panchayat, Kosir, respondent no. 21 is directed to consider the candidature of candidates afresh and thereafter to pass order afresh for appointment of Panchayat Karmi in accordance with law.
12. In view of above, writ petition is allowed.

Sd/-
(Parth Prateem Sahu)
Judge