



AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 2927 of 2015

- Smt. Anusuiya Bai W/o Shri Ashok Gajbhiye Aged About 48 Years R/o Village Kumhalori, Tahsil- Rajnandgaon, Civil And Revenue District Rajnandgaon Chhattisgarh

---- Petitioner

Versus

1. State of Chhattisgarh Through - Secretary, Department of Women And Child Welfare, Mahanadi Bhavan, Mantralaya, New Raipur, District Raipur Chhattisgarh
2. Commissioner, Durg Division, District Durg Chhattisgarh
3. Collector, District Rajnandgaon Chhattisgarh
4. Chief Executive Officer, Janpad Panchayat Rajnandgaon, District Rajnandgaon Chhattisgarh
5. Office of Project Officer Unified Child And Women Development, Project Rajnandgaon Tahsil And District Rajnandgaon Chhattisgarh
6. Smt. Patrika Nishad W/o Paltu Ram Aged About 35 Years R/o Village Kumhalori, Tahsil- Rajnandgaon, District Rajnandgaon Chhattisgarh

---- Respondents

For Petitioner : Shri Abhishek Sharma, Advocate

For Respondents/State : Shri R.K. Gupta, Addl. AG

For Respondent No.6 : Shri Pallav Mishra, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

23/07/2024

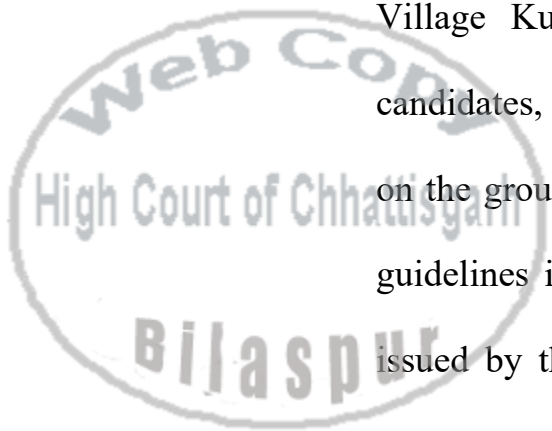
Heard.

1. Challenge in this petition is to the legality and validity of the order dated 25/02/2014 passed by the Collector, Rajnandgaon and order dated



01/01/2015 passed by the Commissioner, Durg Division, District Durg, whereby the appointment of the petitioner was cancelled and in her place Respondent No.6 was appointed.

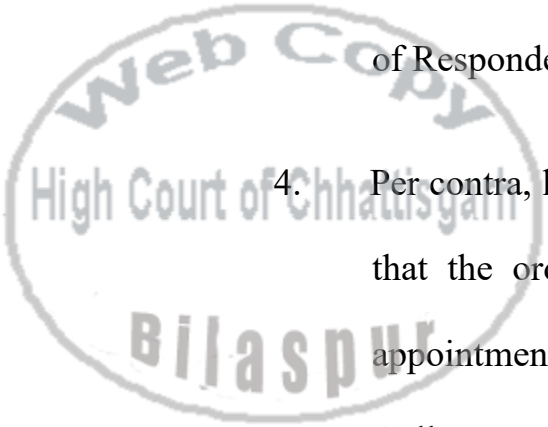
2. The case of the petitioner is that pursuant to the advertisement dated 04/10/2010 issued by Respondent No.5, she applied for the post of Anganbadi Sahayika for Village Kumhalori. On completion of the selection process, the petitioner was appointed as Anganbadi Sahayika on 23/11/2011 for Ward No.2 of Village Kumhalori. Likewise, another woman/candidate namely; Sarita was appointed for Ward No.1 of Village Kumhalori. One Anita Mahar, one of the unsuccessful candidates, challenged the appointment of Sarita before the Collector on the ground that the marks have wrongly been given contrary to the guidelines issued by the State on 02/04/2008. Further the guidelines issued by the State dated 02/04/2008 i.e. Annexure R/3 provides for filing of appeal in case appointment is made by the CEO, Janpad Panchayat as it would be governed by the Chhattisgarh Panchayat Raj Adhiniyam, 1993 as per the Chhattisgarh Panchayat (Appeal & Revision) Rules, 1995 (hereinafter referred to as the Rules, 1995), the said order was challenged before the Collector.
3. It is submitted by the petitioner that before such removal order was passed, the petitioner was not heard and her services were removed on 24/06/2013 and Respondent No.6 was appointed on the same date i.e. on 24/06/2013 in place of the petitioner. The said order of appointment of Respondent No.6 was challenged by the petitioner before the





Collector in an appeal and the said appeal was dismissed on 25/02/2014 (Annexure P/2) by the Collector, Rajnandgaon and the revision against the said order having been filed before the Divisional Commissioner, the same was also dismissed by order dated 01/01/2015 (Annexur P/1). The stand of the petitioner is that the initial order by which the petitioner was removed on 24/06/2013, she was not given any opportunity of hearing and Respondent No.6 was appointed. The petitioner contended that both the Collector and Commissioner failed to take into note of the said fact. Therefore, order of the Collector and Commissioner be set aside and the prayer is made that the appointment of Respondent No.6 be annulled instead the petitioner be appointed.

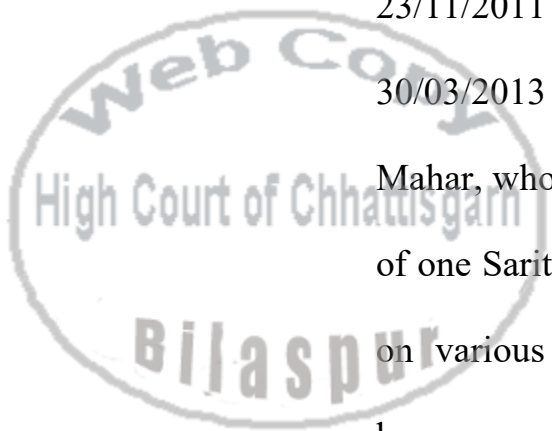
4. Per contra, learned State counsel opposes the submission and it is stated that the order of the Collector wherein 'Anita' had challenged the appointment of 'Sarita', however, the only direction was given by the Collector to the Chief Executive Officer, Janpad Panchayat, Rajnandgaon to enquire into the raised by the various candidates and pass afresh order as the guidelines provide for certain marks to be given for the appointment, the benchmark/directions were not followed. Consequently, the appointment of the petitioner was illegal and accordingly she was removed. The said order having been challenged before the Collector and the Commissioner the same was affirmed, therefore, no illegality can be attached. It is further submitted that as per Annexure R/4 the exercise was carried out by the CEO, Janpad Panchayat and the Project Officer wherein it was found that while





calculating the marks of the petitioner it was found that wrong preference was given and higher marks were awarded. Consequently, the removal order was passed and appointment of Respondent No.6 was issued.

5. No reply has been filed on behalf of Respondent No.6 till date.
6. I have heard learned counsel for the parties and perused the documents.
7. Perusal of the record shows that the petitioner pursuant to the advertisement dated 04/10/2010 was appointed by order dated 23/11/2011 at Ward No.2 Village Kumhalori. The order dated 30/03/2013 (Annexure P/10) is on record which shows that one Anita Mahar, who was an unsuccessful candidate, challenged the appointment of one Sarita, who was appointed for Ward No.1 of Village Kumhalori, on various grounds. The order of appointment of the petitioner, however, was not under any challenge.
8. Since the scheme purports for filing of appeal, the appeal was filed as per the Chhattisgarh Panchayat Raj Adhiniyam, 1993 and Chhattisgarh Panchayat (Appeal & Revision) Rules, 1995. The order since was passed by the CEO, Janpad Panchayat, the same was challenged before the Collector and the Collector by its order allowed the appeal of Anita and the CEO, Rajnandgaon was directed that in respect of village Kumhalori all the applications which were received for appointment shall be scrutinized. Thereafter fresh orders may be passed in accordance with law. As per the State, thereafter the exercise of

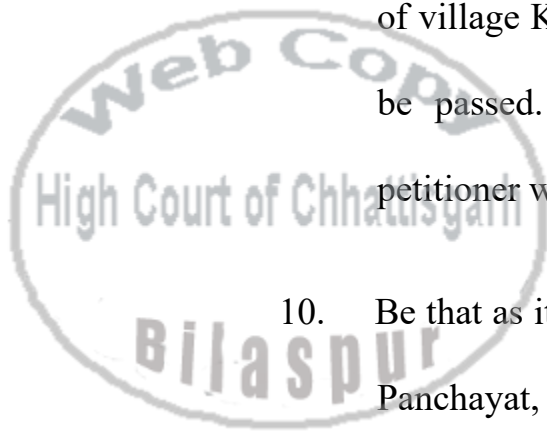




scrutiny was carried out and certain discrepancies regarding awarding of number came to fore and consequently the services of the petitioner were removed by order dated 24/06/2013 Annexure P/4 and instead Respondent No.6 was appointed.

9. The First issue which gave rise to the entire dispute was triggered at the behest of one Anita Mahar, who was an unsuccessful candidate and challenged the appointment of one Sarita, who was appointed as Anganbadi worker for Ward No.1 of village Kumhalori. While deciding such appeal, the Collector directed that all the applications of of village Kumhalori shall be scrutinized thereafter afresh orders would be passed. In the dispute between Anita Mahar and Sarita, the petitioner was not a party.

10. Be that as it may, as per the direction of the Collector, the CEO, Janpad Panchayat, carried out the scrutiny & inspection. The inspection report has been filed as Annexure R/4. Perusal of Annexure R/4 do not show that while such scrutiny was carried out, the petitioner, who was already appointed was given an opportunity of hearing. When the petitioner was appointed by order dated 23/11/2011 and certain right had accrued in her favour, how after two years without any opportunity of hearing her services were terminated, has not been explained. As such, there is a clear violation of principles of natural justice and the rules or *audi alteram partem* given a go-bye. When the right has accrued in favour of a candidate, dispensing the services without giving any opportunity of hearing clearly violates rules of natural justice.





11. The Supreme Court in *Dharampal Satyapal Ltd. v. CCE, (2015) 8 SCC 519 : 2015 SCC OnLine SC 489* at page 537 has held as under:

“35. From the aforesaid discussion, it becomes clear that the opportunity to provide hearing before making any decision was considered to be a basic requirement in the court proceeding. Later on, this principle was applied to other quasi-judicial authorities and other tribunals and ultimately it is now clearly laid down that even in the administrative actions, where the decision of the authority may result in civil consequences, a hearing before taking a decision is necessary.”

In article titled as Right To Hearing And Contracts of Service, (1972) 2 SCC J-9 it was observed that:



“The protection that the principle of audi alteram partem is designed to afford to an individual is in the nature of a right to a fair hearing. The principal characteristics of this right to a hearing are three, namely, (I) the right to be informed of the case one is to meet at the hearing, (ii) the right to have notice of the time and place of hearing, and (iii) a reasonable amount of time between the date of notice and the actual date of hearing so as to enable one to prepare his defence.”

Lord Hodson observed in Ridge v. Baldwin, (1963) 2 All ER 66, 71: (1964) AC 40, 64: that

“No one, I think, disputes that three features of natural justice stand out, (i) the right to be heard by an unbiased tribunal, (ii) the right to have notice of charges of misconduct, and (iii) the right to be heard in answer to these charges.”

12. The direction given by the Collector by its order dated 30/03/2013 to enquire into the matter to the CEO in a dispute which was in between Anita Mahar and Sarita, additional omnibus direction was given to



carry out the scrutiny in entirety is the substratum to conduct the enquiry. It appears that the CEO, Janpad Panchayat while carrying out such scrutiny was fade away by the direction of superior officer i.e. the Collector. Before passing any adverse order, the minimum opportunity of hearing should have been given to the petitioner. The apprehension of the petitioner that there was a biased is to be gathered from the surrounding circumstances and the necessary conclusion was required to be drawn. The term “bias” is used to denote a departure from the standing of even-handed justice.

13. In *Ranjit Thakur v Union of India* {(1987) 4 SCC 611}, the Supreme Court held thus at para 17 :

17. As to the tests of the likelihood of bias what is relevant is the reasonableness of the apprehension in that regard in the mind of the party. The proper approach for the Judge is not to look at his own mind and ask himself, however, honestly, “Am I biased?”; but to look at the mind of the party before him.

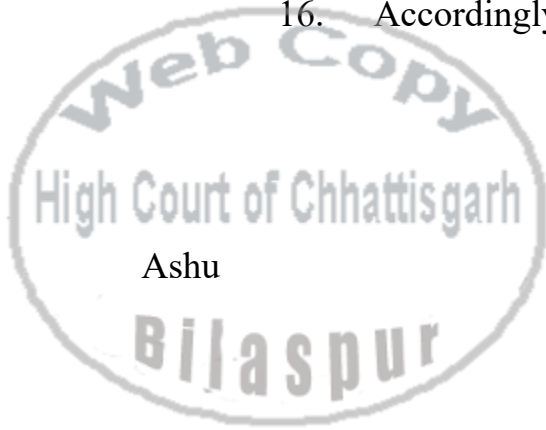
14. Therefore, applying the aforesaid principles in this case, it appears that there was a clear violation of the rules of natural justice and even the matter was subject of challenge and both the Collector and the Commissioner both the authorities deliberated on a different issue without touching the nucleus of the challenge.
15. In the result, both the orders i.e. the order dated 01/01/2015 (Annexure P/1) passed by the Commissioner; and the order dated 25/02/2014





(Annexure P/2) passed by the Collector, are set aside and consequently, the order dated 24/06/2013 (Annexure P/3), which is an appointment order of Respondent No.6 and the cancellation of appointment of the petitioner dated 24/6/2013 (Annexure P/4) are also set aside. The Chief Executive Officer, Janpand Panchayat, Rajnandgaon shall be at liberty to carry out the scrutiny again on the basis of the documents which are prevailing for appointment of the petitioner and Respondent No.6 and may pass the suitable orders after giving opportunity of hearing to the parties.

16. Accordingly, the petition stands allowed.



Goutam Bhaduri
Judge



Head note

1. The term bias is used to denote a departure from the standing of even-handed justice.
2. In the administrative action where the decision of authority may result in civil consequences, a hearing before taking decision is necessary.
1. पूर्वाग्रह शब्द का प्रयोग निष्पक्ष न्याय की स्थिति से विचलन को दर्शाने हेतु किया जाता है।
2. प्रशासनिक कार्यवाही में, जहां प्राधिकारी के निर्णय के परिणामस्वरूप सिविल हो सकते हैं, वहां निर्णय लेने से पूर्व सुनवाई आवश्यक है।

