

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 2921 of 2008**

- Smt. Rina Bai W/o-Nand Kumar, Aged about 27 years R/o-Village Taksiwan, Tahsil-Berla, District- Durg (C.G.)

---- Petitioner**Versus**

1. State of Chhattisgarh, Through- Secretary, Department of Woman and Child Development, Mantralaya, D.K.S. Bhawan Raipur (C.G.)
2. District Programme Officer, Department of Woman and Child Development, Durg, District-Durg (C.G.)
3. Project Officer, Woman and Child Project, Tahsil-Berla District-Durg (C.G.) Raipur
4. Director, Panchayat, Chhattisgarh, Raipur (C.G.)
5. Collector, Durg District-Durg (C.G.)
6. Smt. Ahilya Bai, W/o Arun Kumar Tandan, Aged about-22 years, R/o-Village Taksiwan, Tahsil-Berla, District-Durg (C.G.)

---- Respondents

For Petitioner	:	Shri VV Rao, Advocate
For Respondents No.1 to 5/State	:	Shri PK Bhaduri, GA for the State
For Respondent No.6	:	Shri FS Khare, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board****15/06/2015**

1. This writ petition raises a question as to whether a Kotwar appointed under Section 230 of the Chhattisgarh Land Revenue Code, 1959 (for short 'the Code, 1959') holds a civil post or not. The issue has arisen for consideration while dealing with the appointment of respondent No.6 as Anganbadi worker

of Gram Panchayat, Taksiwan, Block Berla, district Durg.

2. In course of recruitment of Anganwadi worker of the above said Gram Panchayat, the competent authority considered the candidature of the petitioner and respondent No.6 and eventually the petitioner was appointed by order dated 30-12-2006. Challenging the said appointment, respondent No.6 preferred a writ petition being WP (S) 1248/2007, which was disposed of on 2-3-2007 directing the Collector Durg to consider the grievances raised by the said respondent. The Collector, Durg rejected the representation filed by respondent No.6, against which she moved a revision application before the Director, Panchayat, which stands allowed by the impugned order dated 20-5-2008.
3. The Director Panchayat has allowed the revision application of respondent No.6 on the ground that in the case of **Ghanesar v. State of M.P.{1978 RN 408 (DB)}** it has been held that a village Kotwar though a public servant is not a civil servant, therefore, even if father-in-law of respondent No.6 was a Kotwar on the relevant date, she was not disqualified to be considered for appointment as Anganwadi worker.
4. The subject recruitment is governed by the guidelines issued by the State Government on 6-1-2000, wherein clause-I provides for the eligibility conditions for appointment. Para 3 of the said clause provides that near relatives of a government servant or that of elected or nominated members of Panchayat Raj Institutions/municipal bodies shall not be eligible for appointment.
5. When the petitioner was initially appointed, respondent No.6 preferred a writ petition WP (S) 1248/2007, alleging that despite she being more meritorious than the petitioner and having belong to schedule caste category, she was

entitled for appointment, yet her candidature has been ignored. The writ petition was disposed of on 02-3-2007 directing the Collector to consider the representation of respondent No.6. The Collector rejected the representation on the ground that since father-in-law of respondent No.6 is Kotwar of village Taksiwan, she could not be appointed. It is this order of Collector, which was challenged before the Director Panchayat.

6. Appointment of Kotwar, Duties and remuneration are governed under the provisions of Section 230 & 231 of the Code, 1959. The said provisions are reproduced hereunder for ready reference:-

“230. Appointment of kotwars and their duties.-(1) For each village or group of villages, there shall be appointed, in accordance with rules made under section 258, one or more kotwars for the performance of such duties as may be prescribed:

Provided that in the Madhya Bharat region the duties of kotwars under this section shall be performed by the Police Chowkidars who shall, on the coming into force of this Code, be deemed to be kotwars under this section, and be subject in all respects to the control of Revenue Officers.

(2) Every person who at the coming into force of this Code holds the post of a village watchman in the Bhopal and Sironj regions or of a chowkidar in the Vindhya Pradesh region shall be deemed to be a kotwar under this section.

231. Remuneration of kotwars.-The State Government may, by general order, subject to such restrictions, terms and conditions as may be mentioned therein, fix the remuneration of Kotwars either prospectively or retrospectively but such retrospective effect shall not be from a date earlier to the 1st March, 1982.”

7. By various notifications issued by the State Government, Rules regarding appointment, punishment and removal of Kotwar and their duties have been framed. Under the said Rules, the appointment of Kotwar is made by Tehsildar or Nayab Tehsildar, who are empowered by the concerned Collector. In the event of vacancy in the office of Kotwar, preference is given to the near relatives of the Ex-Kotwar, other things being equal. A Kotwar is

liable to be suspended or dismissed, like a government servant, by the appointing authority.

8. Rule 8 of the Rules describes the duties of the Kotwar, which includes the following:-

“8. It shall be the duty of the Kotwar-

- to reside in his village or, if he is in charge of more than one village in such village as is appointed for his residence by the Tehsildar, and not to absent himself without proper leave except when such absence is due to the performance of any of the duties imposed on him by or under these rules;
- to carry out all the orders of the Patel or Gram Panchayat or Gram Sabha entrusted with the duties of Patel under Section 229, read with Section 232 of the Madhya Pradesh Land Revenue Code, 1959 (No.20 of 1959), in the discharge of his duties whether under the Code or otherwise and to assist him as also all the Government Officers in the due performance of their official duties;
- to report to the Patel or Gram Panchayat or Gram Sabha entrusted with the duties of Patel under Section 229 read with section 232 of the Madhya Pradesh Land Revenue Code, 1959 (No.20 of 1959), of misuse of Nistar rights or of Government property and encroachment in the common lands of the village and to assist the Patel or Gram panchayat or Gram Sabha in their protection and use according to rules;
- to report breaches of rules pertaining to Reserved Forests, Nistar Forests and the provisions of the Indian Arms Act, 1878, the Madhya Pradesh Game Act, 1935 and Wild Birds and Animals Protection Act, 1912 and the rules framed thereunder;
- to arrest and convey to the police or any other competent authority Police Station or outpost of the circle, any person who in his view, commits a non-bailable and cognizable offence or who has been proclaimed as an absconder;
- to assist in the private defence of person or property in accordance with Section 97 of the Indian Penal Code, 1860 (XIV of 1860), and in the arrest and conveyance to the Police Station, or outpost of the circle of any person liable to arrest under this Section or under Section 59 of the Code of Criminal Procedure, 1898 (V of 1898);
- to report immediately to the Patel of the village (if present in the village at the time) and then to the officer in charge of the Police Station or outpost of the circle-
 - (a) the permanent or temporary residence within the village of any notorious receiver or vendor of stolen property;
 - (b) the resort to any place within or the passage through the village of any person whom he knows or reasonably suspects to be a thug, robber, escaped convict or proclaimed offender

and the movements of wandering gangs through or in the vicinity of his village,

(c) the commission of, or intention to commit any non-bailable offence within or near the village or any offence punishable under Sections 143, 144 or 145, 147 and 148 of the Indian Penal Code, 1860 (XIV of 1860), in the village;

(d) the departure from his home of any convict or non-convict suspect whose name has been entered in the police surveillance register together with the destination (if known);

(e) the advent in his village of any suspicious stranger together with any information which can be obtained from questioning him regarding his antecedents and place of residence.

(f) the occurrence in or near village of any sudden or unnatural death or of death under suspicious circumstances;

(g) the commission of, or intention to commit any act which, if committed would be an offence punishable under any of the following Sections of the Indian Penal Code, 1860 (XIV of 1860), namely:-

302, 304, 382, 393, 394, 395, 396, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459 and 460

(h) any matter likely to affect the maintenance of order or the prevention of crime or the safety of person or property respecting which the District Magistrate, by general or special order made with the previous sanction of the State Government, has directed him to communicate information;

- to report immediately to the Patel of the Village or Gram Panchayat or Gram Sabha entrusted with the duties of Patel under Section 229 read with Section 232 of the Madhya Pradesh Land Revenue Code, 1959 (No.20 of 1959), (if present in the village at the time) and then to the officer-in-charge of the Police Station or out post of the circle, the occurrence of any cases of plague, cholera, small-pox, cerebro-spinal meningitis, chickenpox, diphtheria, dysentery, influenza, leprosy, measles, pneumonia, epidemic relapsing fever, typhoid or enteric fever, typhus fever, tuberculosis of lungs, yellow fever or lathyrism;
- to report to the officer-in-charge of the Police Station or outpost of the circle, at such period as may be prescribed by the Collector the occurrence of all births and death within the village;
- if directed to do so by the Collector, to report deaths of village cattle from disease or poisoning or the attacks of wild animals;
- to attend the Police Station or outpost of the circle on such date as may be prescribed by the Collector and to obey the orders of the officer-in-charge of such Police Station or outpost in all Police matters;
- upon payment of the fee fixed according to rules made under the Central Provinces and Berar Panchayat Act, 1946 to serve the summons and notices issued by a Gram Panchayat or a Nyaya Panchayat constituted under that Act;
- to assist on demand any officer of the Irrigation Department in identifying any labourer resident in the village to whom such

officer proposes to make an advance of money, and also, if required to witness any agreement entered into by such labourer with the Irrigation Department;

- to report promptly to the Station Master of the nearest Railway Station or any other responsible official of the Railway staff available at the nearest Railway Station, any unusual occurrences, like excessive rains, unexpected heavy floods, overflowing of reservoirs, failure of irrigation works, very heavy flow through bridges, impounding of water on the upstream side, etc., or any other type of natural calamities likely to cause harm to the Railway track;
- to report to the nearest office of the Madhya Pradesh Electricity Board, about the general condition of the Sections of grid lines which lie within his jurisdiction.”

9. Under Section 231 of the Code, 1959, Rules have been framed regarding remuneration of Kotwars. It provides that the remuneration shall be fixed by the Collector at settlement. Thus, remuneration of Kotwar is paid from the Government Treasury.
10. In the matter of **The State of Assam and others Vs. Kanak Chandra Dutta**¹, the Constitution Bench while considering the meaning and scope of the word civil post *vis a vis* Mauzadar working in Assam Valley, which is a post akin to a Kotwar in the State of Chhattisgarh has held thus in para 9, 10 & 11:-

“9. The question is whether a Mauzadar is a person holding a civil post under the State within Art. 311 of the Constitution. There is no formal definition of “post” and “civil post”. The sense in which they are used in the Services Chapter of Part XIV of the Constitution is indicated by their context and setting. A civil post is distinguished in Art. 310 from a post connected with defence; it is a post on the civil as distinguished from the defence side of the administration, an employment in a civil capacity under the Union or a State. See marginal note to of Art. 311. In Art. 311, a member of a civil service of the Union or an all-India service or a civil service of a State is mentioned separately, and a civil post means a post not connected with defence outside the regular civil services. A post is a

1 AIR 1967 SC 884

service or employment. A person holding a post under a State is a person serving or employed under the State. See the marginal notes to Arts. 309, 310 and 311. The heading and the sub-heading of Part XIV and Chapter I emphasise the element of service. There is a relationship of master and servant between the State and a person said to be holding a post under it. The existence of this relationship is indicated by the State's right to select and appoint the holder of the post, its right to suspend and dismiss him, its right to control the manner and method of his doing the work and the payment by it of his wages or remuneration. A relationship of master and servant may be established by the presence of all or some of these indicia, in conjunction with other circumstances and it is a question of fact in each case whether there is such a relation between the State and the alleged holder of a post.

10. In the context of Arts. 309, 310 and 311, a post denotes an office. A person who holds a civil post under a State holds "office" during the pleasure of the Governor of the State, except as expressly provided by the Constitution, see Art. 310. A post under the State is an office or a position to which duties in connection with the affairs of the State are attached, an office or a position to which a person is appointed and which may exist apart from and independently of the holder of the post. Art. 310(2) contemplates that a post may be abolished and a person holding a post may be required to vacate the post, and it emphasises the idea of a post existing apart from the holder of the post. A post may be created before the appointment or simultaneously with it. A post is an employment, but every employment is not a post. A casual labourer is not the holder of a post. A post under the State means a post under the administrative control of the State. The State may create or abolish the post and may regulate the conditions of service of persons appointed to the post.

11. Judged in this light, a Mauzadar in the Assam Valley is the holder of a civil post under the State. The State has the power and the right to select and appoint a Mauzadar and the power to suspend and dismiss him. He is a subordinate public servant working under the supervision and control of the Deputy Commissioner. He receives by way of

remuneration a commission on his collections and sometimes a salary. There is a relationship of master and servant between the State and him. He holds an office on the revenue side of the administration to which specific and onerous duties in connection with the affairs of the State are attached, an office which falls vacant on the death or removal of the incumbent and which is filled up by successive appointments. He is a responsible officer exercising delegated powers of Government. Mauzadars in the Assam Valley are appointed Revenue Officers and ex-officio Assistant Settlement Officers. Originally, a Mauzadar may have been a revenue farmer and an independent contractor. But having regard to the existing system of his recruitment, employment and functions, he is a servant and a holder of a civil post under the State.”

11. In the case of a Kotwar, his appointment, duties and remuneration are governed by statutory provisions. He is liable to be suspended or dismissed from the service by procedure set down in rules framed in exercise of statutory power under the Code, 1959. His remuneration is paid by the exchequer, therefore, there exists a relationship of master and servant between the State Government and Kotwar. He holds an office in the set up of revenue establishment of district with specific nature of duties defined under the rules framed in exercise of statutory powers. Thus, applying the test laid down in the matter of **Kanak Chandra Dutta** (*supra*), a Kotwar holds a civil post, therefore, by virtue of para 2 of the guidelines pertaining to appointment of Anganwadi workers, a near relative of Kotwar is not entitled to be considered for appointment.
12. At this stage, Shri Khare, learned counsel for respondent No.6 would submit that father-in-law of respondent No.6 was in fact not serving as Kotwar on the date of consideration as he had already resigned from the office, therefore, even if Kotwar is considered to be holder of a civil post and his near relative is considered ineligible for appointment, respondent No.6 is still

entitled to be considered.

13. A perusal of the order passed by the Collector or the Director Panchayat would demonstrate that this plea was never raised before the said authorities, however, if on the date of consideration the father-in-law of respondent No.6 was not serving as Kotwar, she could have been considered for appointment, therefore, the issue needs to be considered by the appointing authority only on this point as to whether on the date of consideration the father-in-law of respondent No.6 was continuing as Kotwar or not. If on the relevant date the resignation tendered by the father-in-law of respondent No.6 was already accepted by passing an express order by the competent authority, her case could have been considered, therefore, appointing authority shall consider only this aspect of the matter after giving opportunity of hearing to the petitioner, as well as to respondent No.6 and pass order within a period of three months from the date of submission of certified copy of this order.
14. Accordingly, the writ petition is disposed of. No order as to costs.

Sd/-

JUDGE

Prashant Kumar Mishra

ashu

Headlines

Kotwar is holder of a Civil post.