
(2011) 11 CHH CK 0017

Chhattisgarh High Court

Case No: Writ Petition (S) No. 1810 of 2010

Smt. Nilima Bhoi

APPELLANT

Vs

State of C.G. and Others

RESPONDENT

Date of Decision: Nov. 18, 2011

Acts Referred:

- Chhattisgarh Panchayat Raj Adhiniyam, 1993 - Section 91
- Limitation Act, 1963 - Section 5

Citation: (2012) 1 CGLJ 597

Hon'ble Judges: Pritinker Diwaker, J

Bench: Division Bench

Advocate: Sanjay Agrawal, for the Appellant; Chandresh Shrivastava, PL, for the Respondents No. 1 to 3, Shri Raghvendra Pradhan, Advocate, for the Respondent No. 4 and Ms. Sunita Jain, Advocate, for the Respondent No. 5, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Hon'ble Shri Pritinker Diwaker, J.

Challenge in this petition is to the order dated 17.3.2010 (Annexed P-1) passed by the Additional Collector, Mahasamund (Respondent No. 2 here in) and also the order dated 9.4.2010 (Annexed P-2) passed by the Respondent No.4 - Chief Municipal Officer, Nagar Panchayat, Saraipali, District Mahasamund. Vide order dated 17.3.2010 (Annexed P-1) the respondent No. 2 had allowed the appeal preferred by respondent No. 5 u/s 91 of the Chhattisgarh Panchayat Raj Adhiniyam and set aside the appointment order made in favor of the petitioner. Pursuant to the order dated 17.3.2010 (Annexed P-1) passed by respondent No. 2, respondent No. 4 passed the order dated 9.4.2010 (Annexed P-2) appointing respondent No.5 as Anganwadi Worker in place of the petitioner. Facts of the case in brief are that on 6.10.2006 vide Annexed P-4 the petitioner was appointed as Anganwadi Worker for Ward No.4 and

then she started working on the said post. Appointment of the petitioner was challenged by respondent No.5 by way of appeal u/s 91 of the Chhattisgarh Panchayat Raj Adhiniyam vide Annexed P-7. According to respondent No.5, as her appeal was time barred she had also filed an application u/s 5 of the Limitation Act, 1963 for condonation of delay. After entertaining the appeal, learned Additional Collector had directed for calling the original record and after receiving the same on 25.11.2009, case was fixed for arguments on 23.12.2009 but on that day the case was adjourned and ultimately on 17.3.2010 the final order has been passed allowing the appeal of respondent No. 5.

2. Counsel for the petitioner submits that when the appeal of respondent No. 5 was admittedly time barred and application for condonation of delay was also filed u/s 5 of the Limitation Act, under the law, Additional Collector should have first decided the application for condonation of delay and then proceeded to pass the order on merit. He submits that order impugned dated 17.3.2010 has been passed without affording opportunity of hearing to the petitioner and without scrutinizing the merit aspect of the case. He submits that once the order dated 17.3.2010 itself is bad, consequential order dated 9.4.2010 passed on the basis of order dated 17.3.2010 is also liable to be set aside by this Court as appointment of respondent No. 5 is prima facie illegal. He submits that in the present case status quo order was passed by this Court on 30.4.2010 and though the petitioner is working as Anganwadi Worker but till date she has not been paid her salary. In support of his submissions, he placed reliance on the decisions of the Apex Court in the matter of [Dadan Vs. State of Madhya Pradesh Through SHO, PS Satna \(M.P.\)](#), and in the matter of [Gagandeep Pratishthan Pvt. Ltd. and Others Vs. Mechano and Another](#),

3. Replying to the arguments advanced by the counsel for the petitioner, it has been argued by the State counsel that the order dated 17.3.2010 is strictly in accordance with law and there is no infirmity or illegality in the same. In respect of salary of the petitioner pursuant to the direction of this Court, learned State counsel submits that a report of the Collector dated 16.9.2011 has been received by him according to which the petitioner and the respondent No. 5 both are working as Anganwadi Worker.

4. Counsel for respondent No.4 submits that as the appointment of the petitioner was cancelled by the Additional Collector, respondent No. 4 appointed respondent No. 5 on the post of Anganwadi Worker.

5. Counsel for respondent No. 5 submits that the order dated 17.3.2010 is strictly in accordance with law. She submits that the petitioner never raised any objection about the tendency of application of respondent No. 5 for condonation of delay despite the fact that she had sufficient opportunity to do so. She submits that once the petitioner kept silent on the application for condonation of delay, a presumption should be drawn that she was not interested to oppose the same. According to her, after getting appointment order dated 9.4.2010 the respondent

No. 5 had joined the post of Anganwadi Worker on 12.4.2010 and though she is working on the said post, salary has not been paid to her.

6. Heard counsel for the parties and perused the documents on record.

7. From the record it is apparent that the appeal filed by respondent No. 5 u/s 91 of the Panchayat Raj Adhiniyam was beyond limitation and that is why she had also filed an application for condonation of delay. Record further shows that the application for condonation of delay was not decided by the Additional Collector and he straightaway proceeded to pass an order on merit. It is trite law that limitation goes to the root of the matter and if a suit, appeal or application is barred by limitation, the Court or the adjudicating authority has no jurisdiction, power or authority to entertain such suit, appeal or application and decide the same on merit. This Court finds no force in the argument of counsel for respondent No. 5 that as the petitioner had not raised any objection or pointed out before the Additional Collector about the tendency of application for condonation of delay, the Additional Collector was justified in deciding the case straightaway on merit. Once an application is filed for condonation of delay it is for the Court or the adjudicating authority to decide the same irrespective of the fact whether any objection has been raised by the other party or not. From the record it is further revealed that the Additional Collector has not even issued notice on the application for condonation of delay and straightaway proceeded to decide the case itself on merit. Thus looking to the admitted factual position, the order dated 17.3.2010 is prima facie bad in the eye of law and it is set aside accordingly.

8. As the very basis of appointment of respondent No. 5 i.e. the order dated 17.3.2010 allowing her appeal by respondent No. 2 is set aside, the order dated 9.4.2010 appointing her as Anganwadi Worker also goes.

9. As regards salary part, pursuant to the order passed by this Court on 17.9.2011 a report has been submitted by the Collector stating that the petitioner as well as the respondent No. 5 are performing their duties as Anganwadi Worker, this Court is of the considered view that the authority concerned would consider the said report of the Collector and make every Endeavour to pay salary to both i.e. the petitioner and the respondent No. 5. Considering the fact that the order impugned dated 17.3.2010 has been passed against the settled legal position without deciding the application for condonation of delay, the matter is remanded back to the Additional Collector to be decided afresh after giving due opportunity to the parties. The petitioner as well as the respondent No. 5 are directed to remain present before the concerned Additional Collector on 3.12.2011. Registry is directed to immediately send a copy of this order to the Collector as also the Additional Collector, Mahasamund at the earliest. The petition thus succeeds to the extent indicated above.