
(2012) 03 CHH CK 0033
In the Chhattisgarh High Court
Case No : WA No's. 383 and 404 of 2011

Bhuwan Lal Sahu (Adv.)

APPELLANT

Vs

Leeladhar Prasad Chandrakar and Others
 Leeladhar
Prasad Chandrakar Vs State of Chhattisgarh and Others

RESPONDENT

Date of Decision : 01-03-2012

Acts Referred:

Constitution of India, 1950 — Article 166

Citation : (2012) 3 CGBCLJ 123

Hon'ble Judges : I.M. Quddusi, J;Gulam Minhajuddin, J

Bench : Full Bench

Advocate : Y.C. Sharma in W.A. No. 383/ 2011 and Mr. Malay Kumar Bhaduri in W.A. No. 404/2011, for the Appellant; Y.C. Sharma for Respondent No. 3 in W.A. No. 404/2011, Mr. Malay Kumar Bhaduri for Respondent No. 1 in W.A. No. 383/2011 and Mr. Vinay Harit, D.A.G., for the Respondent

Final Decision : Dismissed

Judgement

I.M. Quddusi, J.—These appeals have been filed against the impugned Judgment/order dated 01st of August, 2011 passed by the learned Single Judge in W.P.(C). No. 46/ 2011 (Leeladhar Prasad Chandrakar-vs.-State of Chhattisgarh and others), whereby the appointment of appellant Bhuwan Lal Sahu (respondent no. 3 in writ petition) to the post, of Notary was quashed and directed that the vacant seat should be filled up by issuing fresh advertisement.

W.A. No. 383/2011 has been filed by appellant Bhuwan Lal Sahu (respondent no. 3 in the writ petition) whereas W.A. No. 404/2011 has been filed by appellant Leeladhar Chandrakar, petitioner of the writ petition. Since both the appeals involve similar facts and law, they are being disposed of by this common order.

Brief facts of the case are that the State published a notification in the year 2008 inviting applications from the eligible candidates for appointment on the post of Notaries in the territorial jurisdiction of Raipur Civil Court. Pursuant to the advertisement, the District Judge, Raipur prepared a list of 124 advocates and

vide letter dated 25.10/24.11.2008 forwarded to the Principal Secretary, Law and Legislative Affairs Department, along-with their memorials for consideration to appoint on six vacant posts of Notary at Civil Court, Raipur and Tehsils. The name of appellant Bhuvanlal Sahu was at Serial No. 42. Petitioner Leeladhar made an application at a later stage; the same was submitted along-with memorial on 22.01.2009 and this was also forwarded by the District and Sessions Judge to the State on 04.02.2009 making a note that though the case of the petitioner deserves to be rejected on account of late submission of the application, but since the decision was to be taken by the Government, the memorial was sent. Then it appears that vide letter dated 27.08.2009 the District and Sessions Judge was informed that the State Government has taken a decision to appoint petitioner Leeladhar as Notary along-with 5 others namely Dharmendra Rant, Santosh Singh Thakur, Prabhulal Nayak, Bhupendra Sharma and Ku. Hemlata Singh. Accordingly, the District and Sessions Judge, Raipur vide memo dated 01.09.2009 informed appellant Leeladhar that his name was approved for consideration for appointment to the post of Notary and thus directed to deposit a sum of Rs. 1000/- by Challan and submit a non-judicial stamp of Rs. 500/- so that requisite papers could be forwarded to the State for further proceedings. Accordingly, he deposited the challan of Rs. 1000/- and non-judicial stamp of Rs. 500/-.

2. In the meanwhile, one K. Shrinivas, Advocate lodged a complaint that the appointment of appellant Leeladhar was bad as the last date of submission of the application was 06.09.2008 and the application of Leeladhar was made on 21.01.2009, which could not have been entertained. It seems that after considering the said objection, name of appellant Leeladhar was dropped before the appointment order in his favour could be issued.

3. So far as it relates to appellant Bhuvan Lal Sahu (respondent No. 3 in W.P.(C). No. 46/2011, he was already in the list of recommended candidates. However, the Government did not approve the name initially for appointment on the post of Notary. Thereafter, it appears that Bhuvanlal Sahu made an application to the Chief Minister on 30.01.2009 directly which was referred back to the Secretary, Law Department for doing the needful. However, it was noted that the application dated 31.01.2009 was not signed by Bhuvanlal. It was informed that though his name was in the panel list at Serial No. 42, but after scrutiny, decision was taken to other Advocates except him. A perusal of the note sheet dated 27.7.2010 signed by the then Principal Secretary, Law Department shows that there was a noting of the Chief Minister recommending the appointment of Bhuvanlal.

4. When appellant Leeladhar did not receive any appointment order, he approached the State Government and District & Sessions Judge, Raipur. Again on 19.10.2010, he made a representation to the State requesting to issue the licence of Notary. The State has informed him through the District and Sessions Judge that his document, challan and non-judicial stamp were being returned vide memo dated 20.10.2010. He applied for the certified copy of the entire note

sheets in respect of appointment process of the Notary under the provisions of Right to Information Act, 2005 wherein he came to know that in his place, appellant Bhuwanlal Sahu was appointed vide noting dated 08.09.2010 and to that effect it was also stated in the noting on 29.09.2010 of the government file. Against the said orders, petitioner Leeladhar has filed writ petition seeking quashment of the orders dated 08.09.2010 & 29.09.2010 issued by the State in favour of the appellant Bhuwanlal Sahu appointing him as Notary. It appears that during the pendency of the petition, by order dated 08.04.2011, amendment to the effect to consider the case of the writ petitioner for appointment on the post of Public Notary at Civil Court, Raipur, was allowed.

5. Learned Single Judge has quashed the appointment of appellant Bhuwanlal Sahu on the post of Notary at Civil Court, Raipur holding that his appointment was not in accordance with law for the reason that he was not selected though his name finds place at Serial No. 42 in the panel of 124 candidates and his selection was made subsequently at the instance of the Chief Minister ignoring the claim of other eligible candidates. However, it has been further held that petitioner Leeladhar can also not be appointed against the said vacancy which arose from quashing of appointment of Bhuwanlal Sahu as the application of petitioner Leeladhar was received after the cut off date fixed in the advertisement and consequently the vacant seat should be filled up by issuing fresh advertisement

6. It is settled law that the appointments of Notaries are governed by the Notaries Act, 1952 and the Rules made in exercise of the powers conferred by Section 15 of the Act. These Rules may be called as Notaries Rules, 1956. Rule 4 of the Notaries Rules, 1956 provides for application for appointment as a notary which reads as under.

(1) A person may make an application for appointment as a notary (hereinafter called "the applicant") through the concerned District Judge or the Presiding Officer of the Court or Tribunal where he practices as an Advocate, in the Form of memorial addressed to such officer or authority (hereinafter referred to as the "competent authority") of the appropriate Government as that Government may, by notification in the Official Gazette, designate in this behalf.

(2) The memorial shall be drawn by a person referred to in clause (a) of rule 3 in accordance with Form I and by a person referred to in clauses (b) and (c) of the said rule in accordance with Form II.

(2A) A person applying in Form II for appointment as a notary may submit the memorial direct to the Competent Authority of the Appropriate Government.

(3) The memorial of a person referred to in clause (a) of rule 3 shall be signed by the applicant and shall be countersigned by the following persons:

(a) a Magistrate;

(b) a Manager of a rationalized Bank;

(c) a merchant; and

(d) two prominent inhabitants of the local area within which the applicant intends to practice as a notary

Under sub-Rule(1) of Rule 6, the competent authority shall examine every application received by him and if he is satisfied that the application is not complete in all respects or the applicant does not possess the qualifications specified in rule 3, or that any previous application of the applicant for appointment as notary was rejected within six months before the date of the application, shall reject it summarily and inform the applicant accordingly. Sub-Rule (2) of Rule 6 also provides that if the competent authority does not reject the application under sub-rule (1), he may, if he thinks fit, ascertain from any Bar Council, Bar Association, Incorporated Law Society or other authority in the area where the applicant proposes to practice, the objections, if any, to the appointment of the applicant as notary, to be submitted within the time fixed for the purpose.

Rule 7(1) is also relevant here and quoted below:

7. Recommendation of the competent authority--

(1) The Competent authority shall, after holding such inquiry as he thinks fit and after giving the applicant an opportunity of making his representations against the objections, if any, received within the time fixed under sub-rule(2) of Rule 6, make a report to the appropriate Government recommending that the applicant may be allowed to appear before the interview Board.

7. Further it is pertinent to mention that Article 166 of the Constitution of India provides for conduct of business of the Government of a State, which reads as under:

166.(1) All executive action of the Government of a State shall be expressed to be taken in the name of Governor.

(2) Orders and other instruments made and executed in the name of the Governor shall be authenticated in such manner as may be specified in rules to be made by the Governor, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor.

(3) The Governor shall make rules for the more convenient transaction of the business of the Government of the State, and for the allocation among Ministers of the said business in so far as it is not business with respect to which the Governor is by or under this Constitution required to act in his discretion.

8. Here in the instant case, the note issued by the Chief Minister on the application of appellant Bhuvanlal Sahu not having been issued in prescribed manner, cannot be treated as a government order or directive because the Chief Minister has not seen the record. Rather on the application a direction was issued

without perusing the file. The said direction of Chief Minister was an order on the application without perusing the record or following the rules, which would amount to an order passed without application of mind and therefore, the same shall be subject to judicial review. As quoted above, there is procedure laid down in the Rules made under the Notaries Act and therefore no decision can be taken without following the statutory rules. In absence of a legal right in favour of a person, issue of a writ of mandamus may not be called for and such matters may be left to be resolved by the administrative authorities amongst themselves and therefore we hold that that a writ of mandamus cannot be issued for enforcement of such direction. Therefore, we are of the opinion that the learned single Judge has rightly quashed the appointment of appellant Bhuwan Lal Sahu on the post of Notary.

9. So far as appellant Leeladhar is concerned, he has submitted his application after the cut off date and in this regard an objection was raised by one K. Shrinivas, Advocate that the appointment of appellant Leeladhar was bad in law, therefore, his name was dropped before the appointment order could be issued to him. We are of the opinion that the learned single Judge has rightly held that appellant Leeladhar cannot claim appointment against the vacancy which arose before quashing of appointment of Bhuwan Lal Sahu as the application of Leeladhar was received much after the cut-off date fixed i.e. the advertisement. For the foregoing discussion, we do not find any good ground warranting interference in the impugned order dated 01st August, 2011 passed by the learned single Judge. Therefore, the appeals fail and are dismissed. No order as to costs.