(2019) 10 CHH CK 0154

In the Chhattisgarh High Court

Case No : Writ Petition (S) No. 487 Of 2016

Chhunku @ Bhishm APPELLANT

Vs

State Of Chhattisgarh And Ors RESPONDENT

Date of Decision : 21-10-2019

Acts Referred:

Chhattisgarh Land Revenue Code, 1959 — Section 230
Code Of Criminal Procedure, 1973 — Section 107, 116

Citation : (2019) 10 CHH CK 0154

Hon'ble Judges : Goutam Bhaduri, J

Bench : Single Bench

Advocate : Sandeep Dubey, Soumya Rai, Manoj Kumar Jaiswal

Final Decision : Allowed

Judgement

Goutam Bhaduri, J

1. The facts of this case are that the petitioner Chhunku @ Bhishm was appointed on 29.05.1993 (Annexure P-3) as a permanent Kotwar at village

Kosamkunda, Tahsil Bilaigarh in exercise of power under Section 230, Rule 4 (2) of the C.G. Land Revenue Code, 1959 by the Naib Tahsildar,

Bilaigarh. Subsequently, certain enquiry was started against the petitioner and by an order of the Tahsildar dated 28.06.1994 (Annexure P-4), the

petitioner was removed from service and one Bodhiram was appointed as Kotwar in his place. The primary removal was on the ground that a case

under Section 107 and 116 of Cr.PC, an Istagasa was filed against the petitioner. The allegation was further that the earlier Kotwar Budhram has

made exchange of his service land with one Sattu for Rs. 40,000/- and the petitioner was a witness to such agreement. The order of removal was

subject of challenge before the SDO, Balaigarh and the SDO, Bilaigarh by order dated 19.01.1999 (Annexure P-5) has dismissed the appeal on the

ground of limitation, as it was delayed by four years as the appeal was filed on 16.03.1998. The said order of the SDO was subject of challenge

before the Upper Collector in the second appeal and the Upper Collector, Baloda Bazar too by order dated 04.10.2006 (Annexure P-6) had dismissed

the appeal on the ground that the original claim of reinstatement is barred by time. The said order was further subject of challenge before the Board of

Revenue and the Board of Revenue by its order dated 24.01.2008 (Annexure P-7) observed that in place of petitioner one Bodhiram was appointed

since the subsequent Kotwar has died, therefore, the cause of action itself has come to an end and dismissed the revision of the petitioner. The said

review petition was filed by the petitioner before the Board of Revenue. The Board of Revenue passed the order dated 29.09.2015 (Annexure P-1)

after hearing the petitioner and gave a finding that the earlier order passed by the Board of Revenue in revision was not on the merits. It further

observed that the issue was with respect to the legality of the appointment of subsequent Kotwar Bodhiram to the post for which petitioner Chhunku

@ Bhishm was also a candidate and if held that the revision would have allowed, the petitioner would have been appointed; therefore, allowed the

review petition thereby the ground of delay for dismissal was condoned with respect to the appointment of petitioner it held that though the case was

registered against applicant under Section 107 and 116 of Cr.PC, an Istagasa was filed against the petitioner and mere filing of Istagasa under Section

107 and 116 of Cr.PC cannot be treated that the petitioner is of a bad character. The reliance was placed on 1993.R.N.293 and it was observed that

the pendency of a case under Section 107 and 116 of Cr.PC would not come into way of the petitioner which warrants dismissal. With respect to the

academic qualification, the Board of Revenue believed in the certificate issued by Panchayat in favour of petitioner and held in the certificate Chhunku

@ Bhishm was named as Bhishmlal there by validity of educational certificate was held in favour of petitioner. Furthermore, with respect to exchange

of service land along with Sattu for Rs. 40,000/- it was observed that it was against the Budhram, the father of the petitioner and petitioner (Chhunku)

was only the witness. Consequently, the disqualification for appointment as Kotwar was not held to be attached with the petitioner. Eventually, it was held that the appointment of petitioner was proper. Further it held that however the order of the Tahsildar and thereafter the Upper Collector to

dismiss the petition was proper. The Board of Revenue thereby reviewed its earlier order and held that since the subsequent appointed Kotwar

Bodhiram has died and Ganeshram was working as temporary Kotwar, it directed to appoint regular Kotwar, by a cut off date.

2. The record Annexure P-2 would show that after the order of Board of Revenue was passed on 29.09.2015, a fresh order was issued in favour of

Ganesh Ram and he was appointed as Kotwar .

3. Learned counsel for the petitioner would submit that before dismissal of the petitioner from the post of Kotwar no opportunity of hearing or any

enquiry was conducted, therefore, the order itself bad in law. It is submitted that the principal of natural justice too was not followed by the

Respondent and he would submit that though irrespective of the fact that Ganesh Ram (Respondent No. 2) has been appointed, the petitioner too can

also be appointed as Kotwar as one or more Kotwar can be appointed for the same village as per Section 230 of C.G. Land Revenue Code, 1950.

4. Learned State counsel opposes the argument. The reply of the State only contents that the order passed by the respective review authority is well

merited and do not call for any interference.

5. I have heard learned counsel for the parties and perused the documents.

6. The last order which is under challenge 29.09.2015 passed by Board of Revenue was on review. The reading of the order would show that Board

of Revenue reviewed its earlier order dated 24.01.2008 holding that the petitioner cause of action do not come to an end, it also held that mere filing of

pendency of an application under Section 107 and 116 would also not debar the petitioner to lose his right over the Kotwari and can't be treated as a

man of bad character. Further, with respect to the exchange of service land by father of the petitioner it was observed that the petitioner cannot be

held responsible for exchange of land as it was done by his father and petitioner was only a witness to it. Since the Board of Revenue has observed

those facts in while passing the order of review, all past observation by Tahsildar, Additional Collector and of the Board of Revenue on same subject

merged in it. Those finding therefore attained the finality in absence of any challenge.

7. The relevant Section 230 of LRC 1959 speaks about appointment of Kotwar which reads as under:-

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.

8. Section 230 of C.G. Land Revenue Code purports that more than one Kotwar can be appointed for purpose of such duty as may be prescribed.

Thereby appointment of two Kotwar is not barred under the Act for single village. Here the question would be as to whether the petitioner was

removed legally or not whether any opportunity of hearing was given to him or not? Board of Revenue on its last order have taken into account the

pendency of the criminal case and has held that pendency of a case merely under Section 107 and 116 of the CRPC would not dis-entitle him to hold

the post of Kotwar.

9. Further, the Board of Revenue has held that merely for the fact that father of petitioner has exchanged the Kotwari land with a villager the liability

cannot be fixed on the petitioner (Chhunku @ Bhishm) both the finding by the Board of Revenue has reached its finality and those are not challenged

by any of the respondent before the Court. Even otherwise the pendency of a proceeding under Section 107 and 116 of the CRPC cannot be

constitute as a major criminal case which would dis entitle to be a Kotwar or to lose his job. The rules have been made under Section 230 for

appointment and dismissal of Kotwar along with its duties. The Rule 5 of it would be relevant for the purpose which gives the power to the Appointing

Authority to fine, suspend or dismiss a Kotwar. For the sake of brevity Rule 5 and 6 are reproduced herein under.

5. (1) the appointing authority may fine, suspend or dismiss a Kotwar for,-

(i) being of bad character, actually participating in any kind of undesirable activities or acting in any manner which, in the kind of undesirable activities

or acting in any manner which, in the opinion of the appointing authority, is not in public interest;

(ii) Wilful breach of rules:

Provided that the amount of fine imposed at any one time shall not exceed Rs. 5.

(2) Action should be taken on reports made by the Police against Kotwars and result thereof be intimated to the police forthwith.

6. The appointing authority may terminate the services of a Kotwar whenever, owing to age or to mental or physical infirmity, he is no longer fit to

perform the duties of the post.

10. Reading the aforesaid rules would show that the appointing authority may fine, suspend or dismiss a Kotwar for the reasons stated in Sub Section

1 and 2.The said rule has to be read along with the principles of natural justice which is implicit as embedded and it cannot be implemented in isolation

without reading parallel principle of natural justice of audi alteram partem. It is a settled proposition as per the law laid down by the Supreme Court in

the matter of State of Punjab & Ors. V. Senior Vocational Staff Masters Association & Ors. (AIR 2017 SC 4072)that no order of adverse to an

individual be passed without following the principles of natural justice. The order of the Tahsildar removing the petitioner by Annexure P-4 on

28.06.1994 do not substantiate the petitioner was given due hearing before removal. The reply of the State too also is silent as to whether the principle

of natural justice were followed before such termination was effected. Subsequent order when was subject of challenge before the SDO and Upper

Collector, all the authorities failed to take into account of the fact that before the removal of petitioner from a particular post which has a civil

consequence, opportunity of hearing was given to him. Therefore, if illegality has come to fore and has come to the notice of this Court that cannot be

allowed to be perpetuated, more so the part of condonation of delay has been dealt by the Board of Revenue in its order dated 29.09.2015, and

condoned the delay however, without further discussion of legality of order by Tahsildar & Additional Collector has affirm the order of dismissal of

petitioner only on the ground that new Kotwar has been appointed.

11. Therefore, in a considered view of this Court, the order of Board of Revenue cannot be accepted as a whole and para-6 of the judgment of the

Board of Revenue passed in review is held to be non speaking, as it has not dealt with the real issue that whether the petitioner was given opportunity of hearing before the removal order was passed? After going through the entire documents and the order sheets, nothing is on record to hold that the

petitioner was heard before he was removed. Consequently the order of the Tahsildar dated 28.06.1994 and subsequent order of appeal dated

04.10.2016, passed by the Upper Collector and the order of the Board of Revenue dated 29.09.2015 is modified to the extent and that it is directed

that the termination of the petitioner is set aside. In consequent thereto the petitioner is directed to be reinstated without back wages as a Kotwar

without affecting the appointment of Respondent No. 2 Ganesh Ram who has been held to be appointed as a Kotwar too.

12. Accordingly, the petition stands allowed to the above extend.

