

(2019) 03 CHH CK 0117

In the Chhattisgarh High Court

Case No : Writ Appeal No. 821 Of 2018, 4, 10, 18, 19, 20, 21, 22, 23, 24, 38, 53, 54, 62, 63, 65, 66, 67, 68, 69, 70, 74 Of 2019

Chief Executive Officer Zila Panchayat

APPELLANT

Vs

Anil Kumar Singh And Ors

RESPONDENT

Date of Decision : 13-03-2019

Acts Referred:

Chhattisgarh Panchayat Raj Adnimiyam, 1993 — Section 69, 70
Chhattisgarh Panchayat Service (Recruitment And General Conditions Of Services) Rules, 1999 — Rule 4, 27

Citation : (2019) 03 CHH CK 0117

Hon'ble Judges : Ajay Kumar Tripathi, CJ; Parth Prateem Sahu, J

Bench : Division Bench

Advocate : R.S. Marhas, Aman Tamboli, R.S. Baghel, Dhiraj Kumar Wankhede, Hamida Siddiqui, A.N. Pandey, C.J.K. Rao

Final Decision : Allowed

Judgement

Ajay Kumar Tripathi, CJ

1. Heard counsel for the parties.
2. A batch of writ applications got clubbed together and heard by the learned Single Judge since a common order dated 05.05.2018 which was an order of transfer passed by the Chief Executive Officer (hereinafter referred to as the 'CEO'), Zila Panchayat, Surguja was issued, by virtue of which, Secretaries of different Gram Panchayats stood transferred to other Janpad Panchayats though within the same Zila Panchayat.
3. In all the writ applications, the common argument made was that since Secretary, Gram Panchayats are appointed by State Government, therefore, it is only the State Government who had the power to transfer the Secretaries of a Gram Panchayat. It is their case that they have been notified by the State Government as Panchayat Secretary, therefore, they will not come under the

jurisdiction of the CEO of a Zila Panchayat. Reliance was placed on Rule 27 of the Chhattisgarh Panchayat Service (Recruitment and General Conditions of Services) Rules, 1999 (hereinafter referred to as the 'Rule, 1999').

4. The learned Single Judge seems to have leaned in favour of the argument of the Petitioners, drawing strength from an earlier decision of a learned Single Judge rendered in case of Omprakash v. State of C.G. & Others reported in 2011 (4) C.G.L.J. 547. There also the issue was transfer of a Panchayat Secretary by the CEO.

5. The orders of transfer were held to be bad by the learned Single Judge on the ground that the CEO has no powers to exercise over Panchayat Secretaries so he could not have effected transfer of such employees.

6. Learned counsel representing the Appellants i.e. Chief Executive Officer, Zila Panchayat, Surguja as well as the State point out the infirmity in the judgment of the learned Single Judge dated 06.10.2018. They submit that so-called Panchayat Secretaries are nothing, but erstwhile "Panchayat Karmis". They were appointed by the Panchayat and it is only on 22.11.2010 that a notification was issued by the Department of Panchayat and Rural Development, Government of Chhattisgarh that henceforth "Panchayat Karmis" will be known as "Gram Panchayat Sachiv". The notification which is Annexure A/6 indicates that position.

The notification does not put erstwhile Panchayat Karmis on any higher pedestal than what they were. The notification of the State Government is noway can be read to be an act of appointing the Respondents on a higher post or position than what they held. A change of nomenclature, therefore, will not alter their status or grant them protection on the argument that their appointment is by the State and therefore, they are amenable only to the State's jurisdiction.

7. Learned Single Judge relied on the decision of Omprakash (supra), extracted paragraphs 12, 14, 16 of the said decision and placed reliance and emphasis on Rule 27 of the Rules, 1999, which is known as Chhattisgarh Panchayat Service (Recruitment and General Conditions of Services) Rules, 1999.

The error which seems to have crept into the decision rendered by the learned Single Judge in Omprakash's case (supra) as well as reliance placed by the learned Single Judge, whose order is being assailed, is because the Rules, 1999 have not been read in entirety and appreciated in true perspective.

8. Rule 27 of the Rules, 1999 by itself does not lay down the complete picture.

Rule 4 is equally important under Rules, 1999 because this talks and terms of Constitution of Service and who all constitutes the service. Rule 4 of the Rules, 1999 reads as under:-

"4.Constitution of Service.- The service shall consists of the following persons, namely, (1) Persons, who, at the commencement of these rules, are holding substantively the posts specified in Schedule I"

(2) Persons, recruited to the service before the commencement of these rules: and (3) Persons, recruited to the service in accordance with the provisions of these rules."

9. Rule 4 refers to Schedule I. The Court has been taken through the said Schedule to point out and highlight that the posts and positions which constitute the service of Panchayat under Rules, 1999 does not include either a "Panchayat Karmi" or a "Panchayat Secretary".

10. The argument built up therefore on behalf of the Appellants is that a misplaced reliance has been placed on a set of rules i.e. Rule, 1999 which has no applicability to the present set of employees, who are known as "Panchayat Secretaries" now, but were earlier known as "Panchayat Karmis" and appointed by Panchayats and not State.

11. The question therefore arises is as to what Rules thereafter will govern them?

12. Counsel for the Appellants submits that the relevant rule in this regard is Section 70 of the Chhattisgarh Panchayat Raj Adnimiyam, 1993 (hereinafter referred to as the 'Act, 1993') which is also required to be read in conjunction with Section 69. Sections 69 and 70 of the Act, 1993 are reproduced for ready reference:-

"69. Appointment of Secretary and Chief Executive Officer. - (1) The State Government or the prescribed authority may appoint a Secretary for a Gram Panchayat or group of two or more Gram Panchayats : Provided that the person holding the charge of a Secretary of Gram Panchayat immediately before the commencement of this Act shall continue to function as such till a Secretary is appointed in accordance with this section :

Provided further that a person shall not hold charge of a Secretary of Gram Panchayat, if such a person happens to be relative of any office-bearer of the concerned Gram Panchayat.

Explanation. - For the purpose of this sub-section the expression "relative" shall mean father, mother, brother, sister, husband, wife, son, daughter, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law. (2) The State Government shall appoint for every Janpad Panchayat a Chief Executive Officer and may also appoint one or more Additional Chief Executive Officer, who shall discharge such functions and perform such duties as may be assigned to them by the Chief Executive Officer.

(3) The State Government shall appoint for every Zila Panchayat a Chief Executive Officer and may also appoint one or more Additional Chief Executive Officers, Deputy Chief Executive Officers and Executive Officers who shall discharge such functions and perform such duties as may be assigned to them by the Chief Executive Officer.

(4) During the absence of a Secretary of Gram Panchayat or Chief Executive

Officer of Janpad Panchayat or Zila Panchayat due to leave, retirement, death, resignation or otherwise the prescribed authority shall, as soon as possible, make such arrangements as he deems fit, for carrying on the office of Secretary of Gram Panchayat or Chief Executive Officer of Janpad Panchayat or Zila Panchayat as the case may be. A person while carrying on such office shall exercise all powers conferred by this Act or rules made thereunder on the Secretary of Gram Panchayat or Chief Executive Officer of Janpad Panchayat or Zila Panchayat as the case may be.

(5) The Secretary of the Gram Panchayat, the Chief Executive Officer of Janpad Panchayat or Zila Panchayat shall be responsible for keeping and maintaining the records of the Gram Panchayat, Janpad Panchayat or Zila Panchayat, as the case may be.

70. Other officers and servants of Panchayat. - (1) Subject to the provisions of Section 69 every panchayat may with previous approval of prescribed authority appoint such other officers and servants as it considers necessary for the efficient discharge of its duties.

(2) The qualification, method of recruitment, salaries, leave, allowance and other conditions of service including disciplinary matters of such officer and servants shall be such as may be prescribed."

13. The argument on behalf of the Appellants is that in exercise of the power under Sections 69 and 70 of the Act, 1993, the State Government has 'prescribed' the guidelines as to the service conditions of the "Panchayat Karmis". The relevant notification dated 29.08.2008 has been brought on record as Annexure A/3 to the writ appeal and this guideline issued under Section 70 of the Act, 1993 is the composite rule governing the terms and conditions of "Panchayat Karmis" now known or notified as "Panchayat Secretaries" by the State.

14. Clause 8 under the heading " p;u izfdz;k" and "iz'kkldh; fu;a=.k" Clause 7 clearly indicates that insofar as Panchayat Karmis/Panchayat Secretaries of the Gram Panchayat are concerned, it is the CEO of the Janpad Panchayat and the CEO of the Zila Panchayat who shall exercise administrative control. It also indicates that it will be a district cadre and power of transfer is vested in the CEO and it was this power conferred upon the CEO which was exercised and became the bone of contention in the batch of writ applications which came to be heard and decided by the learned Single Judge.

15. Having taken note of the relevant Rules and the Act as well as the corresponding guidelines prescribed under Section 70 of the Act, 1993, we seem to be in agreement with the argument made on behalf of the Appellants that there was an error committed by the learned Single Judge in Omprakash case (supra) by relying upon the Rules, 1999 which has no application and not taking into consideration the Act, 1993, especially, Sections 69 and 70.

16. The error committed by the learned Single Judge in the case of Omprakash

(supra) has crept into the decision making of the learned Single Judge because reliance has been placed by him on the case and the ratio of Omprakash (supra).

17. For the reasons therefore, which we have noted above that the Rules, 1999 will not govern the service conditions of Panchayat Secretaries who were erstwhile Panchayat Karmis, the power of the transfer will vest in the CEO of the Zila Panchayat and such order of transfer therefore was a valid exercise of power and not required to be interfered with.

18. For the reasons so provided by us, the decision rendered in the case of Omprakash (supra) is held to be no longer good law and the decision rendered by the learned Single Judge on 06.10.2018 placing reliance on the said decision also suffers from the same infirmity. Therefore, the impugned order also is set aside.

19. The appeals are allowed.