
(2008) 04 CHH CK 0020
In the Chhattisgarh High Court
Case No : Writ Petition (S) No. 6031 of 2000

Smt. Ram Bai

APPELLANT

Vs

State of Chhattisgarh and Others

RESPONDENT

Date of Decision : 24-04-2008

Acts Referred:

Chhattisgarh Panchayat Raj Adhiniyam, 1993 — Section 91
Constitution of India, 1950 — Article 14, 16, 21

Citation : (2008) 04 CHH CK 0020

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Advocate : Meena Shashtri, for the Appellant; Y.S. Thakur, D.A.G. For State/
Respondents No. 1 to 3 Mr. Arvind Dubey, Advocate behalf of Mr. Arun Sao,
Advocate For Respondent No. 4 Mr. Ashok Shukla, Advocate, for the Respondent

Judgement

Satish K. Agnihotri, J.—The Petitioner, by this petition, challenges the order dated 25.09.2006 (Annexure P/9), whereby, the Respondent No. 5 has been appointed as Anganbadi Karyakarta at Anganbadi Center, harijanpara, by the Respondent No. 4. Challenge to the appointment of the Respondent No. 5 on the post of Anganbadi Karyakarta, is on two grounds, Firstly, that it was not in accordance with circular dated 12.01.2006 (Annexure P/1) and secondly, the appointment of the Respondent No. 5 on the post of Anganbadi Karyakarta is violative of Article 14, 16 and 21 of the Constitution of India.

2. This Court, in the matter of Smt. Kaleshwari v. State of Chhattisgarh and Ors. (W.P.(S) No. 796/07), and other connected matters, decided on 09.02.2007, held that the Anganbadi workers are admittedly employees of the Panchayats, as their appointments are made by the Janpad Panchayats on proposal made by the concerned Gram Panchayts. It was further observed that the Petitioners have statutory alternative remedy available by way of statutory appeal under Rule 3 of the Madhya Pradesh/Chhattisgarh Panchayats (Appeal and Revision) Rules, 1995 (for short the Rules, 1995) to the Director of Panchayat, Government of Chhattisgarh. The Petitioner, without exercising of that alternative remedy of

statutory appeal, have approached this Court directly.

3. In the present case also adequate efficacious statutory alternative remedy is accordingly available to the Petitioner under the provisions of Rule 3 of the Rules, 1995 read with Section 91 of the Chhattisgarh Panchayat Raj Adhiniyam, 1993 (for short "the Adhiniyam, 1993).

4. Smt. Meena Shashtri, learned Counsel appearing for the Petitioner relied on decisions of the Supreme Court in the matter of ABL International Ltd. and Another Vs. Export Credit Guarantee Corporation of India Ltd. and Others, ; Mrs. Sanjana M. Wig Vs. Hindustan Petro Corporation Ltd., and Secretary, U.P. High School and Intermediate Education, Allahabad and Another Vs. H.K. Lal, .

5. The Supreme Court in the matter of State of H.P. and Ors. v. Gujrat Ambuja Cement and Anr. 2005 (6) SCC 499 observed as under:

17. We shall first deal with the plea regarding alternative remedy as raised by the Appellant State. Except for a period when Article 226 was amended by the Constitution (Forty-second Amendment) Act, 1976, the power relating to alternative remedy has been considered to be a rule of self-imposed limitation. It is essentially a rule of policy, convenience and discretion and never a rule of law. Despite the existence of alternative remedy, it is within the jurisdiction of description of the High Court to grant relief under Article 226 of the Constitution. At the same time, it cannot be lost sight of that though the matter relating to an alternative remedy has nothing to do with the jurisdiction of the case, normally the High Court should not interfere if there is an adequate efficacious alternative remedy. If somebody approaches the High Court without availing the alternative remedy provided the High Court should not ensure that he has made out a strong case or that there exists good grounds to invoke the extraordinary jurisdiction.

21. In G. Verappa Pillai v. Raman & Raman Ltd., CCE v. Dunlop India Ltd., Ramendra Kishore Biswas v. State of Tripura, Shiv Gonda Anna Patil v. State of Maharashtra, C.A. Abraham v. I.T.O. Titaghur Paper Mills Co. Ltd. v. State of Orissa, H.B. Gandhi v. Gopinath & Sons, Whirlpool Corpn. V. Registrar of Trademarks, Tin Plate Co. of India Ltd. v. State of Bihar, Sheela Devi v. Jaspal Singh, and Punjab National Bank v. O.C. Krishnan, this Court had held that where hierarchy of appeals is provided by the statute, party must exhaust the statutory remedy before resorting to writ jurisdiction.

6. Further applying the said ratio in the matter of U.P. State Spinning Co. Ltd. v. R.S. Pandey and another, (2005) 8 SCC 204 the Hon"ble Supreme Court observed as under:

21. In U.P. State Bridge Corpn. Ltd. v. U.P. Rajya Setu Nigam S. Karmachari Sangh, it was held that when the dispute relates to enforcement of a right or obligation under the statute and specific remedy is, therefore, provided under the stature, the High Court should not deviate from the general view and

interfere under Article 226 except when a very strong case is made out for making a departure. The person who insists upon such remedy can avail of the process as provided under the statute. To the same effect are the decisions in *Premier Automobiles Ltd. v. Kamlekar Shantaram Wadke*, *Rajasthan SRTC v. Krishna Kant*, *Chandrakant Tukaram Nikam v. Municipal Corpn. of Ahmedabad* and in *Scooters India v. Vijai E.V. Eldred*.

7. In another latest decision on the concept of maintainability of writ petition vis-a-vis availability of alternative remedy, the Supreme Court in the matter of *Secretary, U.P. High School and Intermediate Education, Allahabad and Another Vs. H.K. Lal*, observed as under:

4. From the records it is borne out that the question as to whether the Respondent has a legal right to alter his date of birth recorded in the certificate granted by the Board was pending consideration before the appellate Court. The writ petition filed by the Respondent should, therefore, not have been entertained particularly in view of the fact that the appeal thereagainst was pending. Writ jurisdiction is discretionary jurisdiction and should not ordinarily be exercised if there is an alternative remedy.

8. A common thread running into the dicta laid down by the Supreme Court in the aforementioned cases is that, normally the High Court should not interfere if there is an adequate efficacious alternative remedy. Where hierarchy of appeals is provided by the statute, party must exhaust the statutory remedy before resorting to writ jurisdiction, except when a very strong case is made out for making a departure.

9. Applying the well settled dicta laid down by the Supreme Court on the issue of availability of alternative remedy to the facts of the case, wherein, the Petitioner has challenges non-appointment of the Petitioner, no case is made out for making out a departure from normal rule. Thus, this petition is dismissed as not maintainable, in view of the availability of statutory alternative remedy. However, it is open to the Petitioner to take recourse to statutory alternative forum that may be available to him, if so advised. No order as to costs.