

**(2017) 01 CHH CK 0044**  
**In the Chhattisgarh High Court**  
**Case No : 1534 of 2016**

Smt.Pushpanchala Choudhary

APPELLANT

Vs

State Of Chhattisgarh & ors.

RESPONDENT

**Date of Decision : 03-01-2017**

**Acts Referred:**

<a href=3998>Constitution of India</a>, <a href=3998-226>Article 226</a> - Power of High Courts to Issue certain writs  
<a href=1767>Indian Penal Code, 1860</a>, <a href=1767-34>Section 34</a>, <a href=1767-188>Section 188</a>, <a href=1767-506B>Section 506B</a> - Acts done by several persons in furtherance of common intention - Disobedience to order duly promulgated by public servant  
<a href=821>Arms Act, 1959</a>, <a href=821-25>Section 25</a>, <a href=821-27>Section 27</a> - Punishment for certain offences - Punishment for using arms, etc  
<a href=1994>Juvenile Justice (Care and Protection of Children) Act, 2000</a>, <a href=1994-29>Section 29</a>, <a href=1994-29>Section 29(1)</a>, <a href=1994-29>Section 29(4)</a> - Child Welfare Committee - Child Welfare Committee - Child Welfare Committee  
<a href=13537>Juvenile Justice (Care and Protection of Children) Rules, 2007</a>, <a href=13537 — Rule 19>Rule 19</a>, <a href=13537-Rule 20>Rule 20</a>, <a href=13537-Rule 21>Rule 21</a>, <a href=13537-Rule 20>Rule 20(1)</a>, <a href=13537-Rule 21>Rule 21(4)</a>, <a href=13537-Rule 21>Rule 21(1)</a> - Juvenile Justice (Care and Protection of Children) Act, 2015, Section 27, Section 111

**Citation : (2017) 01 CHH CK 0044**

**Hon'ble Judges : Sanjay K. Agrawal**

**Bench : Single Bench**

**Advocate : Sunil Sahu, Dhiraj Wankhede, Ashish Surana**

## Judgement

1. Invoking jurisdiction of this Court under Article 226 of the Constitution of India, the petitioner herein calls in question the legality, validity and correctness of the advertisement dated 20.9.2015 (Annexure P/1) inviting applications for the post of Chairman of the Child Welfare Committee constituted under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000 only to the extent of Balrampur District by way of this writ petition.

2. The essential facts requisite to judge the correctness of the plea raised at the Bar are as under:- 2.1 The petitioner was appointed as Chairman of the Child Welfare Committee (hereinafter called as "CWC") for the term of three years in exercise of powers conferred under sub-section (1) of Section 29 of the Juvenile Justice (Care and Protection of Children) Act, 2000 as amended up to 2006 (hereinafter called as "Act of 2000") read with Rule 20 (1) of the Juvenile Justice (Care and Protection of Children) Rules, 2007 (hereinafter called as "Rules of 2007") by order dated 24.4.2015 which she has joined on the said post on 3.5.2015 and started working on the said post.

2.2 Respondent No.1 issued fresh advertisement (Annexure P/1) inviting applications for appointment on the post of Chairman as well as Members of the CWC of various Districts including Balrampur District.

2.3 Since the petitioner was continuing on the post of Chairman of the CWC, Balrampur District and her tenure had not come to an end, she has filed this writ petition stating inter-alia that she has been appointed for the term of three years which she has joined on 3.5.2015 and therefore, no appointment can be made on the post of Chairman of the CWC till the completion of her tenure of three years i.e. 2.5.2018. It is further case of the petitioner that no Chairman has still been appointed on the said post and therefore, Annexure P/1 only to the extent to make appointment on the post of Chairman of the CWC of Balrampur District be quashed.

2.4 Return has been filed by the State stating inter-alia that the post of Chairman of the CWC including Balrampur District is not an administrative post and only an appointment made on the basis of selection by fitness for implementation and upliftment of the objects of the Act of 2000 i.e. Care and Protection of the Children and no person including the present petitioner can claim said appointment as a matter of right under the said Act frustrating the said objective of the Act itself. It was further pleaded that the Child Welfare Committee was constituted for District of Balrampur on 22.11.2012 and three years stood expired on 21.11.2015 and since the tenure of the Chairman of the CWC is co-terminus with the tenure of the Committee by virtue of Rule 21 of the Rules of 2007, the petitioner is deemed to have completed her tenure itself on 21.11.2015 on the post of Chairman of the CWC by force of law and as such, she is not entitled to continue after the completion of tenure of the CWC on 21.11.2015. It has also been pleaded that provisions contained in Section 111 of the New Act i.e. The Juvenile Justice (Care & Protection of Children) Act, 2015 would make it amply clear that even pursuant to the repeal of the old Act, anything done or any action taken under the said old Act shall be deemed to have been done or taken under the corresponding provisions of the Act of 2015, meaning thereby that the said advertisement issued under the earlier provision of Section 27 of the new Act as provided in Section 111 of the Act of 2015 and as such, the writ petition deserves to be dismissed.

3. Mr.Sunil Sahu, learned counsel appearing for the petitioner, would firstly

submit that the petitioner has only appointed on 21.4.2015 which she has joined only on 3.5.2015 and she has not completed the term of three years as per her appointment order, therefore, her services cannot be discontinued by appointment to be made vide Annexure P/1 and secondly that no one has been appointed till the expiry of tenure of the petitioner and therefore, she is entitled to continue on the said post till the expiry of three years on the post of Chairman of the CWC.

4. Mr.Dhiraj Wankhede, learned Government Advocate with Mr.Ashish Surana, learned Panel Lawyer appearing for the respondents/State, would submit that the tenure of the CWC stood expired on 21.11.2015 and by virtue of Rule 21 (1) of the Rules of 2007, the Committee shall have a tenure of three years and the tenure of Chairperson and Members shall be co-terminus with the tenure of the Committee. Since the tenure of the CWC has already been come to an end on 21.11.2015, the petitioner's tenure has also come to an end by virtue of the provisions contained in Rule 21 (1) of the Rules of 2007 and therefore, the State Government is absolutely justified in advertising the said post for appointment of Chairman and Members of the CWC by Annexure P/1. They would also submit that by virtue of the provisions contained in Section 21(4) of the Rules of 2007, advertisement has to be issued by the State Government prior to completion of tenure of the CWC and its members. Therefore, no exception can be taken to advertise the post of Chairman and Members of the CWC prior to 21.11.2015 and as such, the writ petition is liable to be dismissed. They would also submit that the petitioner has also participated pursuant to the advertisement (Annexure P/1) and submitted her candidature for the said post and it was found that several criminal cases including the cases under Sections 188, 506B read with Section 34 of the IPC and Sections 25 & 27 of the Arms Act are pending against her and therefore, she was not found fit for the said post looking to her criminal antecedents. Even otherwise, the petitioner having participated pursuant to the advertisement (Annexure P/1) cannot turn around and assail that she was entitled to continue for a period of three years from the date of her appointment.

5. I have heard learned counsel appearing for the parties, considered their rival submissions and also gone through the documents appended with the writ petition with utmost circumspection.

6. Chapter III deals with Child in need of care and protection. Section 29 of the Act of 2000 provides for Child Welfare Committee which states as under:- "29. Child Welfare Committee.-(1) The State Government may, within a period of one year from the date of commencement of the Juvenile Justice (Care and Protection of Children) Amendment Act, 2006, by notification in the Official Gazette, constitute for every district, one or more Child Welfare Committees for exercising the powers and discharge the duties conferred on such Committees in relation to child in need of care and protection under this Act.

(2) The Committee shall consist of a Chairperson and four other members as the State Government may think fit to appoint, of whom at least one shall be a

woman and another, an expert on matters concerning children.

(3) The qualifications of the Chairperson and the members, and the tenure for which they may be appointed shall be such as may be prescribed.

(4) The appointment of any member of the Committee may be terminated, after holding inquiry, by the State Government, if-

(i) he has been found guilty of misuse of power vested under this Act;

(ii) he has been convicted of an offence involving moral turpitude, and such conviction has not been reversed or he has not been granted full pardon in respect of such offence;

(iii) he fails to attend the proceedings of the Committee for consecutive three months without any valid reason or he fails to attend less than three-fourth of the sittings in a year.

(5) The Committee shall function as a Bench of Magistrates and shall have the powers conferred by the Code of Criminal Procedure, 1973 (2 of 1974) on a Metropolitan Magistrate or, as the case may be, a Judicial Magistrate of the first class. "

7. The State Government in exercise of the provisions contained in the Act of 2000 framed the Rules of 2007. Chapter IV deals with Child in need of Care and Protection. Rule 19 provides Child Welfare Committee, Rule 20 provides composition of the Child Welfare Committee and Rule 21 provides tenure of the Committee which reads as under:-

"19. Child Welfare Committee.- There shall be a Child Welfare Committee in every district, which shall be constituted by the State Government through a notification in the Official Gazette as per sub-section (1) of section 29 of the Act.

20. Composition of the Child Welfare Committee.-(1) The Committee shall consist of a Chairperson and four other members, of whom at least one shall be a woman.

(2) The Chairperson and members of the Committee shall be appointed on the recommendation of a Selection Committee setup by the State Government, for the purpose under rule 91.

(3) The Selection Committee, while selecting the Chairperson and Members of the Committee, shall as far as possible ensure that none of them are from any adoption agency.

(4) The State Government shall provide for such training and orientation in child psychology, child welfare, child rights, national and international standards for juvenile justice to all members of the Committee as it considers necessary.

21. Tenure of the Committee.-- (1) The Committee shall have a tenure of three years and the tenure of Chairperson and Members shall be co-terminus with the

tenure of the Committee.

(2) The Chairperson and Members of the Committee shall be eligible for appointment for a maximum of two consecutive terms.

(3) Extension of the tenure of members of the Committee shall be on the basis of their performance appraisal by the District Child Protection Unit or the State Government and on the recommendation of the Selection Committee.

(4) With a view to ensuring continuity on completion of the tenure of a Committee, the State Government shall constitute a new Committee before the expiry of the term of the existing Committee, where after the existing Committee shall handover all records and information to the newly formed Committee.

(5) The Chairperson and Members may resign at any time by giving one month's notice in writing or may be removed from office as provided in sub-section (4) of section 29 of the Act.

(6) Any casual vacancy in the Committee may be filled by appointment of another person from the panel of names prepared by the Selection Committee, and shall hold office for the remaining term of the Committee."

8. Rule 21 (1) of the Rules of 2007 clearly states that the Committee shall have a tenure of three years and the tenure of Chairperson and Members shall be co-terminus with the tenure of the Committee. Rule 21 (4) clearly provides that with a view to ensuring continuity on the said post, the State Government shall constitute a new Committee before the expiry of the term of the existing Committee, therefore, it is quite evident that the Committee shall have a tenure of three years and the tenure of Chairperson and Members shall be co-terminus with the tenure of the Committee by virtue of the provisions contained in the Rules of 2007.

9. According to the Shorter Oxford English Dictionary 5th Edition, co-terminus means having a common boundary, co-extensive in space, time, or meaning. According to Black's Law Dictionary, co-terminus means co-extensive in time or meaning.

10. In the light of aforesaid statutory legal provisions and meaning of co-terminus, if the facts of the present case are examined, it is quite vivid that CWC for District Balrampur was constituted on 22.11.2012 and it started functioning on the said date. As per the provisions contained in Rule 21(1) of the Rules of 2007, the tenure of the Committee expired on 21.11.2015, the petitioner was appointed on the post of Chairman of the CWC as late as on 24.4.2015 which she has joined on 3.5.2015 and by virtue of the provisions contained in Rule 21(4) tenure of the petitioner (Chairman of the CWC) also stood expired on 21.11.2015 and therefore, the State Government in accordance with Rule 21(4) of the Rules of 2007 decided to advertise the post prior to 21.11.2015 and issued an advertisement on 20.9.2015 for appointment on the post of Chairman and Members of the CWC, which is in accordance with Rule 21(4) of the Rules of

2007.

11. Since, the petitioner's tenure is co-terminus with the tenure of the Committee, which stood expired on 21.11.2015, the petitioner's term also expired by operation of law on 21.11.2015 i.e. provisions contained in Rule 21 (1) of the Rules of 2007, therefore, the petitioner's contention that she is entitled to continue for full period of three years is in teeth of the provisions contained in Rule 21(1) of the Rules of 2007, therefore, it is liable to be rejected and is hereby rejected.

12. There is an additional reason for not upholding the contention of the petitioner that the petitioner has filed this writ petition on 29.4.2016, but pursuant to the advertisement dated 20.9.2015 (Annexure P/1), she submitted her candidature for the post of Chairman of the CWC, however, she was not found suitable for the said post as the Enquiry Committee has found that several criminal cases including the cases under Sections 188, 506B read with Section 34 of the IPC and Sections 25 & 27 of the Arms Act are pending against her.

13. The petitioner has not challenged the decision of the respondents/State holding her unfit on the ground of pendency of criminal cases which has been disclosed in the return and additional return filed by the respondents/State and copy has also been supplied to the petitioner way back on 21.9.2016, therefore, that order has become final.

14. As a fallout and consequence of the aforesaid discussion, the writ petition deserves to be and is accordingly dismissed leaving the parties to bear their own cost(s).