

**HIGH COURT OF CHHATTISGARH, BILASPUR****Writ Appeal No. 455 of 2022**

Mangali Mahinag

---- Appellant**Versus**

1. Sushila Sahu

2. The District Collector District Baloda Bazar, Bhatapara
Chhattisgarh3. The Chief Executive Officer Janpad Panchayat Bilaigarh, District
Baloda Bazar, Bhatapara Chhattisgarh4. The Project Officer Integrated Child Development Project,
Bilaigarh, District Baloda Bazar, Bhatapara Chhattisgarh5. The District Program Officer Women And Child Development
Department, District Baloda Bazar, Bhatapara Chhattisgarh**---- Respondents**

(Cause-title taken from Case Information System)

For Appellant	:	Mr. Rajesh Kumar Kesharwani, Advocate.
For Respondent No. 1	:	Mr. K.N. Nande, Advocate.
For Respondents No. 2, 4 & 5:	:	Ms. Astha Shukla, Government Advocate.



Hon'ble Shri Arup Kumar Goswami, Chief Justice

Hon'ble Shri Justice Deepak Kumar Tiwari, Judge

Judgment on Board

Per Arup Kumar Goswami, Chief Justice

15.09.2022

Heard Mr. Rajesh Kumar Kesharwani, learned counsel for the appellant. Also heard Mr. K.N. Nande, learned counsel, appearing for respondent No. 1 and Ms. Astha Shukla, learned Government Advocate, appearing for respondents No. 2, 4 & 5.

2. This writ appeal is directed against an order dated 21.07.2022 passed by the learned Single Judge in Writ Petition (S) No. 4422 of 2018, relegating the appellant/petitioner to avail alternative remedy, existence of which is not in dispute.

3. Pursuant to an advertisement dated 20.02.2017 for appointment of Aangan-Badi Karyakarta, the appellant as well as the respondent No. 1 had applied for the same in respect of Janpad Panchayat, Bhilaigarh and after a selection process, the appellant was appointed by an order dated 12.10.2017.

4. The respondent No. 1 herein had preferred an appeal before the Collector, Baloda-Bazar and the Collector, by his order dated 04.06.2018, had set aside the order of the appointment of the petitioner and had directed appointment of respondent No. 1, pursuant to which the respondent No. 1 was appointed on 25.06.2018.



5. While considering the interim prayer on 27.07.2018, on the submission of the learned counsel for the petitioner that the petitioner was still working, the order dated 04.06.2018 was stayed.

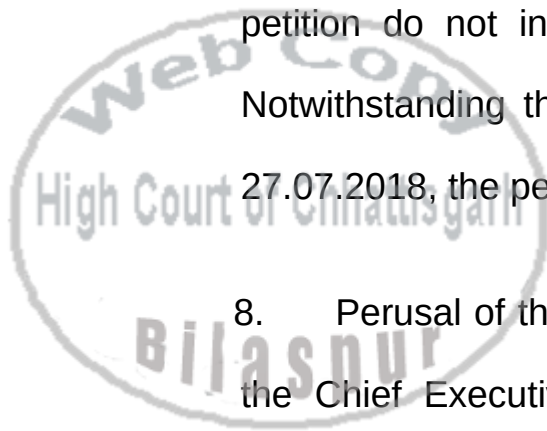
6. It appears that for failure to comply with certain directions, which are peremptory in nature, the writ petition was dismissed on 17.08.2018. The writ petition was restored, subsequently, by an order dated 06.10.2018 subject to payment of cost of Rs. 1,000/- within 7 days before the High Court Legal Services Authority. 7 days' time was also granted to cure the defaults pointed out by the Registry.

7. The said order as well as subsequent orders passed in the writ petition do not indicate that interim order was revived and restored. Notwithstanding the aforesaid, based on the initial order of stay dated 27.07.2018, the petitioner continued to discharge his duties.

8. Perusal of the order of the learned Single Judge goes to show that the Chief Executive Officer, Janpad Panchayat, Bhilaigarh, who was present before the Court, had informed the Court that after being appointed on 25.06.2018, the respondent No. 1 was sent for training and salary was also paid to respondent No. 1.

9. It is, however, not very clear from the impugned order, as to whether the respondent No.1 also continued to receive salary, as Mr. Kesharwani submits that the petitioner had continued to receive payment of salary.

10. Mr. Kesharwani submits that the writ petition was admitted and therefore, after such admission, the learned Single Judge ought not to have relegated the petitioner to avail alternative remedy. In support of his





contention, Mr. Kesharwani has placed before the Court a decision of the Hon'ble Supreme Court in the case of ***Durga Enterprises (P) Ltd. & Another v. Principal Secretary, Govt. of U.P. & Others***, reported in ***(2004) 13 SCC 665***.

11. Ms. Astha Shukla submits that there is no proposition in law that once a writ petition is admitted, the petitioner cannot be asked to avail alternative remedy. She submits that facts and circumstances of each individual case will determine whether the Court would decide the writ petition or the petitioner would be asked to avail alternative remedy. She has placed reliance on a decision of the Hon'ble Supreme Court in the case of ***State of Uttar Pradesh & Another v. Uttar Pradesh Rajya Khanij Vikas Nigam Sangharsh Samiti & Others***, reported in ***(2008) 12 SCC 675*** as well as a decision of the Hon'ble Supreme Court in the case of ***Genpact India Private Limited v. Deputy Commissioner of Income Tax & Another***, reported in ***2019 SCC Online SC 1500***.

12. Mr. Nande submits that despite the respondent No. 1 bringing to the notice of the authorities that the continuation of the petitioner in service is unauthorized in absence of any stay order, no suitable action was taken by the authorities permitting the respondent No. 1 to resume duties in place of the petitioner, and therefore, while dismissing the appeal, direction may be issued to the authorities to allow the respondent No. 1 to function as Aangan-Badi Karyakarta.

13. We have considered the submissions of the learned counsel for the parties and have perused the materials on record.

14. In the instant case, the writ petition was admitted on 27.07.2018.



15. The substratum of argument of Mr. Kesharwani is based on the premise that once a writ petition was admitted for hearing, the petitioner cannot be relegated to avail alternative remedy.

16. In ***Durga Enterprises (P) Ltd.*** (supra), the Hon'ble Supreme Court had observed that the High Court having entertained the writ petition, in which pleadings were also complete, ought to have decided the case on merits instead of relegating the parties to a civil suit. What cannot be lost sight of the fact is that the writ petition was pending for a long period of 13 years. The aforesaid case does not lay down as a proposition that invariably whenever a writ petition is admitted, it has to be heard on merit and the writ Court cannot exercise discretion to relegate the petitioner to avail alternative remedy.

17. In ***Uttar Pradesh Rajya Khanij Vikas Nigam Sangharsh Samiti*** (supra), it was observed by the Hon'ble Supreme Court that issuance of rule *nisi* or passing of interim orders is a relevant consideration for not relegating the petitioner to avail alternative remedy if it appears to the High Court that the matter could be decided by a writ Court. It was observed that there is no proposition in law that once a writ petition is admitted, it could never be dismissed on the ground of alternative remedy.

18. In ***Genpact India Private Limited*** (supra), the decision in ***Uttar Pradesh Rajya Khanij Vikas Nigam Sangharsh Samiti*** (supra) was taken note of.

19. A perusal of the aforesaid two judgments would go to show that as a proposition of law it cannot be countenanced that once a writ petition is entertained and admitted, the same cannot be dismissed on the ground of availability of the alternative remedy at the time of hearing. In that view of the matter, the contention of Mr. Kesharwani fails.



20. Having regard to the nature of the dispute raised, we are of the considered opinion that it is not a case where the writ Appellate Court ought to exercise discretion to entertain the writ petition. We find no infirmity with the view taken by the learned Single Judge for relegating the petitioner to avail alternative remedy.

21. Accordingly, the writ appeal fails and is dismissed.

22. Before parting with the records, we direct the respondent authorities to allow the respondent No. 1 to discharge her duties.

**Sd/-
(Arup Kumar Goswami)
Chief Justice**

**Sd/-
(Deepak Kumar Tiwari)
Judge**

