



CGHC010322572026

2026:CGHC:4435



NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPC No. 4305 of 2026

Order Reserved on: 17.08.2026

Order Delivered on: 14.10.2026

- Visram Yadav S/o Babuji Yadav Aged About 37 Years Presently Posted As Officiating Sarpanch, Gram Panchayat Dongariyakhurd, Post Office Bharevpuran, Tehsil Kunda, Janpad Panchayat Pandariya, Distt.- Kabirdham, C.G.

... Petitioner(s)

versus

1. State Of Chhattisgarh Through The Secretary, Department Of Panchayat And Rural Development, Mantralaya, Mahanadi Bhawan, Nava Raipur, Atal Nagar, Chhattisgarh.
2. The Collector / District Election Officer District Kabirdham, (Chhattisgarh).
3. The Sub- Divisional Officer (Revenue) Pandariya, District Kabirdham, (Chhattisgarh).
4. The Chief Executive Officer Janpad Panchayat Pandariya, District Kabirdham, (Chhattisgarh).

5. The Secretary Gram Panchayat Dongariyakhurd, Janpad Panchayat Pandariya, District Kabirdham, (Chhattisgarh).
6. The Chhattisgarh State Election Commission Located At The Election Building, North Block, Sector 19, New Raipur Atal Nagar, Rakhi, Raipur, Chhattisgarh, 492018.

... Respondent(s)

For Petitioner(s)	:	Mr. Anand Kumar Shukla, Advocate along with Mr. Vivek Siddharth Ojha, Advocate.
For Respondent(s)/State	:	Mr. S. S. Choubey, G.A.
For Respondent No. 6	:	Ms. Anushka Sharma, Advocate on behalf of Mr. S. S. Marhas, Advocate.

Hon'ble Mr. Justice Amitendra Kishore Prasad

C A V Order

1. By way of this petition, the petitioner has prayed for following reliefs:-

"1] That, issue a writ, order or direction in the nature of certiorari quashing and setting aside the impugned Order No./1035 Pancha. Ext./J.P./2026 dated 06.08.2026 passed by the Sub-Divisional Officer (Revenue), Pandariya, District Kabirdham.

2] That, declare that the vacancy in the office of Sarpanch arising from non-receipt of nominations in the general/by-election does not constitute a "casual vacancy" under

Section 38 of the Chhattisgarh Panchayat Raj Adhiniyam, 1993, and that the invocation of Section 38(1)(b) is wholly without jurisdiction;

3] Restrain the Respondents, their officers, servants and agents from giving any effect to the impugned order and from holding any meeting on 17.08.2026 or any subsequent date for the purpose of electing an acting/officiating Sarpanch under Section 38(1)(b) of the Act of 1993;

4] That, this Hon'ble Court may kindly be pleased to grant any other relief(s), which is deemed fit and proper in the aforesaid facts and circumstances of the case. ”

2. Brief facts of the case, is that, the petitioner was duly elected as the Up-Sarpanch of Gram Panchayat Dongariyakhurd, Tehsil Pandariya, District Kabirdham. In view of the vacancy in the office of Sarpanch, the Petitioner has been entrusted with the charge of the office of Sarpanch and is presently discharging all the duties, exercising all the powers and performing all the functions of the Sarpanch of the said Gram Panchayat. General elections to the three-tier Panchayats in the State of Chhattisgarh were held in January, 2025, wherein the post of Sarpanch of Gram Panchayat Dongariyakhurd was reserved for a woman belonging to the Scheduled Tribe category in accordance with the applicable reservation roster. However, no nomination paper was received from any eligible candidate belonging to the reserved category,

i.e., a Scheduled Tribe woman, and consequently, the post of Sarpanch could not be filled through direct election and remained vacant since the constitution of the newly elected Gram Panchayat. Thereafter, a bye-election was conducted in July, 2026; however, even in the said bye-election, no nomination paper was received from any eligible Scheduled Tribe woman candidate for the post of Sarpanch, and consequently, the post continued to remain vacant. In view of the continuing vacancy in the office of Sarpanch, the Petitioner, being the duly elected Up-Sarpanch, was entrusted with the charge of the office of Sarpanch and has since been discharging the duties, exercising the powers and performing the functions of the Sarpanch in accordance with the statutory scheme, particularly Rule 3(2) of the Chhattisgarh Panchayat (Powers and Function of Sarpanch and Up-Sarpanch of Gram Panchayat, President and Vice-President of Janpad Panchayat and Zila Panchayat) Rules, 1994 (hereinafter referred to as "the Rules of 1994"). However, by the impugned order dated 06.08.2026, Respondent No. 3 has recorded that the post of Sarpanch is vacant due to non-receipt of nomination for the post of Sarpanch in the General Election, 2025 and the bye-election, 2026, and has purportedly invoked Section 38(1)(b) of the Chhattisgarh Panchayat Raj Adhiniyam, 1993. The impugned order further directs the designated officers/employees to conduct proceedings for the election of an acting/officiating Sarpanch on 17.08.2026 at 10:30 a.m. in the concerned Gram Panchayat

building. The Petitioner had earlier ventilated his grievance before this Hon'ble Court in W.P.(C) No. 4275/2025, whereafter this Hon'ble Court, vide order dated 13.08.2026, directed the Petitioner to file a duly constituted petition after impleading the necessary parties. The impugned order is wholly without jurisdiction, illegal, arbitrary and contrary to the statutory scheme governing the functioning of the Gram Panchayat and is also contrary to the binding judgment rendered by this Hon'ble Court in *Sarswati Bai v. State of Chhattisgarh*, W.A. No. 621/2015. Hence, being aggrieved by the impugned order and having no other efficacious remedy, the Petitioner is constrained to approach this Hon'ble Court by way of the present writ petition.

3. Learned counsel for the petitioner submits that the present petition arises out of the impugned order dated 06.08.2026 passed by respondent No. 3, whereby a meeting was directed to be convened on 17.08.2026 for election of an acting/officiating Sarpanch under Section 38(1)(b) of the Chhattisgarh Panchayat Raj Adhiniyam, 1993. It is submitted that the petitioner is the duly elected Up-Sarpanch of Gram Panchayat Dongariyakhurd, District Kabirdham, whereas the post of Sarpanch was reserved for a woman belonging to the Scheduled Tribe category, however, in the General Election held in January, 2025, no eligible candidate from the said reserved category filed her nomination, as a result whereof no person was elected as Sarpanch and the post remained unfilled from the very inception of the present

Panchayat. It is further submitted that even in the subsequent bye-election held in July, 2026, no eligible Scheduled Tribe woman candidate filed her nomination, and consequently, the post continued to remain vacant. The petitioner, being the duly elected Up-Sarpanch, has been discharging the duties and functions of Sarpanch in accordance with the statutory scheme, particularly Rule 3(2) of the Chhattisgarh Panchayat (Powers and Functions of Sarpanch and Up-Sarpanch of Gram Panchayat, President and Vice-President of Janpad Panchayat and Zila Panchayat) Rules, 1994, which provides that, in the absence of the Sarpanch, the powers and functions of the Sarpanch shall be exercised and performed by the Up-Sarpanch. Learned counsel submits that respondent No. 3, by the impugned order, has erroneously treated the initial non-filling of the post as a "casual vacancy" and invoked Section 38(1)(b), whereas the statutory concept of a casual vacancy necessarily presupposes that the office was occupied by an elected office-bearer and subsequently became vacant during the subsistence of his or her tenure on account of any of the contingencies contemplated under Section 38(1)(a), such as death, resignation, no-confidence motion, removal, or the office-bearer becoming a Member of the Legislative Assembly or either House of Parliament. In the present case, there was never an elected Sarpanch whose office subsequently became vacant, and none of the contingencies contemplated under Section 38(1)(a) occurred. It is, therefore, submitted that the foundational

requirement for invoking Section 38(1)(b) is absent and the mere description of the post as a "casual vacancy" cannot confer jurisdiction upon the authority where the statutory conditions are not satisfied. Learned counsel further submits that the Panchayat Raj Adhiniyam itself distinguishes between a failure to elect a Sarpanch and the occurrence of a casual vacancy in the office of an already elected Sarpanch, and Section 13(2) specifically contemplates the situation where a village or ward fails to elect a Sarpanch and provides for commencement of fresh election proceedings. Thus, the present case falls within the former category and cannot be brought within the ambit of Section 38(1)(b). It is further submitted that Rule 89 of the Chhattisgarh Panchayat Nirvachan Niyam, 1995 prescribes the procedure for dealing with vacancies and contemplates the role of the District Election Officer and the State Election Commission in initiating and completing the election process; therefore, the Respondents could not have bypassed the prescribed election machinery and directly proceeded to convene a meeting for election of an acting/officiating Sarpanch by treating the initial failure to elect as a casual vacancy. Learned counsel places reliance upon the judgment of the Division Bench of this Hon'ble Court in *Sarswati Bai v. State of Chhattisgarh*, W.A. No. 621/2015, wherein the statutory scheme concerning Rule 89 and the election machinery was considered. It is submitted that the Petitioner does not seek to contend that the office of Sarpanch should remain vacant

permanently, nor does he seek to prevent a fresh election; rather, his limited submission is that the Respondents must follow the procedure prescribed by law for filling a post which remained unfilled due to failure of election and cannot invoke the machinery applicable to a casual vacancy. It is, therefore, submitted that the impugned order dated 06.08.2026 suffers from a fundamental jurisdictional error, is contrary to the statutory scheme and is liable to be set aside, with liberty to the competent election authorities to initiate or continue the appropriate election process in accordance with law while maintaining the reservation attached to the office of Sarpanch. He has placed reliance upon the judgment passed by this Court in **WA No. 621/2015** on **11.07.2016**.

4. On the other hand, learned counsel appearing for the State submits that the impugned order dated 06.08.2026 has been passed by the competent statutory authority, namely, the Sub-Divisional Officer (Revenue), Pandariya, District Kabirdham, strictly in accordance with the provisions of law and does not warrant any interference by this Hon'ble Court. It is contended that the post of Sarpanch of Gram Panchayat Dongariyakhurd could not be filled up, as no eligible candidate belonging to the Scheduled Tribe (Woman) category submitted a nomination paper either in the General Election held in the year 2025 or in the subsequent bye-election held in the year 2026. In such circumstances, the competent authority, having regard to the continuing vacancy in the office of Sarpanch, has rightly invoked

the provisions of Section 38(1)(b) of the Chhattisgarh Panchayat Raj Adhiniyam, 1993 and directed the convening of the meeting for taking necessary steps in accordance with law. It is, therefore, submitted that the action taken by the respondent authorities is legally justified, based upon the prevailing factual circumstances and in conformity with the statutory provisions, and that no illegality, arbitrariness or jurisdictional error can be attributed to the impugned order so as to warrant interference by this Hon'ble Court in exercise of its writ jurisdiction.

5. Having heard learned counsel for the parties and having perused the material available on record.
6. From a perusal of the impugned order dated 06.08.2026, it transpires that, as the post of Sarpanch of Gram Panchayat Dongariyakhurd, reserved for a woman belonging to the Scheduled Tribe category, could not be filled up either in the General Election or in the subsequent bye-election, the competent authority proceeded to pass the impugned order for filling up the said post by taking recourse to the provisions of Section 38(1)(b) of the Chhattisgarh Panchayat Raj Adhiniyam, 1993. It is not in dispute that the post of Sarpanch has continued to remain vacant and, in the absence of an elected Sarpanch, the present Petitioner, being the duly elected Up-Sarpanch, is presently officiating and discharging the duties and functions of the Sarpanch. In such circumstances, the necessity for making appropriate arrangements for filling up the vacant post of

Sarpanch has arisen. In order to examine the controversy in the light of the rival submissions advanced by learned counsel appearing for the respective parties, it would be apposite to reproduce the relevant statutory provisions governing the subject matter.

7. Section 38 (1) (b) of the Chhattisgarh Panchayat Raj Adhiniyam, 1993 reads as under:-

“38. Filling up of vacancies.-*(1) (a) In the event of death, resignation, no confidence motion, or removal of an office bearer of a Panchayat or on his becoming a member of State Legislative Assembly or a member of either House of Parliament before the expiry of his term, a casual vacancy shall be deemed to have occurred in his office and such vacancy shall be filled as soon as may be by election in accordance with the provisions of the Act and the rules made thereunder;*

(b) in the event of occurrence of a casual vacancy in the office of the Sarpanch of a Gram Panchayat, the Secretary of the Gram Panchayat, as the case may be, shall cause to be called a special meeting of the Panchayat immediately, but not later than fifteen days from the date of receipt of information from the prescribed authority regarding the vacancy and the members shall elect from amongst themselves a person to hold the office temporarily till a new Sarpanch, as the case may be, is

elected in accordance with the provisions of this Act and the rules made thereunder and such officiating Sarpanch, as the case may be, shall perform all the duties and exercise all the powers of Sarpanch, during the pendency of election:

Provided that if the office of the Sarpanch is reserved for the member of Scheduled Castes or Scheduled Tribes or other Backward Classes or for a woman, the officiating Sarpanch shall be elected from amongst the members belonging to the same category;

Provided further that where the office of Sarpanch is reserved for a woman belonging to Scheduled Castes or Scheduled Tribes or other Backward classes, and there is no other woman belonging to that category who can be elected to officiate as Sarpanch, any other woman belonging to the other reserved categories may be elected to officiate as Sarpanch during the casual vacancy.”

8. Rule 3(2) of the Chhattisgarh Panchayat (Powers and Functions of Sarpanch and Up-Sarpanch of Gram Panchayat, President and Vice-President of Janpad Panchayat and Zila Panchayat) Rules, 1994 provides:

"In the absence of the Sarpanch, the powers and functions of the Sarpanch shall be exercised and performed by the Up-Sarpanch."

9. Rule 89 of the C.G. Panchayat Nirvachan Niyam, 1995 (henceforth "Rules of 1995") reads as follows:-

"Casual vacancies in Panchayats.-(1) When any vacancy occurs due to any reason such as death, disqualification, resignation, absence without leave, setting aside of election etc. of a member of a Panchayat, or Sarpanch the Secretary of the Gram Panchayat or the Chief Executive Officer of the Janpad Panchayat or the Zila Panchayat as the case may be, shall inform the District Election Officer about such vacancy within seven days from the date of its occurrence.

(2) the District Election Officer shall ensure due observance of sub-rule (1) and send to the Commission, in the first week of every month a consolidated statement of vacancies in the various Panchayats of the District, whereupon, the Commission shall take necessary action to fill the vacant seats and the provisions of these rules shall, mutatis- mutandis apply to fresh poll taken to fill such seats."

10. Upon a perusal of the aforesaid provisions of the Act and the Rules, this Court shall now proceed to examine the legality and validity of the impugned order dated 06.08.2026. It is pertinent to note that this Court, in W.A. No. 621/2015, has elaborately considered and dealt with a similar issue and has held that where the post of Sarpanch remains vacant on account of the fact that

no candidate belonging to the Scheduled Tribe (Woman) category has submitted a nomination paper to contest the election, and consequently, the post remains unfilled both in the General Election as well as in the subsequent bye-election, such a situation cannot be treated as a "casual vacancy" within the meaning of Section 38 of the Act. A casual vacancy can arise only upon the occurrence of the circumstances contemplated under the statutory provision, such as the death or resignation of the elected office-bearer, the passing of a no-confidence motion against him or her, removal from office, or any other statutorily prescribed contingency resulting in the office becoming vacant during the tenure of the elected office-bearer. In the present case, admittedly, no person was elected to the office of Sarpanch in the first place, and therefore, there was no elected office-bearer whose tenure was subsequently brought to an end by death, resignation, no-confidence motion, removal or any other circumstance contemplated under Section 38(1)(a) of the Act. Thus, the foundational condition precedent for treating the vacancy as a "casual vacancy" and consequently for initiating proceedings under Section 38(1)(b) of the Act is conspicuously absent. In view of the aforesaid legal position and the ratio laid down by this Court in W.A. No. 621/2015, the impugned order dated 06.08.2026 is required to be examined in the light of the distinction between an office which remained unfilled from its inception due to failure of

election and an office which became vacant during the tenure of an elected office-bearer.

11. None of the conditions contemplated under Section 38(1)(a) of the Act were fulfilled in the present case. On the contrary, the facts and circumstances of the case clearly indicate that the present situation is governed by Rule 3(2) of the Chhattisgarh Panchayat (Powers and Functions of Sarpanch and Up-Sarpanch of Gram Panchayat, President and Vice-President of Janpad Panchayat and Zila Panchayat) Rules, 1994 provides:

"In the absence of the Sarpanch, the powers and functions of the Sarpanch shall be exercised and performed by the Up-Sarpanch."

12. Upon applying Rule 89(2) of the Chhattisgarh Panchayat Nirvachan Niyam, 1995, the District Election Officer is required to ensure due compliance with the prescribed procedure and to forward a consolidated statement of vacancies to the State Election Commission, whereupon the Commission is required to take necessary steps for filling up the vacant seats. Thus, the statutory scheme clearly places the responsibility for initiating and conducting the election process upon the prescribed election machinery and, ultimately, upon the State Election Commission.
13. However, from a perusal of the impugned order dated 06.08.2026, it appears that the concerned Sub-Divisional Officer (Revenue), Pandariya, by invoking an incorrect provision of law, has proceeded to convene a meeting for the election of an officiating

Sarpanch. Such a course of action, having been adopted without there being a casual vacancy within the meaning of Section 38 of the Act, cannot be held to be in accordance with law.

14. Accordingly, in view of the judgment passed by this Court in W.A. No. 621/2015, this Court is of the opinion that, if pursuant to the impugned order, an election was conducted on 17.08.2026 and any person has been elected as Sarpanch, the concerned authorities shall take appropriate recourse under Rule 89(2) of the Chhattisgarh Panchayat Nirvachan Niyam, 1995 by informing the District Election Officer regarding the vacant post of Sarpanch on account of non-availability of an eligible candidate belonging to the concerned reserved category. Thereafter, the District Election Officer shall take necessary steps in accordance with law and forward the requisite information to the State Election Commission, which shall initiate the appropriate election process and, upon completion of the prescribed procedure, ensure the election of a Sarpanch belonging to the Scheduled Tribe (Woman) category.
15. During the interregnum, if any person has been appointed or elected as Sarpanch pursuant to the proceedings conducted on 17.08.2026, such person shall continue to officiate as Sarpanch of the concerned Gram Panchayat until the fresh election is duly conducted in accordance with law. However, if no person has been elected or appointed as Sarpanch pursuant to the aforesaid proceedings, the present Petitioner, being the duly elected Up-

Sarpanch and presently discharging the duties and functions of Sarpanch under the existing statutory arrangement, shall continue to discharge such duties as officiating Sarpanch of the concerned Gram Panchayat until the prescribed election process is duly completed and a Sarpanch belonging to the Scheduled Tribe (Woman) category is elected in accordance with law.

16. Accordingly, the impugned order dated 06.08.2026 passed by the Sub-Divisional Officer (Revenue), Pandariya, District Kabirdham, is hereby set aside, and the present writ petition stands **allowed**.

Sd/-

(Amitendra Kishore Prasad)
Judge

Raghu Jat