

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 557 of 2015**

Benjamin Sikka S/o I.D.Sikka, aged about 40 years, Occupation Service Presently posted as Naib Tahsildar and posted at Kabeerdham, now working as Patwari at Tahsil Office Pithora, District Mahasamund, R/o village Lakhagarh, Tahsil Pithora, District Mahasamund, Chhattisgarh

---- Appellant**Versus**

1. State of Chhattisgarh, through the Secretary, Department of Revenue, Mahanadi Mantralaya, Naya Raipur, Post Office & Police Station Naya Raipur, District Raipur, Chattisgarh
2. Collector, Mahasamund, District Mahasamund, Chhattisgarh.
3. Sub Divisional Officer (Revenue) Pithora, District Mahasamund, Chhattisgarh.
4. Tahsildar, Pithora, District Mahasmund, Chhattisgarh.
5. Naib Tahsildar, Pithora, District Mahasamund, Chhattisgarh.
6. Revenue Inspector, Pithora, District Mahasamund, Chhattisgarh.
7. Balraj Naidu, R/o Ward No. 5, Ratna Bhawan, Thana Chowk, NH 53, Pithora, District Mahasamund, Chhattisgarh.

---- Respondents

For Appellant	:	Shri Rajeev Shrivastava and Shri Malay Shrivastava, Advocates.
For Respondent/State	:	Shri B. Gopa Kumar, Deputy Advocate General.

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri P. Sam Koshy, J.

Judgment on Board**Per Navin Sinha, Chief Justice****18/11/2015**

1. The present appeal arises from order dated 15.9.2015 dismissing Writ Petition (S) No. 3267 of 2015 declining to interfere with the order of suspension dated 15.5.2015 and the consequent charge sheet dated 25.6.2015 constituting departmental enquiry.

2. The challenge with regard to the direction for lodgment of the First Information Report is not pressed in appeal as the same is stated to have been lodged already, reserving the right to take such appropriate steps in law as the Appellant may be advised.
3. Learned Counsel for the Appellant submits the 16 point document issued by him with regard to the lands in question alleged to be forest lands was based on the entries made in the revenue records between the period 2006-2010 much prior to posting of the Appellant at village Teka. The suspension is therefore based on non-est ground for which the Appellant has filed representation also before Respondent No. 2 which remains to be decided.
4. Learned Counsel for the State points out that an order of suspension under Rule 9 of the Chhattisgarh Civil Services (Classification, Control & Appeal) Rules, 1966 (hereinafter referred to as 'the Rules') is appealable under Rule 23. Whether the order of suspension is based on non-est grounds or not itself requires a preliminary enquiry from the original records which can be done better before the appellate authority.
5. We have considered the submissions on behalf of the parties.
6. Normally, an order of suspension based on non-est grounds is amenable to challenge. But, because the Rules provide an alternate statutory remedy before the appellate authority for assailing an order of suspension and we are of the considered opinion that whether suspension is based on non-est grounds or not is a question of fact to be verified from the original records as to when entries were made in the revenue records and who was the Patwari posted there at the relevant time, the appropriate remedy for the Appellant to pursue at this stage is before the Appellate Authority.
7. The appeal is disposed with the observation that the Appellant may file an appeal against his suspension before the appellate authority. If an application is filed under Rule 25 of the Rules for condonation of delay in preferring the same, it is expected to be considered on its merits in accordance with law keeping in

mind that the laws of limitation cannot be invoked to shut out adjudication on merits simplicitor. If any representation has already been filed before the appellate authority, it is directed that it shall be treated as an appeal with liberty to the Appellant to supplement the same if so advised.

8. Let the appeal be disposed by the appellate authority by a reasoned and speaking order within a maximum period of two months from the date of receipt and/or presentation of a copy of this order, in either case by lodgment of fresh appeal or treating the representation as an appeal.

9. The writ appeal stands disposed.

Sd/-

(Navin Sinha)
CHIEF JUSTICE

Sd/-

(P. Sam Koshy)
JUDGE