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HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 1424 of 2015

- Smt. Sarswati Bai W/o Aatma Ram Aged About 48 Years R/o Village Bodhara, Gram Panchayat Bodhara, Post Dhaneli, Police Station & Tahsil Gurur, District Balod, (Chhattisgarh)

---- Petitioner

Versus

1. State Of Chhattisgarh Through Its Secretary, Panchayat Avam Samaj Kalyan Vibhag Mahanadi Bhawan, New Raipur, District Raipur, (Chhattisgarh)
2. The Collector, District Balod, (Chhattisgarh)
3. The Chief Executive Officer, Zila Panchayat Balod District Balod, (Chhattisgarh)
4. The Chief Executive Officer , Janpad Panchayat- Gurur, District Balod, (Chhattisgarh)
5. The Secretary, Gram Panchayat- Bodhara, Police Station/ Tahsil Gurur, District Balod, (Chhattisgarh)

---- Respondent

And

WPC No. 1297 Of 2015

- Smt. Aroopa Sahu W/o Kunjlal Aged About 40 Years R/o Village Bohara Gram Panchayat Bohara Police Station & Tahsil Gurur, District Balod Chhattisgarh

---- Petitioner

Vs

1. State Of Chhattisgarh Through The Secretary Panchayat Avam Samaj Kalyan Vibhag Mahanadi Bhawan New Raipur District Raipur Chhattisgarh
2. The Collector Balod, District Balod Chhattisgarh
3. The Chief Executive Officer Zila Panchayat Balod, District Balod Chhattisgarh
4. The Chief Executive Officer Janpad Panchayat Gurur District Balod Chhattisgarh

5. The Secretary Gram Panchayat- Bohara, Police Station/ Tahsil Gurur, District Balod Chhattisgarh
6. Kamtaram Sahu S/o Late Manrakhan Sahu Aged About 57 Years
R/o Gram Panchayat Bohara Police Station / Tahsil Gurur District
Balod Chhattisgarh

---- Respondents

For Petitioners	Mr. Ravi Maheshwari, Advocate
For Respective Respondents	Mr. Rahul Birtharey, Mr. Avinash Singh, Panel Lawyer, Mr. P.P. Sahu and Mr. R.S. Baghel, Advocates

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

27/10/2015

Heard finally with the consent of learned counsel for the parties.

(2) In both the writ petitions, the issue involved is about nomination of Up-Sarpanch for exercising powers and function of Sarpanch of the concerned Gram Panchayat. In both the writ petitions, the office of Sarpanch of the concerned Gram Panchayat was reserved for Scheduled Tribe woman category, however, there being no woman member belonging to the Scheduled Tribe community available in the village, the post of Sarpanch did not receive any nomination in the election, therefore, the said office remained vacant. The elected Panchas have already elected Up-Sarpanch for the concerned Gram Panchayat. In both the matters, the petitioners are Panchas of the respective Gram Panchayats. They have assailed the steps taken by the respondent authorities in handing over the powers and function of the office of Sarpanch to the Up-Sarpanch.

(3) Mr. Maheshwari, learned counsel for the petitioners, would submit that the respective petitioners have been authorized by the concerned Gram Panchayat to exercise the powers and functions of the office of Sarpanch, however, the CEO of the Janpad Panchayat has nominated the Up-Sarpanch to exercise the powers and functions of the Sarpanch. He would submit that under Section 38 of the Chhattisgarh Panchayat Raj Adhiniyam, 1993 (in short "the Adhiniyam, 1993"), it is the Gram Panchayat which is competent to authorise any of the Up-Sarpanch to exercise the powers and functions of the Sarpanch and the CEO has committed illegality by nominating the Up-Sarpanch.

(4) Per contra, learned counsel for the respondents, would submit that the present is not a case of occurrence of casual vacancy, therefore, Section 38 of the Adhiniyam, 1993 has no application in the facts and circumstances of the case. According to them, Rule 3(3) (ii) (b) of the Chhattisgarh Panchayat (Powers and Function of Sarpanch and Up-Sarpanch of Gram Panchayat, President and Vice-President of Janapad Panchayat and Zila Panchayat) Rules, 1994 (in short the Rules, 1994) would apply in the present case.

(5) After hearing learned counsel for the parties, it would appear to this Court that Section 38 of the Adhiniyam, 1993 would only apply when there is occurrence of a casual vacancy in the office of Sarpanch of a Gram Panchayat, however, when the Sarpanch was not at all elected in the General Election, there was no occasion for occurrence of a casual vacancy. It is rightly contended by learned counsel for the respondents that in the present facts' situation, Rule 3(3) (ii) (b) of the Rules, 1994 would apply, which provides that the Up-Sarpanch shall exercise the powers and perform the functions of the Sarpanch pending the election

of the Sarpanch or in case the Sarpanch is unable to attend the meeting due to any reason. Thus, whenever a Sarpanch is not elected, it is the Up-Sarpanch who shall perform the functions of the office of Sarpanch.

(6) The above being the provision of law, the writ petitions are disposed of with a direction that the concerned Collector or the State Election Commission shall take steps to hold elections of the Sarpanch of Gram Panchayats Bohara, District Balod and Bodhara District Balod, within a period of 6 months from today. Till the elections are held, the Up-Sarpanch shall continue to exercise the powers and functions of the office of Sarpanch of the concerned Gram Panchayat.

Sd/-

Judge

(Prashant Kumar Mishra)

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