

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 5982 of 2008**

- Gram Panchayat Sahaspani Tahsil-Sarangarh, Distt.-Raigarh (CG), Through Its Sarpanch, Dhaja Ram Patel S/o Vasudev Patel, Aged 50 Years, R/o Village-Sahaspani, Tahsil-Sarangarh, Distt.-Raigarh (CG)

---- Petitioner**Versus**

1. State Of Chhattisgarh, through Secretary, Department of Panchayat & Rural Development, Mantralaya, DKS Bhavan, Raipur (CG)
2. Director (Panchayat), Chhattisgarh, Raipur (CG)
3. Collector, District Raigarh, Raigarh (CG)
4. Chamru Ram Bariha, S/o Salik Ram Bariha, aged about 40 years, R/o Village Ghanapipar, P.O. Kedar, Tehsil Sarangarh, District Raigarh (CG)

---- Respondent

For Petitioner : Shri Adil Minhaj, Advocate.
 For Respondent/State : Shri Satish Gupta, Govt. Advocate.
 For Respondent No.4 : Shri B.N. Nande, Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board****27/04/2017**

1. The petitioner would assail the orders (Annexure-P/1) dated 1.10.2008 and Annexure-P/2 dated 26.2.2005 passed by respondents No.1 and 2 respectively thereby holding that respondent No.4's removal from the post of Panchayat Karmi of Gram Panchayat Sahaspani, Tehsil Sarangarh, District Raigarh is illegal and has directed his continuance in service.
2. Respondent No.4 was appointed as Panchayat Karmi of the Gram Panchayat on 2.2.95. On certain allegations against respondent No.4, a meeting of the Gram Sabha was convened on 22.1.99 for considering

resolution for his removal. Upon such resolution being passed, respondent No.4 was removed from the office on 23.1.99 (Annexure-P/6) without holding any enquiry.

3. In another set of proceeding, some complaints were made against respondent No.4 before the SDO (Revenue), Sarangarh, upon which the SDO issued a show cause notice to respondent No.4 on 18.1.99 and was eventually removed from the post within a week on 25.1.99. This order of removal passed by the SDO was affirmed by the Additional Collector, Raigarh in its order dated 29.7.99 (Annexure-P/7). Feeling aggrieved by the order of the Additional Collector, respondent No.4 preferred revision application before the Director Panchayat wherein the said Revisional Authority passed an order on 26.2.2005 holding that the order passed by the SDO is without jurisdiction. Against the order passed by the Director Panchayat, the petitioner preferred appeal/revision before the State Government which came to be dismissed by the impugned order dated 1.10.2008.
4. It is argued by learned counsel for the petitioner that the Director Panchayat has allowed the appeal preferred by respondent No.4 on the ground that the Gram Panchayat has not initiated any action against the respondent No.4 whereas the Gram Panchayat has already removed him on 23.1.99 vide Annexure-P/6, therefore, the impugned orders are wholly unsustainable.
5. Per contra, learned counsel appearing for the respondents would argue that the procedure prescribed for convening meeting of the Gram Sabha has not been followed. Similarly, the service of Panchayat Karmi/ Panchayat Sachiv can be terminated after following the procedure prescribed in Rule 7 of the CG Panchayat Service (Discipline and Appeal) Rules, 1999 (for short 'the Rules, 1999'), which has not been done in the present case, therefore, no interference be made in this writ petition.
6. Section 6 of the CG Panchayat Raj Adhiniyam, 1993 prescribes the procedure for holding meeting of Gram Sabha. A plain reading of the provision would indicate that there shall be at least one meeting of the

Gram Sabha in every three months, provided that upon a requisition in writing by more than one third of the total number of members of Gram Sabha or if required by Janapad Panchayat, Zila Panchayat or the Collector a meeting of Gram Sabha shall be held within 30 days of the requisition or such requirement. The quorum for such meeting is one-tenth of the total number of members of the Gram Sabha, which means one tenth of the total voters of Gram Sabha, out of one tenth, one-third members shall be women.

7. The documents available on record would not indicate that there was any requisition for holding meeting of the Gram Sabha or that quorum for such meeting was available. As a matter of fact, the resolution (Annexure-P/5) refers to the Gram Sabha but a reading of the resolution would clearly indicate that it was the meeting of the Gram Panchayat and not Gram Sabha. For this reason alone, the mention of meeting of Gram Sabha in the letter of termination issued by the Gram Panchayat on 23.1.99 is perverse and respondent No.4 is found to have been removed by the Gram Panchayat without any meeting of the Gram Sabha.
8. Even otherwise, a Panchayat Karmi/Panchayat Secretary can be removed only after following the procedure prescribed under Rule 7 of the Rules, 1999. The law in this regard has been settled in several judgments of this Court. In the matter of **Ramsai Sahu Vs. The State of Chhattisgarh & Others** (WPS No.4523/2011, decided on 18.10.2013) this Court has observed in paras-6 & 7 thus:-

“6. It is evident that the impugned removal order was passed without following the statutory and mandatory procedure of law, as prescribed under Rule 7 of the Rules, 1999. The procedure for holding an enquiry is enshrined in Rule 7 of the Rules, 1999 for imposition of major penalty. Hence, the removal is bad and vitiated on the ground of non-compliance of the statutory provisions and denial of the principles of natural justice. It amounts to infraction of not only the provisions of Rule 7 of the Rules, 1999, but also the provisions of Article 311(2) of the Constitution of India. The order was, in fact, penal in nature, having civil consequences and as such compliance of the elaborate provisions, as enshrined in Rule 7 of the Rules, 1999 was mandatory in the present case.

7. In view of the above, it appears that the subject matter of this writ petition is squarely covered by law laid down by this Court in Ilesh Kumar Sahu Vs. State of CG & Others {2010 (2) CGLJ 76}.”

9. Since in the case at hand, neither the Gram Panchayat nor the SDO has followed the procedure prescribed under Rule 7 of the Rules, 1999, removal or termination of respondent No.4 from the office of Panchayat Karmi/Panchayat Secretary was wholly illegal and without authority of law. Therefore, the orders passed by the Director Panchayat or the State Government need no interference.
10. The writ petition being devoid of any substance deserves to be and is hereby dismissed.

Sd/-
Judge
(Prashant Kumar Mishra)

Barve