

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 369 of 2017**

Smt. Sunita Sarthi, W/o Vinod Sarthi, aged about 25 years, Sarpanch, Gram Panchayat Masturi, Janpad Panchayat Masturi, District Bilaspur, R/o Village & PO Masturi, Tahsil Masturi, District Bilaspur (C.G.)

---- Appellant**Versus**

1. State of Chhattisgarh, through: The Secretary, Department Panchayat & Rural Development, Mantralaya, Mahanadi Bhawan, Naya Raipur, PO & P.S. Rakhi, District Raipur (C.G.)
2. The Director, Department of Panchayat & Rural Development, State of Chhattisgarh, Mantralaya, Mahanadi Bhawan, Naya Raipur, PO & P.S. Rakhi, District Raipur (C.G.)
3. Collector Bilaspur, District Bilaspur (C.G.)
4. Sub-Divisional Officer (Revenue) Masturi, District Bilaspur (C.G.)
5. Chief Executive Officer, Janpad Panchayat Masturi, District Bilaspur (C.G.)
6. Tahsildar, Masturi, Tahsil Masturi, District Bilaspur (C.G.)
7. Naib Tahsildar, Masturi, Tahsil Masturi, District Bilaspur (C.G.)
8. Ishwar Suryavanshi, S/o Late Nankaiya Suryavanshi, R/o Jairamnagar Road, Gopiyapar, PO & Tahsil Masturi, District Bilaspur (C.G.)

---- Respondents

For Appellant	:	Shri Mateen Siddiquie, Advocate
For State	:	Shri R.K. Gupta, Deputy Advocate General
For Caveator	:	Shri Ali Asgar, Advocate

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice**Hon'ble Shri Sharad Kumar Gupta, Judge****Judgment on Board****Per, Thottathil B. Radhakrishnan, Chief Justice****26/09/2017**

1. We have heard the learned counsel for the Appellant/ Writ Petitioner, the learned counsel for the State and the learned counsel for the Caveator.
2. The Writ Petitioner/Appellant is the Sarpanch of a Gram Panchayat. She

was removed from the post. That was challenged before this Court. Through order dated 06.04.2017 in W.P.(C) No. 430 of 2017 passed by the learned Single Judge, the order of removal was set-aside with a direction to proceed in accordance with law as contained in the Chhattisgarh Panchayats (Appeal and Revision) Rules, 1995 (hereinafter referred to as the 'Rules').

3. Thereafter, a show cause notice with charge-sheet was served upon the Petitioner. This was followed by an order of suspension by the Prescribed Authority in terms of Section 39(1) (b) of the Chhattisgarh Panchayat Raj Adhiniyam, 1993 (hereinafter referred to as the 'Adhiniyam, 1993'). The Writ Petition was instituted challenging that suspension order. The learned Single Judge relegated that the writ petitioner Sarpanch to statutory alternate remedy as is available under the relevant Rules.
4. In this appeal, the learned counsel for the Appellant argued that the earlier order issued by this Court setting aside the removal of the Sarpanch does not contain any direction to conduct an enquiry; nevertheless that, the authorities have proceeded as if there is a direction by this Court to conduct a particular enquiry. It is further argued that the impugned order of suspension is not on the basis of any fact finding that would stand with reference to relevant provisions. He accordingly argued that there are sufficient grounds to interfere with the impugned order notwithstanding availability of statutory remedy, if at all there is one.
5. Section 40 of the Adhiniyam, 1993 provides for removal of office bearers of Panchayat. That event can occur only on entering findings which would constitute the requisite elements to make an order under that provision. Section 39 provides different grounds on which an order of suspension may be made. Once a show cause notice is issued with a charge-sheet under the Adhiniyam, 1993 proposing removal of an office bearers of the

Panchayat, the jurisdictional fact to exercise authority in terms of the Section 39 of the Adhiniyam, 1993 is established. The question then would be as to whether the exercise of the authority to suspend has been appropriately exercised in the context of the statutory expression, that an order of suspension 'may' be made. Therefore, whether an order of suspension should be made even following the issuance of a show cause notice alongwith the charge-sheet for removal from office, is essentially a question on which the Prescribed Authority has to take as well informed decision advised by the relevant statutory and other legal parametres. Obviously, this includes consideration of facts, materials and the relevant law, as also drawing situational inferences that may be legitimately available on the facts and circumstances of a particular case. In this view of the matter, it would be inappropriate for the writ court to step in and hold that an order of suspension is not justifiable. That is a matter best left to the statutory the appellate authority. This what has been done by the learned Single Judge by dismissing the writ petition. We do not find any ground to interfere with that, in exercise of the intra-court appellate jurisdiction. This appeal, therefore, fails.

6. Before parting, we may record the submission on behalf of the Appellant that an appeal will be preferred by her within a period of one week from today and, if that event happens, the statutory appellate authority may expedite the final disposal of the appeal in accordance with law.
7. In the result, the appeal is dismissed.
8. Certified copy today.

Sd/-

(Thottathil B. Radhakrishnan)
Chief Justice

Sd/-

(Sharad Kumar Gupta)
Judge