

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 347 of 2017**

{Arising out of Order dated 11.08.2017 passed in Writ Petition (C) No. 2215 of 2017 by the learned Single Judge}

Smt. Narmada Dhruw W/o Shri Nandkishore Dhruw Aged About 35 Years R/o Village And Post Officer Bindra Narvagarh Tahsil Gariyaband Police Station Mainpur District Gariyaband Chhattisgarh.

---- Appellant**Versus**

1. State of Chhattisgarh Through Secretary Panchayat Department Mahanadi Bhawan Mantralaya New Raipur District Raipur Chhattisgarh.
2. The Collector, Gariyaband District Gariyaband Chhattisgarh.
3. The Sub - Divisional Officer, (Revenue) Gariyaband District Gariyaband Chhattisgarh.
4. The Chief Executive Officer, Janpad Panchayat Gariyaband Block Gariyaband District Gariyaband Chhattisgarh.
5. Gram Panchayat Bindra Navagarh, Through The Secretary Block Bindra Navagarh Police Station Bindra Navagarh District Gariyaband Chhattisgarh.

---- Respondents

For Petitioners : Shri Prateek Sharma, Advocate.
For Respondent/State : Shri UNS Deo, Government Advocate.

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice
Hon'ble Shri Sanjay Agrawal, Judge

Judgment on Board**Per Thottathil B. Radhakrishnan, Chief Justice****07/12/2017**

1. We have heard the learned counsel for the Appellant-Petitioner and the learned Government Advocate.
2. The Appellant-Petitioner challenged Annexure P/1 order of the Sub Divisional Officer (Revenue) removing her from the post of Sarpanch under Section 40(1) of the Chhattisgarh Panchayat Raj Adhiniyam, 1993; hereinafter called the 'Act'.

The learned Single Judge upheld the objection raised on behalf of the Respondent/State that an appeal would lie before the appellate authority namely the Collector in terms of the Chhattisgarh Panchayat (Appeal and Revision) Rules, 1995. Accordingly, the Petitioner was relegated to avail the statutory appellate remedy. This appeal is against that decision of the learned Single Judge.

3. In support of the appeal, it is argued that the sequence of events which are apparent from the order impugned in the writ petition would show that the said order was issued without due adherence to the principles of natural justice. It is also the case of the Appellant-Petitioner that the proceedings before the Sub Divisional Officer (Revenue) was generated on a direction by the Collector and therefore an appellate remedy to the Collector would be futile.
4. In the light of the contentions in the appeal, after hearing the learned counsel for the parties, an order was issued on 22.09.2017 to the following effect:

"In the normal course we would not have considered entertaining this matter, but *prima facie* it appears to us that there is material to indicate that rule of hearing was not carried forward in satisfaction of the requisite norms of the concept of natural justice, especially when the matter involves the removal of a Sarpanch from office. The last among the materials referred to in the order impugned in the writ petition is dated 07.07.2017. That is a communication issued from a different office. The maker of the impugned order could, at the best, have got it on 08.07.2017. Let us assume so. 08.07.2017 was a second Saturday. Therefore, 10.07.2017 was next available working day. The order impugned in the Writ Petition is issued on 11.07.2017. We do not see that there is sufficient material to show that rules of natural justice were complied with to that extent which could persuade a Writ Court to dissuade from exercising its jurisdiction merely on the premise of availability of alternate statutory appellate remedy. We hasten to reiterate that this is only a *prima facie* view."

5. Respondent No. 3, the Sub Divisional Officer (Revenue), was required to produce the original file in its entirety. That is presented before us. We have perused it. Among other things, we see that the action taken against the Petitioner-Appellant was preceded by a pre-decisional notice. Petitioner had

submitted objections to the said notice essentially admitting the fact that the amounts due were not remitted.

6. Going by the submissions of the learned counsel for the Appellant, this could be a case where the Appellant has the plea that the amounts were remitted, though belatedly, and there was no ground to exercise authority against the Appellant-Petitioner under Section 40(1) of the Act. We also note that the learned counsel for the Appellant mentioned that there was a particular financial situation owing to demonetization steps taken by the Government. We mention it here only to indicate that the plea raised in defence to the order impugned in the writ petition essentially revolves around mixed questions of facts and law which cannot be the foundation for adjudication of the writ petition from which this appeal arises. The question whether there was pre-decisional hearing in terms of the requirement of law is also a question which requires to be deliberated on the basis of materials and facts, more particularly, having regard to the show cause notice stated to have been issued prior to the proceedings and the reply tendered by the Appellant-Writ Petitioner to that notice.
7. In the aforementioned view of the matter, we do not find any error of jurisdiction, illegality or irregularity in the learned Single Judge having refused to interfere at the instance of the Appellant-Writ Petitioner and relegating her to the statutory appellate remedy. We do not find any ground to interfere with the order passed by the learned Single Judge. This intra-Court appeal therefore fails.
8. The Appellant may take recourse the statutory appellate remedy, if so advised. We leave open the plea of the Appellant-Petitioner that she was entitled to cross examine the witnesses before the proceedings were concluded. This is also an issue which can be considered by the appellate authority. If an appeal is filed by the Appellant-Petitioner before the Collector against the order of the Sub Divisional Officer (Revenue), the time taken in prosecuting the writ petition and

this writ appeal would be treated as eligible to be excluded while determining the period of limitation for institution of that appeal.

9. In the result, this appeal is dismissed subject to what is stated in the immediately preceding paragraph.

Sd/-

(Thottathil B. Radhakrishnan)
Chief Justice

Sd/-

(Sanjay Agrawal)
Judge