

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WA No. 296 of 2017**

(Arising out of order dated 06/07/2017 in W.P.(C) No.1819 of 2017 of the learned Single Judge, High Court of Chhattisgarh, Bilaspur)

Pradeep Kumar Xess S/o Stanis Xess, Aged About 57 Years, Member Of Janpad Panchayat Balrampur, Area No. 9 Tatapani Janpad Panchayat Balrampur, District Balrampur Ramanujganj, Chhattisgarh.

---- Appellant

Versus

1. State Of Chhattisgarh Through The Secretary, Panchayat And Rural Development Mahanadi Bhawan, New Raipur, District Raipur, Chhattisgarh.
2. The Collector, Balrampur, District Balrampur Ramanujganj, Chhattisgarh.
3. Sub Divisional Officer (Revenue) Ramanujganj, District Balrampur Ramanujganj Chhattisgarh.
4. Smt. Parvati Ayam Member Of Janpad Panchayat Now She Was Elected On The Post Of President Janpad Panchayat Balrampur, District Balrampur Ramanujganj, Chhattisgarh.

---- Respondents

For Appellant	: Shri Rakesh Pandey and Shri A.N. Pandey, Advocates
For State	: Shri R.K. Gupta, Deputy Advocate General

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice

Hon'ble Shri Sharad Kumar Gupta, Judge

Order On Board

Per Thottathil B. Radhakrishnan, Chief Justice

25/08/2017

1. This writ appeal is by the writ petitioner. He is the Member of a Janpad Panchayat.
2. We have heard the learned counsel for the appellant and the

learned Deputy Advocate General for the State.

3. The appellant-petitioner is a Member of a Janpad Panchayat. There was an elected President for that Janpad Panchayat. He died. The fourth respondent was elected in terms of Section 38 of the Chhattisgarh Panchayat Raj Adhiniyam, 1993, (for short, *'the Act'*) to the casual vacancy that so occurred. Thus the 4th respondent became the President of the Janpad Panchayat against the said casual vacancy.
4. The writ petition was filed challenging the officiation of the 4th respondent as the President of the Janpad Panchayat. The learned Single Judge held that the issue raised is one which is barred from adjudication otherwise than through an election petition in terms of Article 243 'O' of the Constitution of India.
5. The learned counsel for the appellant argued that in terms of Section 25 of the Act, it is the bounden duty of the competent authority to hold election to the post of the President of the Janpad Panchayat, which is now held by the 4th respondent by the process of filling up of the casual vacancy that occurred as a result of death of the then incumbent. However, examining the relief sought for in the writ petition, we see that they were exclusively within the domain of what would fall under Article 243 'O' of the Constitution of India, as rightly held by the learned Single Judge. Therefore, notwithstanding the fact that the 4th respondent is the President of the Janpad Panchayat concerned only by following the procedure for filling up of the casual

vacancy in terms of Section 38, it was not permissible for the writ Court to interfere with her election as the President of the Janpad Panchayat as against casual vacancy. This formidable position coupled with the availability of jurisdiction to challenge the election clearly justified the application of the ratio of the judgment in *Harnek Singh vs. Charanjit Singh and others*¹. The learned Single Judge was therefore is right in dismissing the writ petition.

6. While we do not find any ground to interfere with the impugned judgment, it is clarified that the appellant will be entitled to move the competent statutory authority for consideration as to the conduct of the election to the post of President of Janpad Panchayat concerned, otherwise than by filling up the casual vacancy.
7. Writ appeal is dismissed subject to what is stated immediately herein before.

Sd/-

(Thottathil B. Radhakrishnan)
Chief Justice

Sd/-

(Sharad Kumar Gupta)
Judge

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1 (2005) 8 SCC 383