

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No.5935 of 2007**

- Anand Kumar Gupta S/o Shri Damodar Prasad Gupta, aged about 30 years, R/o Village - Kolhuwa, Tahsil Wadrafnagar, District - Surguja C.G.

---- **Petitioner****Versus**

1. State Of Chhattisgarh through the Secretary, Department of Panchayat and Social Welfare, DKS Bhawan, Raipur C.G.
2. Deputy Director, Panchayat And Social Welfare, District - Surguja C.G.
3. Sub Divisional Officer, R Wadrafnagar, District - Surguja C.G.
4. Chief Executive Officer, Janpad Pachayat Wadrafnagar, District - Surguja C.G.
5. Sarpanch, Gram Panchayat Kolhuwa, Tahsil - Wadrafnagar, District - Surguja C.G.
6. Gram Panchayat Kolhuwa, Tahsil - Wadrafnagar, District - Surguja C.G.
7. Shri Vituram S/o Shri Nanka, R/o Village - Kolhuwa, Tahsil - Wadrafnagar, District - Surguja C.G.
8. Shri Chandrika Yadav S/o Not Know, R/o Village - Kolhuwa, Tahsil - Wadrafnagar, District - Surguja C.G.

---- **Respondents**

For Petitioner	:	Shri Sanjay Agrawal, Advocate
For Respondent/State	:	Shri Manish Nigam, Panel Lawyer
For Respondents No.5 to 7:	:	Shri A. K. Yadav, Advocate

Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****09/04/2018**

Heard.

1. Challenge in this petition is to the order dated 02-07-2007 passed by the Sub Divisional Officer (Revenue), Wadraf Nagar, Surguja as also resolution dated 29-08-2007 passed by the Gram Panchayat Koluha.

2. Briefly stated relevant facts of the case are that pursuant to direction issued on 24-07-2006 by the Chief Executive Officer, Wadraf Nagar for filling up the vacant post of Panchayat Karmi for Gram Panchayat Koluha and the order passed by the Collector on 03-08-2006 for conducting meeting of Gram Sabha, Sub Divisional Officer (Revenue) instructed Sarpanch of Gram Panchayat Koluha on 14-08-2006 for taking steps towards appointment of Panchayat Karmi. It is further pleaded that the meeting of Gram Panchayat was conducted on 16-08-2006 and the name of the petitioner was recommended for appointment and forwarded to the Gram Sabha. On 21-08-2006, Gram Sabha passed a resolution to approve the name of the petitioner. Thereafter, the matter was again considered in the meeting of Gram Panchayat on 25-09-2006, in which, it was resolved to appoint the petitioner as Panchayat Karmi. Consequently, vide order dated 25-09-2006, Sarpanch of the Gram Panchayat Koluha issued appointment order of the petitioner. Later on, the Deputy Director (Panchayat) passed an order on 20-10-2006 appointing the petitioner as Panchayat Secretary in exercise of powers under Section 69 of the Chhattisgarh Panchayat Raj Adhiniyam, 1993 (In short "the Adhiniyam of 1993").

However, there were certain complaints made that the selection of the petitioner was not proper and legal and in violation of the procedure prescribed under various directions/instructions of the Government and Higher Authorities. On these complaints, the Sub Divisional Officer (Revenue) initiated enquiry, which culminated in impugned order. The Sub Divisional Officer (Revenue) vide order dated 02-07-2007 recorded a finding that the selection of the petitioner was not proper and against the government instructions and thereupon, the matter was forwarded to the Gram Panchayat for passing necessary resolution for removal of the petitioner and for appointment of Panchayat Karmi in

accordance with the government instructions and the provisions contained in Section 69 & 70 of the Adhiniyam of 1993. In furtherance thereof, Gram Panchayat Koluha passed a resolution on 29-08-2007, wherein it was resolved to remove the petitioner and make fresh appointment.

3. Calling in question the legality of the action of the respondent authorities including Sub Divisional Officer (Revenue) and Gram Panchayat, learned counsel for the petitioner submits that the Sub Divisional Officer (Revenue) had no jurisdiction under the law to hold any such enquiry on the complaints so made because once the petitioner was appointed as Secretary of the Gram Panchayat under Section 69 of the Adhiniyam of 1993 by the Deputy Director (Panchayat), any such complaint, could only be examined by the Deputy Director and not by the Sub Divisional Officer (Revenue). Next submission of learned counsel for the petitioner is that the impugned action taken by the Sub Divisional Officer (Revenue) and by the Gram Panchayat amounts to removal of the petitioner on certain allegations, which could not be done and without holding enquiry as contemplated under Rule 7 of the Chhattisgarh Panchayat Service (Discipline and Appeal) Rules, 1999 (In short “the Rules of 1999”) which has not been followed, but by the procedure unknown to law, the petitioner has been removed. In support of the submission, learned counsel for the petitioner relies upon the decisions in the case of ***Dhaluram Kosaria vs. State of CG & Others***¹, ***Aghan Singh Jangade vs. State of CG & Others***² and ***Prakash Chand Soni vs. State of Chhattisgarh and Others***³

4. On the other hand, learned counsel for the respondent/State would submit that the petitioner was initially appointed as Panchayat Karmi and it was only in that capacity, he was later on, appointed as Panchayat Secretary by the

1 2006(2) CGLJ 186

2 2009(3) CGLJ 72

3 WPS No.1846 of 2011, Order dated 15-07-2015

Deputy Director (Panchayat). He submits that the action of termination of the petitioner as Panchayat Karmi has been taken by the Gram Panchayat and not by the Sub Divisional Officer (Revenue) and the Sub Divisional Officer (Revenue) had only made enquiry, wherein it was found that the appointment of the petitioner was not legal and proper and instructions of the government were violated, therefore, the action against the petitioner is in accordance with law.

5. Shri A. K. Yadav, learned counsel for the respondents No.5 to 7 would submit that in fact, the petitioner's appointment was illegal. He submits that no detailed enquiry was made by the Deputy Collector and the petitioner was not rightly appointed because he was not a resident of that area and therefore, he could not be appointed as Secretary of Gram Panchayat. It was further submitted that neither advertisement was issued nor applications were invited for appointment as Panchayat Karmi.

6. In this case, the petitioner has raised a specific issue with regard to jurisdiction of the Sub Divisional Officer (Revenue) to hold enquiry into the correctness and validity of the appointment of the petitioner as Panchayat Karmi. It is not in dispute that the petitioner has been appointed as Panchayat Secretary by the Deputy Director (Panchayat) on 20-10-2006. Appointment of the petitioner as Secretary of the Gram Panchayat in exercise of statutory powers contained in Section 69 of the Chhattisgarh Panchayat Raj Adhiniyam of 1993.

In so far as the appointment as Panchayat Karmi is concerned, appointment of Panchayat Karmi is purely an administrative arrangement de hors the provisions of Chhattisgarh Panchayat Raj Adhiniyam, 1993. The petitioner having been appointed, can be proceeded against either in a departmental action or otherwise only by the authority who would be appointing authority or any other authority empowered under the law to dismiss the petitioner as Secretary of the Gram Panchayat or to terminate him from the

services of Gram Panchayat.

7. None of the respondents have any material on record to show that the Sub Divisional Officer (Revenue) was empowered under the law to hold enquiry into the legality and validity of the appointment of the petitioner as Panchayat Secretary. The State has not come out with any rules and regulations or notifications to satisfy the Court that at the time, when the impugned order was passed by the Sub Divisional Officer (Revenue), the powers of Deputy Director (Panchayat) were delegated by the government in favour of Sub Divisional Officer (Revenue).

8. Though, learned counsel for the respondents made submissions to satisfy the Court that the selection of the petitioner was illegal and unauthorized, this Court is concerned with the jurisdiction of Sub Divisional Officer (Revenue) and not with the justification for exercise of power. If the petitioner was appointed as Secretary of Gram Panchayat, the statutory post, by the Deputy Director (Panchayat) in exercise of power conferred under Section 69 of the Adhiniyam of 1993, the Sub Divisional Officer (Revenue) had no jurisdiction to examine the legality and validity of appointment of the petitioner. All that could be done to forward the complaint to the Deputy Director.

9. Contention of learned counsel for respondents No.5 to 7 that as the petitioner was appointed by the Gram Sabha as Panchayat Karmi, the Sub Divisional Officer (Revenue) would have jurisdiction to hold enquiry, is completely misconceived.

10. It is apparent that the Sub Divisional Officer (Revenue) hold enquiry and declared the selection of the appointment as illegal and he had issued direction/command to the Gram Panchayat to remove the petitioner and it was only in furtherance of this direction that the Gram Panchayat passed resolution on 29-08-2007.

11. Curiously enough, the legislation of Gram Panchayat shows that the Gram Panchayat resolved to remove the petitioner on the ground that he was not properly discharging his duties. However, there is no material on record to show that before recording any finding that the petitioner had committed dereliction in performance of duties, any enquiry was made by the concerned Gram Panchayat, after passing of order dated 02-07-2007 by the Sub Divisional Officer (Revenue).

12. Under Section 16 of the Madhya Pradesh General Clauses Act, in the absence of contrary intention expressed under the law, the Deputy Director, who had appointed, alone was competent to remove the petitioner from service, therefore, the entire enquiry held by the Sub Divisional Officer (Revenue) and the declaration with regard to the petitioner's status is held to be without jurisdiction and authority under the law. Removal of the petitioner treating him as Panchayat Karmi ignoring that the petitioner was holding the statutory post of Panchayat Secretary, appointed under Section 69 of the Adhiniyam of 1993, renders the proceedings of Gram Panchayat without authority. The Gram Panchayat, in any case, was obliged to hold enquiry as contemplated under Rule 7 of the Rules of 1999, if at all, there were allegations of dereliction in performance of duties which would be a subject matter of disciplinary enquiry on alleged misconduct. From this angle also, resolution of Gram Panchayat appears to be without jurisdiction and illegal. Submissions of learned counsel for the respondents based on the decision of the Supreme Court in the case of **Secretary, A.P. Social Welfare Residential Educational Institutions v. Pindiga Sridhar & Ors.**⁴, is distinguishable on facts of the present case. It is relevant to note that the resolution of the Gram Panchayat is not based on the finding that the petitioner had obtained employment contrary to any procedure.

4 AIR 2007 SC 1527

The basis for passing resolution for removal of the petitioner was that the petitioner is not working properly. It is nothing here nor there.

13. Accordingly, the petition is allowed with all consequential benefits. The impugned order passed by the Sub Divisional Officer (Revenue) and resolution passed by the Gram Panchayat, Koluha are declared illegal and set aside. If Gram Panchayat or any other authority having right over the service of the petitioner, has any allegation that the selection and appointment of the petitioner as Panchayat Karmi is not proper, the authority shall hold enquiry in accordance with law.

SD/-
(**Manindra Mohan Shrivastava**)
Judge