

HIGH COURT OF CHHATTISGARH AT BILASPURWPS No. 3755 of 2018

M. D. Bhardwaj S/o Shri Mahesh Ram Bhardwaj, Aged About 48 Years, Posted As Lecturer (Panchayat) At Government Higher Secondary School, Nariyara, Block Malkharoda, District Janjgir Champa, R/o Village Bharbhantha, Tahsil Malkharoda, District Janjgir Champa Chhattisgarh.

---Petitioner

**Versus**

1. State Of Chhattisgarh Through The Secretary, Panchayat And Rural Development Department, Mantralaya, Mahanadi Bhawan, Naya Raipur, District Raipur Chhattisgarh.
2. Additional Commissioner (Revenue), Bilaspur Division Bilaspur, District Bilaspur Chhattisgarh.
3. Chief Executive Officer, Zila Panchayat Janjgir Champa, District Janjgir Champa, Chhattisgarh.

---Respondents

WPS No. 3798 of 2018

Kishunlal Lahrey S/o Lt. Bhore, Aged About 43 Years, Posted As Panchayat Secretary, Posted At Gram Panchayat Kodabhat, Janpad Panchayat Pamgarh, District Janjgir- Champa, Chhattisgarh, R/o Rasauta, P. O. Rasauta Tehsil- Pamgarh, District- Janjgir- Champa, Chhattisgarh.

---Petitioner

**Versus**

1. State Of Chhattisgarh Through The Secretary, Panchayat And Rural Development, Mantralaya, Naya Raipur, District Raipur, Chhattisgarh.
2. Chief Executive Officer, Zila Panchayat Janjgir- Champa, District- Janjgir- Champa, Chhattisgarh.
3. Chief Executive Officer, Janpad Panchayat Pamgarh, District Janjgir- Champa, Chhattisgarh.
4. Shri Mohanlal Sahu, Presently Posted As Panchyat Secretary, At Gram Panchayat Khorsi, Janpad Panchayat Pamgarh, District Janjgir- Champa, Chhattisgarh.

---Respondents

WPS No. 3824 of 2018

Kishunlal Lahrey S/o Lt. Bhore, Aged About 43 Years, Posted As Panchayat Secretary, Posted At Gram Panchayat Kodabhat, Janpad Panchayat Pamgarh, District Janjgir- Champa, Chhattisgarh, R/o Rasauta, P. O. Rasauta Tehsil- Pamgarh, District- Janjgir- Champa, Chhattisgarh.

---Petitioner

**Versus**

1. State Of Chhattisgarh Through The Secretary, Panchayat And Rural Development, Mantralaya, Naya Raipur, District Raipur, Chhattisgarh.
2. Additional Commissioner (Revenue), Bilaspur Division, Bilaspur, District Bilaspur (C.G.).
3. Chief Executive Officer, Zila Panchayat Janjgir- Champa, District- Janjgir- Champa, Chhattisgarh.
4. Chief Executive Officer, Janpad Panchayat Pamgarh, District Janjgir- Champa, Chhattisgarh.

---Respondents

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|---------------------------|---|--------------------------------------------------------|
| For respective petitioner | : | Shri Mateen Siddiqui and Shri Rohit Sharma, Advocates. |
| For State                 | : | Shri S.P.Kale, Dy.A.G.                                 |

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Hon'ble Shri Justice P. Sam Koshy

Order on Board

18/05/2018

1. These are the three Writ Petitions revolved around the order passed by the Secretary, Panchayat & Rural Development Department dated 01/05/2018.
2. The issue involved in these cases is whether the Secretary invoking powers under Rule 5 of the Chhattisgarh Panchayat (Appeal & Revision) Rules, 1995 (In short "the Act") can remit a matter back after making modifications in the order passed by the Appellate Authority.

3. The facts of the cases in brief is that, the petitioners before this Court had been placed under suspension by the Chief Executive Officer, Zila Panchayat, District Janjgir-Champa on 16/02/2018 and 19/02/2018 respectively. Against these orders, the petitioners have preferred an appeal under Rule 91 of the Act before the Additional Commissioner. Taking cognizance of the appeal, the Commissioner entertained the same and stayed the effect and operation of the suspension order.

4. Against the said stay order, the Chief Executive Officer, Zila Panchayat, District Janjgir-Champa is said to have preferred a revision before the State Government under Rule 5 of the Act. While hearing the said revision, the Secretary of the department i.e. the Revisional Authority vide the impugned order dated 01/05/2018 has staying the interim order granted by the Appellate Authority has remitted the matter back to the Appellate Authority to decide the appeal on merits leading to the filing of these Writ Petitions.

5. The further grievance of the petitioner in WPS No.3798/2018 is the withdrawal of the financial powers of the petitioner by the Chief Executive Officer, Janpad Panchayat, Pamgarh, District Janjgir-Champa.

6. The contention of the learned counsel for the petitioner is that, Rule 5 of the Act does not empowers the Revisional Authority to remit a matter back by modifying the order under challenge before the Appellate Authority. The only power which according to the counsel for the petitioner conferred upon the Revisional Authority is either to refrain the Appellate Authority from passing any orders in the appeal pending before him or to withdraw the proceeding from the Appellate Authority and decide the same on merits. He

further submits that, it is a case where the Revisional Authority has exceeded his jurisdiction while remitting the matter back to the Appellate Authority which otherwise is impermissible under the provision of Rule 5(2) (ii) of the Act.

7. So far as the counsel for the petitioner in WPS No.3824/2018 is concerned, he submits that, the authorities concerned have infact in a very contemptuous manner and while complying the order of stay granted by the Commissioner, they have arbitrarily and with malafides withdrawn the financial powers which were being exercised by one of the petitioner – Kishunlal Lahrey.

8. Thus, the counsel for the petitioner prayed for setting aside of the impugned order – Annexure-P/1 and maintaining the order of stay granted by the Additional Commissioner and for issuance of direction to the Appellate Authority to decide the appeal on merits without being influenced by the order and observations made by the Revisional Authority.

9. The State counsel however opposing the petitions submits that, the appeal itself before the Additional Commissioner was not maintainable for the reason that, the appeal under Rule 91 of the Act should had been made before the Director Panchayat and not before the Additional Commissioner as Rule 91 has since not been amended in spite of the fact that Commissionarate has become functional in the State of Chhattisgarh which earlier had been abolished.

10. It was further contended that, the authorities concerned has all the powers under Rule 5 of the Act to pass a suitable order on his own motion or

on an application made by either of the parties before him in revision and if such order has been passed, the same being a discretionary power which he has exercised cannot be interfered by this Court under Article 226 of the Constitution of India in the garb of judicial review.

11. Given the factual matrix of the case, it would be relevant at this juncture to refer to the provision of Rule 5(1) of the Act. For better understanding, it is reproduced herein under:-

**“5. Revision - (1) (a) The State Government, the Director of Panchayat, the Collector may on its/his own motion or on the application by any party, at any time for the purpose of satisfying itself/himself as to the legality or propriety of any order passed by or as to the regularity of the proceeding of, the authority subordinate to it/him call for and examine the record of any case pending before, or disposed of by, such authority and may pass such order in reference thereto as it/he may think fit:**

**Provided that it/he shall not vary or reverse any order unless notice has been served on the parties interested and opportunity given to them for being heard:**

**Provided further that no application for revision shall be entertained against an order appealable under the Act.**

**(b) An application for revision by any party shall only be entertained if it is on the point of law and not on facts.”**

12. Now if we peruse the aforesaid statutory provision what clearly reflect is that, the provision empowers either the State Government, the Director of Panchayat or the Collector as the case may be on its motion or on the application by any party, at any time for the purpose of satisfying himself as to the propriety of any order passed by or as to the regularity of the proceeding of, the authority subordinate to it may call for and examine the record and may pass such order in reference thereto as it may think fit.

13. Likewise sub-rule 2(ii) also empowers the authority to exercise an option which is envisaged therein. There are two options available to the authority. One is it may either refrain from taking action under challenge until the final disposal of such proceeding before the subordinate authority or may withdraw proceeding and pass such orders as it may deem fit.

14. For ready reference, the provision of Sub-Rule(2) of Rule 5 is reproduced herein under:-

**“5. (2) Notwithstanding anything contained in sub-rule (1), -**

**(i) Where proceedings in respect of any case have been commenced by the State Government under sub-rule (1) no action shall be taken by other Officer mentioned in the said sub-rule in respect thereof, and**

(ii) Where proceedings in respect of any such case have been commenced by the Officer mentioned in sub-rule(1), the State Government may either refrain from taking any action under this rule in respect of such case until the final disposal of such proceeding by such officer or may withdraw such proceeding and pass such order as it may deem fit.”

15. In the instant case, admittedly, the appeal of the petitioner is pending consideration before the Additional Commissioner.

16. Initially, the Additional Commissioner has granted stay of the effect and operation of the order of suspension to which a revision was preferred before the Revisional Authority under Rule 5 of the Act. The Revisional Authority under sub-rule 2(ii) of Rule 5 of the Act has two options. First is, it may refrain from entertaining the appeal till the final disposal of the proceeding before the Appellate Authority i.e. the Additional Commissioner in the instant case or secondly it may withdraw the proceeding and pass a suitable order as it may deem fit.

17. At this juncture, if we peruse the impugned order – Annexure-P/1 what reflect is that, the Revisional authority taking into consideration the submissions, arguments & contentions put forth by either side and after hearing both the parties had passed the order and had remitted the matter to the Appellate Authority i.e. the Additional Commissioner with the only modification being that of the Revisional Authority having stayed the effect

and operation of the interim order granted by the Additional Commissioner i.e. the Appellate Authority.

18. This exercise of power in the opinion of this Court would fall within the second option which has been empowered upon the Revisional Authority under sub-rule 2(ii) of Rule 5 of the Act wherein the Revisional Authority has the power to withdraw the proceeding and pass a suitable order as it may deem fit.

19. If the analogy which has been advanced by the petitioners is to be accepted, then the legislature would have simply inserted or would have framed the rules or the option in a manner that the Revisional Authorities after withdrawing the proceedings would have to decide the revision on its merits by himself. Such is not the intention of the legislature from the plain reading of the contents of the second option which has been envisaged in the said Rule.

20. Moreover, the term “as it may deem fit” itself is a term which has to be given a wide interpretation, of the authority being empowered to exercise his powers to meet the substantial justice and to pass a suitable order in the factual matrix of the case. There is sufficient play in the joints provided to the Revisional Authority.

21. In the instant case, admittedly, the proceeding were pending consideration before the Appellate Authority. The issue was of the order of suspension contemplating departmental enquiry against the petitioner. There were allegations and charges levelled against each of the petitioners which have to be enquired upon. Pending such allegations and enquiry if the

authority felt that it would not be safe, proper or justified in recommending the petitioner in the given factual matrix staying the suspension and have ordered for the Appellate Authority to decide the appeal on merits, it cannot be said to be one which has been passed in violation of the Rule, more particularly under Rule 5 of the Act.

22. So far as the contention of the petitioner that the Revisional Authority has not passed a speaking order is concerned, this Court is of the opinion that since the revision itself was not against the order which was passed on merits, but had gone their only against the interim order granted by the Appellate Authority, the requirement for reasoned order was not essentially required, neither would it in any manner make a substantial difference on the merits of the case which is yet to be adjudicated upon by the Appellate Authority.

23. So far as the case of the petitioner in WPS No.3798/2018 in as much as withdrawal of the financial powers are concerned, it is again purely an administrative decision on part of the respondents and that it is not a matter of right for the petitioner to claim for having the financial powers. The substantial service condition of the petitioner would not get adversely affected merely by withdrawal of the financial powers. The petitioner on being taken back in service in compliance to the order of Additional Commissioner would be given the status of the post which he was enjoying earlier and in the meanwhile pending the departmental enquiry if the financial powers has been withdrawn, that action would only be an administrative action which cannot be subjected to the judicial review as it is

not a fundamental right or a statutory right conferred upon the petitioner to also have the power of drawing and disbursing power which has been withdrawn by the authorities concerned. Even otherwise, when the allegation is that of misconduct it would otherwise also not be proper to grant drawing disbursing power to such persons.

24. This Court therefore is of the view that there is no substantial merits in the present Writ Petitions calling for an interference with the impugned order.

25. Accordingly, all the Writ Petitions stands dismissed.

Sd/-

**(P. Sam Koshy)**  
**JUDGE**

Sumit