

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 3029 of 2018**

1. Smt. Mangalin Bai Surya W/o Late Ishwar Singh Aged About 65 Years Acting Sarpanch, Gram Panchayat Masturi, R/o Masturi, District Bilaspur, Chhattisgarh.

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary, Ministry Of Panchayat And Rural Development, Secretariat Mahanadi Bhawan, Naya Raipur, District - Raipur, Chhattisgarh.
2. The Collector District Bilaspur, Chhattisgarh.
3. The Sub Divisional Officer-Cum-Presiding Officer Masturi, District Bilaspur, Chhattisgarh.
4. Smt. Sunita Saarthi W/o Shri Vinod Sarthi Aged About 25 Years R/o Masturi, District Bilaspur, Chhattisgarh.

---- Respondent

For Petitioner

Shri B.P. Sharma, Advocate

For Respondent/State

Shri Sameer Behar, Panel Lawyer

Order On Board**By****Prashant Kumar Mishra, J.****30/10/2018**

1. The petitioner, who is the Panch of Gram Panchayat, Masturi, District Bilaspur, has called in question the order passed by the respondent No.3-Sub Divisional Officer (Revenue)-cum-Prescribed Authority, Masturi on 22-10-2018 (Annexure – P/5) whereby the said authority has recalled the order of

suspension of the respondent No.4-Smt. Sunita Sarthi, Sarpanch of Gram Panchayat, Masturi, District Bilaspur.

2. Facts of the case, briefly stated, are that the respondent No.4 herein was earlier removed from the office of the Sarpanch under Section 40 of the Chhattisgarh Panchayat Raj Adhiniyam, 1993 (henceforth 'the Act, 1993'). The order of removal was challenged by the respondent No.4 Smt. Sunita Sarthi in WPC No.430 of 2017. The said writ petition was allowed on 6-4-2017 setting aside the order of removal with direction to proceed in accordance with law as contained in the Chhattisgarh Panchayat (Appeal and Revision) Rules, 1995 (henceforth 'the Rules, 1995'). Another order was passed in WA No.369 of 2017 allowing the respondent No.4 to prefer an appeal.
3. In the meanwhile, after the order was passed on 6-4-2017 in WPC No.430 of 2017, but before the said order was affirmed in writ appeal the respondent No.4 was suspended from the office by the concerned SDO on 31-8-2017 under Section 39 of the Act, 1993. The Collector also affirmed the order on 20-11-2017. These orders were assailed by the respondent No.4 preferring WPC Nos.143 of 2018 and 548 of 2018, which were dismissed by the Single Bench, however, liberty was reserved in favour of the respondent No.4 to make representation challenging the constitution of committee before the SDO with direction to the said authority to consider and take a decision on the representation before proceeding further in the matter. Soon after the order of suspension was issued on 31-8-2017 the petitioner was handed over the current charge of the office of the Sarpanch. Thereafter, the respondent No.4 moved an application before the SDO (Revenue) for recalling of the order of suspension, which has

been allowed by the prescribed authority by the order impugned dated 22-10-2018.

4. While passing the order impugned, the SDO has observed that, *prima facie*, the main allegation against the respondent No.4 concerning failure to maintain records is the duty of the Panchayat Secretary, therefore, till the charges against the respondent No.4 is proved she is not required to be placed under suspension for a longer period and, as such, order of suspension deserves to be recalled.
5. Learned counsel appearing for the petitioner would submit that the order of suspension having not been interfered in the writ petition, the SDO ought not to have recalled the order.
6. Having heard learned counsel for the parties, it appears the petitioner, an officiating Sarpanch, has no locus to challenge the order of recall of the suspension order of the respondent No.4. It is for the prescribed authority to consider as to whether continued suspension for a longer period during pendency of the proceedings for removal under Section 40 is desirable or not. While refusing to interfere with the order of suspension the respondent No.4 was allowed liberty to move representation before the prescribed authority and in exercise of such liberty the respondent No.4 moved a representation which has been allowed, therefore, non interference by this Court with the order of suspension would not come in the way of the respondent No.4 or the SDO. The petitioner is officiating as Sarpanch, therefore, she is interested in continuation of suspension, but has otherwise no locus to challenge the order dated 22-10-2018.
7. It is also settled that mere wrong mention of provision does not render the exercise of power illegal or without jurisdiction

if the authority has otherwise power, jurisdiction and authority to consider the relief prayed for in the application mentioning wrong provision, therefore, argument raised by the learned counsel appearing for the petitioner that while entertaining application under Order 7 Rule 11 of the Code of Civil Procedure, 1908 the order of suspension could not have been recalled also deserves to be repelled.

8. In the result, the writ petition, *sans* merit, is liable to be and is hereby dismissed.

Sd/-

Judge

Prashant Kumar Mishra

Gowri