

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WA No. 39 of 2019**

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

---- Appellant**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.
3. The Sub Divisional Officer-Cum-Presiding Officer Masturi, District Bilaspur.
4. Smt. Sunita Saarthi W/o Shri Vinod Sarthi, Aged About 25 Years R/o Masturi, District Bilaspur Chhattisgarh.

---- Respondents

For Appellant	: Shri B.P. Sharma, Advocate.
For Respondent/State	: Smt. Fouzia Mirza, Additional Advocate General.

Hon'ble Shri Ajay Kumar Tripathi, Chief Justice**Hon'ble Shri Parth Prateem Sahu, Judge****Judgment on Board****23/01/2019****Per Ajay Kumar Tripathi, Chief Justice**

1. I.A. No.01 of 2019 has been filed to condone delay of 24 days in preferring the appeal. For the reasons indicated in the application, the same is allowed. Delay is condoned.
2. Heard counsel for the Appellant and the learned counsel for the State.
3. The Appellant had moved the writ Court for setting aside the order dated 22.10.2018 passed by the Sub-Divisional Officer (Revenue)-cum-Prescribed Authority, Masturi. By virtue of the said order, under challenge, the order of

suspension passed against private Respondent No.4, the Elected Sarpanch of Gram Panchayat, Masturi was revoked.

4. The reason for the Appellant to be aggrieved by the said decision of the Sub Divisional Officer is that her continuance as a stopgap Sarpanch of the Panchayat in question came to an end. It is clarified that a proceeding was initiated under Section 40 of the Chattisgarh Panchayat Raj Adhiniyam, 1993 (hereinafter referred to as 'the Adhiniyam, 1993') for her removal. The said proceeding was assailed by the regular Sarpanch in a writ application which was allowed and the order of removal was set aside with a direction and liberty to the authority to proceed in accordance with law was granted.

5. After the writ Court passed the order on 06.04.2017 and before the said order could be affirmed in a writ appeal, the Sarpanch in question was suspended by order of the Sub Divisional Officer in exercise of power under Section 39 of the Adhiniyam, 1993. The Collector affirmed the order on 20.11.2017. Both the decisions again came to be challenged by the Sarpanch i.e. Respondent No.4 by filing of writ applications which came to be dismissed by the learned Single Judge.

6. Naturally, after the suspension of the regular Sarpanch, an interim arrangement was made and the present Appellant became the officiating Sarpanch.

7. When the proceeding was initiated against the regular Sarpanch, she moved an application before the Sub Divisional Officer bringing to his notice that the charges brought against her for which she had remained under suspension for almost a year, was misplaced. The allegations if at all were *prima facie* directed or established against the Panchayat Secretary as he was the keeper of the records and she had no occasion to tamper with the same.

8. Keeping in mind that the elected Sarpanch was kept out of office for almost a year due to the order of suspension and *prima facie* satisfied that the charges against her had not yet been established, therefore, keeping in mind her responsibility as elected Representative, the Sub Divisional Officer decided to revoke the order of suspension.

9. The learned Single Judge had this to say in paragraph-6 of the writ application as to the reasons for dismissing the writ petition and refusing to interfere with the decision to revoke the suspension. Paragraph-6 reads as follows:-

“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.”

10. Submission of the counsel for the Appellant is that there was serious charges against her which was *prima facie* established. Once a decision was taken to suspend her on those materials, there was no occasion for the Sub Divisional Officer to subsequently revoke the order of suspension and give her benefit of being restored back to the office when there was evidence which had emerged in the preliminary enquiry against her.

11. The final evidence with regard to her omission and commission has not yet emerged. Some primary kind of report was produced and that was made the basis to suspend her. The suspension lasted for more than a year. During this period,

nothing tangible had emerged against her. From the impugned order passed by the Sub Divisional Officer dated 22.10.2018, it is apparent that the record keeping of the Panchayat is the responsibility of the Panchayat Secretary and not of the Sarpanch of the Gram Panchayat.

12. Be that as it may, we do not want to dwell upon the correctness or otherwise of the allegations and charges for which the process for removal was initiated. It will reach to its logical end, however, we cannot be unmindful of the fact that the whole effort on the part of the present Appellant is to continue on the post of Sarpanch which she was anyway holding in officiating capacity and did not have a substantive right to continue.

13. The view taken by the learned Single Judge therefore in the given facts, cannot be said to be an erroneous view to take.

14. The appeal therefore has no merit. It is dismissed.

Sd/-

(Ajay Kumar Tripathi)
CHIEF JUSTICE

Sd/-

(Parth Prateem Sahu)
JUDGE