

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 2207 of 2019**

1. Smt. Ashwani Diwan W/o Shri Lachchhan Diwan, Aged About 32 Years Sarpanch Of Village Panchayat Piparhattha, Block- Chhura, Tahsil Chhura, Post Patseoni, P. S. Chhura, District Gariyaband, Chhattisgarh
2. Doman Singh Dhruw, S/oLate Ude Ram Dhruw, Aged About 48 Years Village Secretary Of Gram Panchayat Piparhattha, Block- Chhura, Tahsil Chhura, Post Patseoni, P. S. Chhura, District Gariyaband, Chhattisgarh

---- Petitioners**Versus**

1. State of Chhattisgarh Through The Secretary, Panchayat And Rural Development Department, Government Of Chhattisgarh, Mahanadi Bhawan, Nava Raipur, Atal Nagar, District- Raipur, Chhattisgarh
2. The Collector, Gariyaband, District Gariyaband, Chhattisgarh
3. The Sub-Divisional Officer(Revenue), Gariyaband, District Gariyaband, Chhattisgarh
4. The Chief Executive Officer, Janpad Panchayat Chhura, District Gariyaband, Chhattisgarh

---- Respondents

For Petitioners : Shri Jitendra Nath Nande, Advocate

For Respondents/State : Shri Rahul Jha, GA

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****04/07/2019**

1. Heard.
2. Learned counsel for the petitioners would submit that the petitioner No.1 Smt. Ashwani Diwan was a Sarpanch of Village Panchayat Piparhattha, Block Chhura, Tahsil Chhura, District Gariyaband (C.G.) and petitioner

No.2 Doman Singh Dhruw was the Panchayat Secretary of Gram Panchayat Piparhattha, District Gariyaband. He would further submit that for an alleged misconduct committed, they were served with a show-cause notice on 29.01.2019 and enquiry under Section 40 of the Chhattisgarh Panchayat Raj Adhiniyam, 1993 (for short 'the Adhiniyam, 1993') was conducted without giving any opportunity of hearing. He would further submit that the show-cause notice was issued on 25.01.2019 and the removal order was passed on 29.05.2019 i.e. beyond the period of 90 days. He placed his reliance in the case of M.P. High Court in the matter of ***Dhanwanti Vs. State of MP & others {2013 (1) MPLJ 549}*** and would submit that the proviso to Section 40 of the Adhiniyam, 1993 itself provides a rider that in case the final orders are not passed within 90 days then in such case no order can be passed after that period as the authorities would not have jurisdiction to adjudicate the case after 90 days. He therefore, submits that the opportunity of hearing was not given and the order of removal has been passed beyond 90 days, therefore, as per the law laid down in the case of ***Dhanwanti (supra)*** by the M.P. High Court, that would be without jurisdiction.

3. Learned State counsel opposes the arguments advanced by learned counsel for the petitioner and would submit that the alternative remedy of appeal is available to the petitioner.
4. I have heard learned counsel for the parties and perused the documents.
5. The proviso to Section 40 of the Adhiniyam, 1993 reads as under:-

“Provided that the final order in the inquiry shall as far as possible be passed within 90 days from the date of issue of show cause notice to the concerned officer bearer.”

6. The reading of the case law ***Dhanwanti (supra)*** on which the petitioner has placed reliance would show that it was in context to the law as prevailing in the Madhya Pradesh, wherein proviso to Section 40 (c) of the Adhiniyam, 1993 was amended which reads as under:-

“Proviso to Section 40 (c) of the Adhiniyam of 1993 prescribes a rider in regard to passing of final order in the inquiry by the prescribed authority, which is as under:-

“Provided further that the final order in the inquiry shall be passed within 90 days from the date of issue of show cause notice to the concerned office bearer and where the pending case is not decided within 90 days, the prescribed authority shall inform all facts to his next senior officer in writing and request extension of time for disposal of the inquiry but such extension of time shall not be more than 30 days.”

The aforesaid proviso was substituted by Act No.20 of 2005. Earlier the proviso was as under:-

“Provided that the final order in the inquiry shall as far as possible be passed within 90 days from the date of issue of show cause notice to the concerned officer bearer”

7. Therefore, in Chhattisgarh the word 'as far as possible' still remains in the statute book.
8. The case law of ***Dhanwanti (supra)*** relied by the petitioner would show that this aspect was taken care by the Division Bench and para 14 of the said judgment is clear, therefore, the ratio which has been relied by the learned counsel for the petitioner will not be applicable herein at Chhattisgarh, as a result, the reliance so placed is completely misconceived. The Adhiniyam, 1993 further lays down Section 91, which provides for appeal and revision and as per the Chhattisgarh Panchayats (Appeal and Revision) Rules, 1995 (for short 'the Rules, 1995) since the

order has been passed by the SDO, therefore, the appeal would lie before the Collector as per Rule 3 (a) of the Rules, 1995. So the petitioner has the alternative remedy to file an appeal before the competent authority. In such circumstances, since alternative statutory remedy to file an appeal is available, I am not inclined to invoke the power under Article 226 of the Constitution of India.

9. The submission made being devoid of all force, the petition is dismissed.

Sd/-

Goutam Bhaduri
Judge

Ashu