

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPC No. 3874 of 2019**

Dayanidhi Patel S/o Mohit Ram Patel, Aged About 35 Years R/o Village Damodarha, Block And Tahsil Saraipali, District - Mahasamund Chhattisgarh.

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary, Panchayat And Rural Development Department, Mantralaya, Mahanadi Bhawan, Atal Nagar, Raipur, District - Raipur Chhattisgarh.
2. Sub Divisional Officer/Prescribed Officer, Saraipali, District - Mahasamund Chhattisgarh.
3. Collector, Mahasamund, District - Mahasamund Chhattisgarh.

---- Respondent

For Petitioner	:	Mr. Raghvendra Pradhan, Advocate
For State	:	Mr. P. Acharya, Panel Lawyer

Hon'ble Shri Justice P. Sam Koshy**Order on Board****05/11/2019**

1. The relief sought for by the petitioner in the present writ petition is for a direction to the respondent No.2 to decide the representation dated 25.09.2019 pending before the respondent No.2.
2. The facts of the case is that the petitioner, who is a Sarpanch was under suspension vide Annexure P/2 dated 14.06.2019. The petitioner subsequently had moved an application under Section 39(2) of the Chhattisgarh Panchayat Raj Adhiniyam before the respondent No.2 for revocation of the suspension and for granting charge of the Sarpanch back to the petitioner.
3. From the pleadings of the petition, it is revealed that the petitioner has already challenged the order of suspension dated 14.06.2019 before the Commissioner, Raipur division, which is pending. The contention of the petitioner is that though the appeal is pending, but

the Sub-Divisional Officer is duty bound to decide the claim of the petitioner under Section 39(2) that he has moved before the Sub-Divisional Officer. This Court is of the opinion that since the original order of Sub-Divisional Officer i.e. the respondent No.2 itself is under challenge before the Commissioner and who has seized of the matter, it would not be proper at this juncture for the Sub-Divisional Officer to decide the application under Section 39(2). It would be more appropriate if the petitioner is permitted to approach the concerned Commissioner for firstly getting the appeal itself decided at an early date and thereafter move before the Commissioner for appropriate direction to the Sub-Divisional Officer to take an appropriate decision in the light of the provisions of Section 39(2) of the Chhattisgarh Panchayat Raj Adhiniyam.

4. The reliance made by the petitioner on the order passed by this Court in the case of **WPC No. 3665/2019 (Arvind Mishra v. State of Chhattisgarh & Ors.)** is concerned, the observations made or the order passed in the said writ petition would not be applied in a straight jacket manner in the present writ petition for the reason that in the said case, the Sarpanch Arvind Mishra had not challenged his suspension order before the appellate forum, whereas in the instant the petitioner's appeal against the order of suspension is already pending consideration before the Appellate Authority.
5. Reserving the right of the petitioner to approach the Commissioner for ventilating his grievance, the present writ petition stands rejected.

Sd/-
(P. Sam Koshy)
Judge