

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No.7266 of 2009**

Soukhiram Patel S/o Bakhuram Patel Aged about 36 years, R/o Village Chanta, Tehsil-Bodla, P.S.-Pandatarai, Dist-Kabirdham (CG)

----- **Petitioner**

Versus

1. State of Chhattisgarh, Through Secretary, Panchayat & Rural Development Deptt., D.K.S. Bhawan, Raipur, Dist-Raipur (CG)
2. Chief Executive Officer, Janpad Panchayat Bodla, Dist-Kabirdham (CG)
3. Gram Panchayat-Chanta Through Sarpanch Vikaskhand Bodla, Tehsil-Bodla, Dist-Kabirdham (CG)
4. Ganeshram S/o Udayram Patel R/o Village-Madmada, near village Chanta, Tehsil-Bodla, Dist-Kabirdham (CG)

----- **Respondents**

For Petitioner	:	Mr.Gary Mukhopadhyay, Advocate
For Res.No.1&2/State	:	Mr.Ravi Bhagat, Dy.G.A.
For Respondent No.3	:	None present
For Respondent No.4	:	Mr.Sudhir Verma, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

14/7/2021

1. Proceedings of this matter have been taken-up through video conferencing.
2. The petitioner herein calls in question legality, validity and correctness of the order dated 5.11.2009 (Annexure P-7) passed by the Collector, Kabirdham, by which revision preferred by the petitioner has been dismissed affirming the order dated 8.4.2009 (Annexure P-6) passed by the Sub-Divisional Officer (Revenue),

Bodla setting aside the resolution dated 23.9.2007 selecting the petitioner on the post of Panchayat Karmi, Gram Panchayat Chanta, Tahsil Bodla, District Kabirdham.

3. Gram Panchayat Chanta through its Sarpanch issued an advertisement on 16.4.2007 inviting applications for selection and appointment on the post of Panchayat Karmi in which the petitioner and respondent No.4 participated and thereafter in the meeting of General Body held by said Gram Panchayat on 23.9.2007 selected the petitioner as Panchayat Karmi, but subject to approval of Gram Sabha in accordance with the provisions contained in the Chhattisgarh Panchayat Raj Adhiniyam, 1993 (hereinafter called as 'the Adhiniyam 1993') and on 4.10.2007 the concerned Gram Sabha approved the selection of the petitioner as Panchayat Karmi unanimously and thereafter on 24.10.2007 the petitioner was appointed as Panchayat Karmi for Gram Panchayat Chanta and thereafter by order dated 5.11.2007 (Annexure P-5) the Deputy Director, Panchayat and Social Welfare, Kabirdham being the Prescribed Authority appointed the petitioner as Panchayat Secretary for Gram Panchayat Chanta. Against the resolution dated 23.9.2007 selecting the petitioner as Panchayat Karmi, respondent No.4 herein

preferred an appeal under Section 91 of the Adhiniyam 1993 read with Rule 3(d) of the Chhattisgarh Panchayats (Appeal and Revision) Rules, 1995 (hereinafter called as 'Rules of 1995') before the Sub-Divisional Officer (Revenue), Bodla, in which he called in question the selection of the petitioner on the post of Panchayat Karmi. The SDO, Bodla by order dated 8.4.2009 (Annexure P-6) set-aside the selection made by resolution No.1 dated 23.9.2007 passed by Gram Panchayat Chanta for the reasons recorded therein and appointed respondent No.4 by that order. Feeling aggrieved against the order dated 8.4.2009 (Annexure P-6) passed by the SDO, Bodla, the petitioner preferred revision before the Collector, Kabirdham. The Collector, Kabirdham by the impugned order dated 5.11.2009 (Annexure P-7) affirmed the order passed by the Sub-Divisional Officer, Bodla and dismissed the revision, resulting into filing of the present writ petition by the petitioner before this Court questioning the order passed by the SDO and the Collector branding the same as arbitrary and illegal stating inter-alia that appeal as framed and filed under Section 91 of the Adhiniyam 1993 read with Rule 3(d) of the Rules of 1995 before the SDO was not maintainable.

4. Return has been filed by respondent No.4 stating inter-alia that the petitioner's appointment on the post of Panchayat Karmi has rightly been set-aside by the SDO and the writ petition as framed and filed deserves to be dismissed having no merit.
5. Mr. Gary Mukhopadhyay, learned counsel for the petitioner, would make solitary contention that by resolution dated 23.9.2007 General Body of Gram Panchayat Chanta has only resolved to select the petitioner as Panchayat Karmi subject to approval of Gram Sabha of the concerned village and thereafter Gram Panchayat Chanta by its order dated 24.10.2007 has only appointed him, therefore, the order dated 24.10.2007 is appealable under Section 91 of the Adhiniyam 1993 read with Rule 3(d) of the Rules of 1995 and the resolution dated 23.9.2007 was not appealable, as such, appeal was not maintainable before the SDO and the SDO has committed legal error in entertaining the appeal against the resolution dated 23.9.2007 and overstepping its jurisdiction by directing to appoint respondent No.4 on the post of Panchayat Karmi and the Collector has further committed legal error in dismissing the revision filed by the petitioner, as such, the order dated 8.4.2009 (Annexure P-6) passed by the SDO and the order dated

5.11.2009 (Annexure P-7) passed by the Collector deserve to be set-aside. He would rely the judgment of the Madhya Pradesh High Court in the matter of **Devidayal Raikwar v. State of M.P. and others**¹.

6. On the other hand, Mr.Sudhir Verma, learned counsel for respondent No.4, would submit that since 23.9.2007 the petitioner was selected though subject to approval of concerned Gram Sabha, but no such approval of Gram Sabha was required. He would rely upon the judgment of the Madhya Pradesh High Court in the matter of **Abdul Hasan Qureshi v. State of M.P. and others**² to support his contention.

7. I have heard learned counsel appearing for the parties, considered their rival submissions made hereinabove and also went through the records with utmost circumspection.

8. Admittedly and undisputedly, by resolution of the Gram Panchayat dated 23.9.2007 the petitioner was selected on the post of Panchayat Karmi subject to approval of Gram Sabha and thereafter Gram Sabha approved the resolution of Gram Panchayat on 4.10.2007 and thereafter Sarpanch of Gram Panchayat Chanta has issued appointment order to the petitioner on 24.10.2007, but respondent No.4 preferred an appeal

1 2008 (4) MPLJ 647

2 (2008) 4 MPLJ 546

under Section 91 of the Adhiniyam 1993 read with Rule 3(d) of the Rules of 1995, not against the order of appointment of the petitioner on the post of Panchayat Karmi dated 24.10.2007, but against the resolution dated 23.9.2007 selecting the petitioner on the post of Panchayat Karmi.

9. The question for consideration would be, whether an appeal under Section 91 of the Adhiniyam 1993 read with Rule 3(d) of the Rules of 1995 would lie against the resolution dated 23.9.2007 or against the order dated 24.10.2007 appointing the petitioner on the post of Panchayat Karmi.

10. In order to consider the plea, it would be appropriate to notice Rule 3 of the Rules of 1995 which states as under:-

"3. Appeal and appellate authorities.-Save where it has been otherwise provided in the Act or rules or bye-laws made thereunder, an appeal shall lie,-

(a) in the case of an order passed by the Sub-Divisional Officer under any provision of the Act or rules or byelaws made thereunder to the Collector.

(b) in the case of an order passed by the Collector under any provision of the Act or rules by bye laws made thereunder to the Director of Panchayat.

(c) in the case of an order passed by the Director of Panchayats to the State Government.

(d) in the case of an order passed by the Panchayat specified in Column (1) of the Table below- to the authority specified in the corresponding entry in column (2) thereto.

TABLE

(1)	(2)
(a) Gram Panchayat	Sub-Divisional Officer.
(b) Janpad Panchayat	Collector.
(c) Zila Panchayat	Director of Panchayat.

11. A careful perusal of Rule 3(d) of the Rules of 1995 along with table enacted therein would show that against the order passed by the Panchayat specified in Column (1), an appeal would lie before the Sub-Divisional Officer. The word "order" has been used in sub-rule (d) of Rule 3 of the Rules of 1995.

12. The question for consideration whether appeal under Section 91 of the Adhiniyam 1993 read with Rule 3(d) of the Rules of 1995 would lie against the order appointing Panchayat Karmi or resolution selecting the petitioner as Panchayat Karmi would be appealable under Section 91 of the Adhiniyam 1993 read with Rule 3(d) of the Rules of 1995 came-up for consideration before the Madhya Pradesh High Court in the matter of Devidayal Raikwar (supra), in which the word "resolution" was considered by a Division Bench and held as under:-

"9. It will be clear from Clause 4.4 of the Panchayat Karmi Scheme quoted above that all applications for appointment of Panchayat Karmi will be placed before the General Body of the Gram Panchayat for consideration and

the General Body of the Gram Panchayat, after consideration of the applications, shall select a candidate. It will be further clear from Clause 4.5 that after such selection is made by the Panchayat by a resolution, the Sarpanch of the Gram Panchayat shall issue an appointment letter to the selected person. In Black's Law Dictionary, First Edition, the expression 'resolution' has been described as 'a formal expression' of the opinion or will of an official body or a public assembly, adopted by vote. The resolution of the Panchayat is therefore a formal expression of opinion of the General Body of the Panchayat in favour of selection of a particular applicant as Panchayat Karmi. The letter of appointment issued by the Sarpanch to carry out the resolution of the General body of the Panchayat is the order of appointment of Panchayat Karmi."

13. Thereafter, their Lordships considered as to whether appeal would lie against resolution or appeal would lie against the order appointing Panchayat Karmi issued by the Sarpanch pursuant to the resolution of General Body of Gram Panchyaat and held as under:-

"10. Obviously, the provisions of an Act cannot be interpreted by reference to the provisions of a scheme made by the Government to give effect to the provisions of the Act, but has to be interpreted by reference to the provisions of the Act. As we have seen, Section 70 of the Adhiniyam does not provide for appointment of a Panchayat Karmi by a resolution of the Panchayat. Hence, an appointment order of a Panchayat Karmi issued by the Sarpanch of a Gram Panchayat can be challenged by way of appeal under Section 91 of the Adhiniyam read with the Rules of 1995. Section 91 of the Adhiniyam states that an appeal against an order of a Panchayat under the Adhiniyam shall lie to such authority and in such manner as may be prescribed. Rule 3 of the Rules of 1995 prescribes the 'Appellate Authority' and states that an appeal shall lie in the case of an

order passed by the Gram Panchayat to the Sub-Divisional Officer. Thus, an order of appointment of a Panchayat Karmi issued by the Sarpanch pursuant to the resolution of the General Body of a Gram Panchayat is appealable before the Sub-Divisional Officer under Section 91 of the Adhiniyam read with Rule 3 (d) of the Rules of 1995."

As such, in the above-stated judgment (supra), it has clearly been held that order of appointment of Panchayat Karmi issued by the Sarpanch pursuant to the resolution of General Body of Gram Panchayat is appealable under Section 91 of the Adhiniyam 1993 read with Rule 3(d) of the Rules of 1995.

14. Similar view has been taken by this Court in **Smt.Chandrawali v. State of Chhattisgarh & Ors.**³ in which it has been held as under:-

"7. A resolution of a Gram Panchayat/Gram Sabha cannot be termed as final order of removal as it is well settled principle of law that the resolution is a mere guidelines. Even, sub-rule (1) of Rule 7 of the Rules, 1999 prescribes for passing an order by the Disciplinary Authority on the basis of the report after considering his representation, if any, made by the person charged in response to the notice. In the case on hand, since no formal order was passed, therefore, keeping the petitioner away from service on the basis of the resolution is vitiated for want of proper statutory order. Thus the petitioner continues on the same post as if he was never removed from the post of Panchayat Karmi."

15. In view of clear pronouncement of the Madhya Pradesh High Court in **Devidayal Raikwar** (supra) and also by this Court in **Smt.Chandrawali** (supra), I have

no reason to take different view of the matter. Hence, it is held that order of appointment of Panchayat Karmi issued by the Sarpanch pursuant to the resolution of General Body of Gram Panchayat Chanta would be appealable before the SDO under Section 91 of the Adhiniyam 1993 read with Rule 3(d) of the Rules of 1995.

16. Strong reliance of para-22(ii) of Abdul Hasan Qureshi's case (supra) has been placed by Mr.Sudhir Verma, learned counsel for respondent No.4, in which the High Court of Madhya Pradesh has clearly held that resolution of Gram Panchayat merely selecting thereby a Panchayat Karmi and not appointing thereby would not amount to an order, but would amount to merely a proceedings of Gram Panchayat and would not be appealable as an order under Rule 3. Mr.Verma has also stressed upon paras-12, 13 and 14 of the judgment rendered by the Madhya Pradesh High Court in Abdul Hasan Qureshi's case (supra).

17. In the instant case, pursuant to the resolution dated 23.9.2007, appointment order was issued by the Sarpanch of Gram Panchayat Chanta on 24.10.2007, which ought to have been questioned by respondent No.4, that has not been done, as such, in the considered opinion of this Court, since respondent No.4 has only

challenged the resolution dated 23.9.2007 selecting the petitioner on the post of Panchayat Karmi and thereafter, order of appointment of the petitioner was issued by the Sarpanch of Gram Panchayat Chanta on 24.10.2007 appointing the petitioner on the post of Panchayat Karmi, which has not been challenged and appeal under Section 91 of the Adhiniyam 1993 read with Rule 3(d) of the Rules of 1995 was maintainable against the order of appointment of the petitioner issued by the Sarpanch of Gram Panchayat Chanta on 24.10.2007, appeal as framed and filed by respondent No.4 before the SDO only questioning the resolution dated 23.9.2007 selecting petitioner was not maintainable and learned SDO has committed grave legal error in entertaining and granting the appeal, which was wholly without jurisdiction and without authority of law and consequently, learned Collector has also committed illegality in not noticing the jurisdictional error committed by learned SDO and directing the appointment of respondent No.4, which was not his jurisdiction. The fact remains that the order passed by the SDO is without jurisdiction and appeal against the resolution dated 23.9.2007 selecting the petitioner on the post of Panchayat Karmi was not maintainable and learned Collector has

perpetuated the illegality committed by learned SDO.

18. Consequently, the impugned order dated 5.11.2009 (Annexure P7) passed by the Collector, Kabirdham affirming the order dated 8.4.2009 (Annexure P-6) passed by the Sub-Divisional Officer (Revenue), Bodla both are hereby quashed.

19. The writ petition is allowed to the extent indicated hereinabove. No order as to cost(s).

Sd/-

(Sanjay K.Agrawal)
Judge

B/-