

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(C.) No.1835 of 2021

- Gajju Usendi S/o Late Rainu Usendi, Aged About 35 Years R/o Village Murjhar, Gram Panchayat Ravindranagar, Tahsil Pakhanjore, Distt. Uttar Baster Kanker C.G.

---- Petitioner

Versus

1. The State Of Chhattisgarh Through Secretary, Panchayat And Rural Department, Mantralaya Naya Raipur Distt. Raipur C.G.
2. Sub Divisional Officer (R), Pakhanjore, Distt. Uttar Bastar Kanker C.G.
3. The Tahsildar, Tahsil Pakhanjore, Distt. Uttar Baster Kanker C.G.
4. Amulya Manjhi, Ex. Up Sarpanch Of Gram Panchayat Ravindra Nagar, Tahsil Pakhanjore, Distt. U.B. Kanker C.G.

---- Respondents

For Petitioner : Mr. Parag Kotecha, Advocate.

For State/respondents No.1 to 3 : Ms. Shriya Mishra, Panel Lawyer.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

18/11/2021

1. Heard.
2. It is submitted that the petitioner is elected Sarpanch of Gram Panchayat Ravindra Nagar, Tehsil- Pakhanjore, District- Uttar Bastar Kanker. Certain allegations were made against the petitioner by the ex-sarpanch, on which proceeding was initiated against the petitioner under Section 40 of Panchayat Raj Adhiniyam, 1993 (in short 'the Act, 1993'). A show cause notice was issued, which had been replied by the petitioner. An inquiry was conducted and inquiry report was submitted. Petitioner on receiving the copy of inquiry report submitted his

objections and made a prayer to cross-examine the Inquiry Officer. That application was not allowed by respondent No.2. Respondent No.2 then finally passed the order dated 01.03.2021 removing the petitioner from his post and disqualifying him for a period of 06 years.

3. It is submitted that the impugned order is totally against the principle of natural justice. The petitioner was never given a fair opportunity of hearing. The grounds in defence by the petitioners were not considered. Thus, the action of the respondent authorities is illegal, deliberate, unfair and discriminatory. Prayer has been made to quash the impugned order dated 01.03.2021 (Annexure-P/7).
4. Reliance has been placed on the judgment of this Court in W.P.(C.) No.2675/2017 between parties Smt. Kamti Bai Vs. State of Chhattisgarh and Ors. decided on 11.12.2017 and the judgment of this case in the W.P.(C.) No.564 of 2018 between the parties Ajay Jaiswal Vs. State of Chhattisgarh and Ors. decided on 24.04.2018 and also on the judgment of this Court in the case of Gurumukh Singh Hora Vs. State of Chhattisgarh and Ors. reported in (2005) AIR (Chhattisgarh) 1.
5. Learned State counsel representing respondents No.1, 2 and 3 opposes the submissions and submits that no illegality has been committed in passing of the impugned order. The impugned order is appealable under Rule 3 of M.P./C.G. Panchayat (Appeal and Revision) Rules 1995 (in short 'the Rules, 1995'). Therefore, the present petition is not maintainable, which may be dismissed.
6. Considered on the submissions. Section 40 (1) of the Act, 1993 authorizes inquiry on the allegations of misconduct etc., which is defined in explanation of the same provision which shall be a ground for passing order for removal of the elected member of the Panchayat. In case, the

misconduct is found true in the inquiry, the member of Panchayat shall not only be immediately removed but he shall also be disqualified for a period of six years for participating in elections.

7. The order passed by respondent No.2 is appealable under Rule 3 of the Rules 1995, hence, in this case, the issue raised by the petitioner cannot be and should not be entertained in Writ Petition under Article 226 Constitution of India.
8. In the case of Ajay Jaiswal (supra), the petitioner, who was an office bearer of Jila Panchayat, Korba was removed from his post without any inquiry and because of that manifest illegality, the order of removal of the petitioner in that case was quashed. Similarly, in the case of Kanti Bai (Supra), the petitioner who was elected Sarpanch was not given reasonable opportunity of hearing before her removal because of which, the order of her removal was quashed. The fact is to be noted that the petitioner Kamti Bai had come before High Court after exhausting the remedy of filing appeal before the Collector and Revision before the Commissioner.
9. The petitioner's reliance on Gurumukh Singh Hora Case (Supra) is on the point that the petition under Article 226 Constitution of India can be entertained. However, if there is a statutory remedy available, which has not been availed by the petitioner in that case, the discretion for entertaining the petition under Article 226 Constitution of India cannot be exercised.
10. On perusal of the impugned order dated 01.03.2021 vide Annexure-P/7, it appears, that the petitioner was served with show cause notice to which he has replied. The reason that the petitioner was not allowed to cross examine the Inquiry Officer is an issue which cannot be

considered by this Court in exercise of jurisdiction under Article 226 Constitution of India. This issue certainly can be examined by the appellate Court. Therefore, the petitioner has opportunity to file appeal against the impugned order.

11. With these observations, I do not find another reason to entertain this petition and grant any relief. Hence, this petition is dismissed.

12. Accordingly, the petition stands disposed off.

Sd/-

(Rajendra Chandra Singh Samant)

Judge

Monika