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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No.2457 of 2013**

Jayant Barik Son of Shoukilal Barik, aged about 35 years,
Panchayat Karmi, R/o. Village Dudhipali, Tahsil & P.S.
Basna, Revenue and Civil District Mahasamund (CG)

-----Petitioner**Versus**

1. Balak Ram Nishad Son of Karamsai Nishad, R/o. Dudhipali,
Tahsil and P.S. Basna, Civil and Revenue District
Mahasamund (CG)
2. Additional Commissioner, Raipur Division, Raipur, District
Raipur (CG)
3. Collector, Mahasamund, District Mahasamund (CG)

----- Respondents

For Petitioner	: Mr.Surfaraaj Khan, Advocate
For Respondent No.1	: Mr.F.S.Khae, Advocate
For Respondents No.2 & 3	: Mr.Sunil Otmani, Addl.A.G.

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****06.10.2021**

1. The petitioner herein calls in question the order dated 1.8.2013 (Annexure P-1) passed by respondent No.2/Additional Commissioner, Raipur Division, Raipur affirming the order dated 15.6.2012 (Annexure P-2) passed by respondent No.3/Collector, Mahasamund, by which the appeal preferred by respondent No.1 has been allowed.
2. Mr.Surfaraaj Khan, learned counsel for the petitioner, would submit that the resolution dated 4.9.2006 appointing the petitioner as Panchayat Karmi was questioned by respondent No.1 by way of appeal under Rule 3 of the Chhattisgarh Panchayat (Appeal and Revision) Rules, 1995 (hereinafter called as 'Rules of 1995') before the Sub-Divisional

Officer (Revenue), Saraipali, but that appeal was never considered on merits and by order dated 30.4.2010, it has been dismissed holding that in objection of respondent No.1 an order has already been passed on 29.9.2009 and that ought to have been challenged and when respondent No.1 preferred an appeal before respondent No.3/Collector, Mahasamund. Respondent No.3/Collector, Mahasamund decided the appeal on merits by order dated 15.6.2012 (Annexure P-2) and set-aside the resolution dated 4.9.2006 passed by Gram Panchayat, Dudhipali, whereas the appeal preferred by respondent No.1 was never decided on merits by the Sub-Divisional Officer (Revenue), Saraipali, which illegality has been perpetuated by respondent No.2/Additional Commissioner, Raipur Division, Raipur by the impugned order, therefore, it is liable to be set aside.

3. On the other hand, Mr.F.S.Khare, learned counsel for respondent No.1, would support the impugned order and submit that order of the Sub-Divisional Officer (Revenue), Saraipali has rightly been set-aside by respondent No.3/Collector, Mahasamund and that has rightly been affirmed by respondent No.2/Additional Commissioner, Raipur Division, Raipur as the Sub-Divisional Officer (Revenue), Saraipali has unnecessarily dismissed the appeal without going into merits of the matter.

4. Mr.Sunil Otwani, learned Additional Advocate General for respondents No.2 and 3/State, would support the impugned order.

5. I have heard learned appearing for the parties, considered their rival submissions made hereinabove and also went through the records with utmost circumspection.
6. Recruitment for the post of Panchayat Karmi was advertised by Gram Panchayat, Dudhipali on 31.7.2006 and concerned Gram Panchayat passed a resolution on 4.9.2006 in favour of the petitioner resolving to appoint him on the said post and accordingly, the order dated 17.10.2007 was issued in his favour appointing him on the post of Panchayat Karmi. In the meanwhile, respondent No.1 has made an objection to the resolution / appointment of the petitioner, which was rejected by the Sub-Divisional Officer (Revenue), Saraipali on 29.9.2009. Thereafter, respondent No.1 preferred an appeal under Rule 3 of the Rules of 1995 before the Sub-Divisional Officer (Revenue), Saraipali. When the appeal preferred against resolution dated 4.9.2006 came up for hearing before the Sub-Divisional Officer (Revenue), Saraipali on 30.4.2010, the Sub-Divisional Officer (Revenue), Saraipali dismissed the appeal holding that he ought to have questioned the order dated 29.9.2009, whereas the SDO ought to have decided the appeal on merits adjudicating the correctness or otherwise of the resolution dated 4.9.2006, but it was not done and it was dismissed summarily relying the order dated 29.9.2009. On appeal being preferred by respondent No.1, respondent No.3/Collector, Mahasamund by order dated 15.6.2012 interfered with the resolution dated 4.9.2006 and set-aside

the same, which has been affirmed by the Additional Commissioner, Raipur Division, Raipur on 1.8.2013 (Annexure P-1).

7. Though objection of respondent No.1 relating to appointment of the petitioner was rejected by the SDO on 29.9.2009, but that cannot take place and cannot substitute the appellate proceeding, which is a statutory appeal under Rule 3 of the Rules of 1995. Even some objection regarding the petitioner's appointment has been rejected by the SDO on administrative side, but statutory appeal, which is quasi-judicial proceeding, ought to have been decided on merits by learned SDO on 30.4.2010, but merely citing and relying the order passed on 29.9.2009 on complaint of respondent No.1, the statutory appeal of respondent No.1 could not have been dismissed and on appeal being preferred by respondent No.1 before respondent No.3/Collector, Mahasamund, respondent No.3/Collector, Mahasamund after setting aside the order dated 30.4.2010 could have remanded the matter to the SDO to decide the correctness of the resolution dated 4.9.2006 as the SDO has not decided the appeal on merits, but respondent No.3/ Collector, Mahasamund allowed the appeal in toto, which the Additional Commissioner perpetuated the illegality.

8. Accordingly, the order dated 15.6.2012 (Annexure P-2) passed by the Collector, Mahasamund as affirmed by the Additional Commissioner, Raipur Division, Raipur on 1.8.2013 (Annexure P-1) along with the order dated

30.4.2010 passed by the Sub-Divisional Officer (Revenue), Saraipali are hereby set-aside. The matter is remitted to the Sub-Divisional Officer (Revenue), Saraipali to consider the appeal preferred by respondent No.1 against the resolution dated 4.9.2006, whether it is in accordance with law or not after affording an opportunity of hearing to the petitioner and respondent No.1, within a period of 45 days from the date of receipt of a copy of this order.

9. It is stated at the Bar that since the date of order of the Collector, Mahasamund, respondent No.1 is working on the post of Panchayat Karmi and thereafter given him charge of Panchayat Secretary, for smooth functioning of Gram Panchayat, Dudhipali, it is directed that respondent No.1 be allowed to work on the said post till the appeal is decided by the SDO within a period of 45 days without being prejudiced to the rights of the parties.

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

Sd/-

(Sanjay K.Agrawal)
Judge

B/-