



AFR

IN THE HIGH COURT OF ORISSA AT CUTTACK

**W.P.(C) No.39518 of 2023, W.P.(C) No.35134 of 2022 &
W.P.(C) No.17495 of 2016**

In the matter of an application under Articles 226 and 227
of the Constitution of India.

.....

Rajkishore Sahu

....

Petitioner

-versus-

State of Odisha and Others

....

Opposite Parties

For Petitioner : Mr. S.K. Dalai, Advocate

For Opp. Parties : Mr. P.K. Panda, ASC

PRESENT:

THE HONBLE JUSTICE BIRAJA PRASANNA SATAPATHY

Date of Hearing:09.10.2025 and Date of Judgment:12.12.2025

Biraja Prasanna Satapathy, J.

1. Since all these Writ Petitions involve a common issue, all the matters were heard analogously and disposed of by the present common order.



2. Heard Mr. S.K. Dalai, learned counsel for the petitioner and Mr. P.K. Panda, learned Addl. Standing Counsel for the State.

3. All these Writ Petitions have been filed by the petitioner who happens to be Panchayat Executive Officer of Sikua Grama Panchayat under Bhawanipatna Block in the district of Kalahandi, *inter alia* challenging the orders, so passed by Opp. Party No.2, on the ground that Opp. Party No.2 is not competent to pass such orders.

4. It is the case of the petitioner that petitioner while continuing as Grama Panchayat Secretary of Sikua Grama Panchayat, he was appointed as VLW vide order issued by the Collector, Kalahandi-Opp. Party No.2 in the year 2011 on promotion. Subsequently, post of VLW was re-designated as Panchayat Executive Officer and petitioner accordingly was allowed to continue as Panchayat Executive Officer of the Grama Panchayat.

4.1. It is contended that while continuing as PEO of the Grama Panchayat, petitioner initially vide order



dated 24.09.2016, was placed under suspension with effect from the said date of Opp. Party No.2. Challenging such order of suspension, petitioner approached this Court by filing W.P. (C) No.17495 of 2016. It is contended that this Court while issuing notice of the matter vide order dated 07.10.2016, passed an interim order, *inter alia* directing that no coercive action be taken against the petitioner following the impugned order of suspension.

4.2. Learned counsel for the petitioner contended that such an order of suspension passed at the instance of Opp. Party No.2 by the District Panchayat Officer, Kalahandi, was challenged *inter alia* on the ground that Opp. Party No.2 being not the disciplinary authority, he is not competent to pass an order of suspension so passed by him vide order dated 24.09.2016. Accordingly, this Court while issuing notice of the matter passed an interim order on 07.10.2016.

4.3. It is contended that on the face of such order passed by this Court on 07.10.2016, in the proceeding



initiated against the petitioner by Opp. Party No.2 vide Memorandum No.1308 dated 22.03.2017, Opp. Party No.2, while disposing the proceeding, imposed various punishments on the petitioner vide order dated 01.12.2022. Accordingly, such an order of punishment was assailed by the petitioner before this Court by filing W.P. (C) No.35134 of 2022. It is contended that this Court vide order dated 23.12.2022, while issuing notice of the matter, passed an interim order to the effect that order dated 01.12.2022 shall not be given effect to till the next date.

4.4. Learned counsel for the petitioner contended that on the face of the interim order passed by this Court in W.P.(C) No.17495 of 2016 on 07.10.2016, not only the proceeding vide Memorandum No.1308 dated 22.03.2017 was initiated but also order of punishment was passed vide order dated 01.12.2022, which is the subject matter of challenge in W.P.(C) No.35134 of 2022. Not only that on the face of such interim order passed by this Court in W.P.(C) No.17495 of 2016 on



07.10.2016, another proceeding was also initiated against the petitioner by Opp. Party No.2 vide Memorandum No.804 dated 01.08.2018 under Annexure-3.

4.5. It is contended that such a proceeding with the charges indicated therein, since was initiated on the face of a Vigilance Proceeding initiated against the petitioner on self-same charges in Koraput Vigilance P.S. Case No.26 dated 03.07.2017 under Section 13(2) read with Section 13(1)(c)(d) of the P.C. Act, 1988 and Section 468/471/406/420/120-B of the IPC, petitioner on receipt of the Memorandum No.804 dated 01.08.2018 under Annexure-3, moved an application on 18.11.2022 *inter alia* with a prayer to stay the enquiry of the proceeding till conclusion of the vigilance case.

4.6. It is contended that petitioner gave such a reply to the Memorandum as the Memorandum dated 01.08.2018 was only served on him in the year 2022. It is contended that on the face of the request made by



the petitioner in his reply dated 18.11.2022 under Annexure-5, Opp. Party No.2 vide order dated 20.01.2023 under Annexure-6 while proceeding with the matter, appointed Sub-Collector, Bhawanipatna as the Enquiry Officer. Pursuant to such order issued under Annexure-6 and the notice issued by the Enquiry Officer, petitioner appeared before Enquiry Officer on 02.03.2023 as found from Annexure-7.

4.7. It is however contended that while the matter stood thus and instead of taking a final decision in the departmental proceeding so initiated vide Memorandum dated 01.08.2018, petitioner vide order dated 22.11.2023 under Annexure-8 of Opp. Party No.2, was dismissed from his services, taking recourse to the provision contained under Rule-13 read with Rule-18(1) of the OCS(CCA) Rules, 1962 and Article-311(2)(b) of the Constitution of India and his period of suspension was treated as such.

4.8. While assailing the order of dismissal passed vide order dated 22.11.2023, learned counsel for the



petitioner, vehemently contended that in view of the interim order passed by this Court in W.P.(C) No.17495 of 2016 on 07.10.2016, no coercive action could have been taken against the petitioner with initiation of the proceeding, one in the year 2017 and the other in the year 2018, with passing of the impugned order of dismissal vide order dated 22.11.2023. It is contended that taking into account the nature of interim order passed, no order of dismissal could have been passed which is admittedly coercive in nature. It is accordingly contended that on the face of the interim order so passed by this Court, the order of dismissal since could not have been passed; such an order is not sustainable in the eye of law.

4.9. A further submission was also made by the learned counsel appearing for the petitioner *inter alia* contending that petitioner since is posted as PEO in the Grama Panchayat, in view of the provisions contained under Section 122 of the Grama Panchayat Act, 1964 read with Article-243(G) of the Constitution of India,



Opp. Party No.2 cannot act as the Disciplinary Authority of the petitioner.

4.10. Placing reliance on the provision contained under Section 122(2) and (3) of the Act, it is contended that it is the Grama Panchayat who is only competent to initiate the proceeding against petitioner for any alleged omission and commission and Opp. Party No.2 is not at all competent to take any action against the petitioner with initiation of any proceeding. Section 122(2) and (3) of the Act reads as follows:-

“122(2) The Panchayat Executive Officers appointed under sub-section (1) shall act as such within the local area of such Grama or Gramas as may be assigned to them by the Collector, and]

122(3) Subject to the provisions of Sub-section (1), the [Panchayat Executive Officer) shall function under the control and supervision of the Grama Panchayat.]”

4.11. Similarly, Article-243(G) of the Constitution of India reads as follows:-

“243-G. Powers, authority and responsibilities of Panchayats. Subject to the provisions of the Constitution, the Legislature of a State may, by law, endow the Panchayats with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Panchayats, at the appropriate level, subject to such conditions as may be specified therein, with respect to.”



4.12. Placing reliance on the aforesaid legal provisions, so contained under the Act and the Constitution of India, learned counsel for the petitioner contended that not only the initiation of both the proceedings is bad in the eye of law at the instance of Opp. Party No.2, but also the order of suspension dated 24.09.2016 as well as order of punishment passed on 01.12.2022 and 22.11.2023, in both the proceedings. It is also contended that this Court while issuing notice of the matter vide order dated 08.12.2023 in W.P.(C) No.39518 of 2023, passed an interim order to the effect that any appointment made in place of the petitioner shall be subject to result of the Writ Petition.

4.13. Learned counsel for the petitioner accordingly contended that since the initiation of the proceeding at the instance of Opp. Party No.2 is not maintainable, consequential impugned order of punishment passed by the self-same authority vide order dated 01.12.2022 and 22.11.2023 are not sustainable in the eye of law



and so also the order of suspension passed on 24.09.2016.

4.14. In support of his aforesaid submission, learned counsel for the petitioner relied on the following decisions:-

- “1. 1998 (2) OLR 410 (***Sri Adwaita Chandra Jena vs. Khandahata Grama Panchayat and Others***),
2. 2007 (II) SCC 138 (***U.P. Gram Panchayat Adhikari Sangh & Ors. v. Daya Ram Saroj & Ors.***),
3. 2007 (7) SCC 718 (***Gujarat Pradesh Panchayat Parishad and Others Vs State of Gujarat and Others***),
4. 2008(II) OLR 530 (***Fakir Mohan Das and Others Vs. Govt. of Odisha and Others***),
5. The decision of this Court in W.P.(C) No.29804 of 2014 (***Narayan Jena Vrs. State of Odisha and Others***), disposed of on 26.04.2024.”



4.15. This Court in the case of **Adwaita Chandra Jena** in para-11 has held as follows:-

“11. A conspectus of the provisions makes it clear that under the Act and the Rules the power to appoint a Secretary and to take disciplinary action against him vests with the Grama Panchayat. Power of removal also vests with the Grama Panchayat. The relationship between the Grama Panchayat and the Secretary is that of master and servant, and State cannot be said to be the master of the latter. That being the position, the conclusion is inevitable that Secretary of a Grama Panchayat does not hold civil post under the State Government, and is not a Government servant.”

4.16. Hon’ble Apex Court in the case of **Daya Ram Saroj & Ors** in para-3, 4 and 37 has held as follows:-

“3. By the 73rd Constitutional Amendment Article 243-G was introduced in the Constitution of India. Article 243-G reads as under:

“243-G. Powers, authority and responsibilities of Panchayats.—Subject to the provisions of the Constitution, the legislature of a State may, by law, endow the panchayats with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Panchayats at the appropriate level, subject to such conditions as may be specified therein, with respect to—

(a) the preparation of plans for economic development and social justice;

(b) the implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule.”

4. Article 243-G, thus, endows the Panchayats with such power and authority as may be necessary to enable them to function as institutions of self-government. Such law may contain provisions for the devolution of powers and responsibilities upon Panchayats, subject to conditions as may be specified, with respect to the implementation of schemes for economic development and



social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule of the Constitution.

XXXX

XXXX

XXXXX

37. *This contention, in our view, is not tenable in law. We have already said that the 73rd Amendment was brought into force on 24-4-1993 to give effect to one of the directive principles of State policy, namely, Article 40 of the Constitution. Therefore, it cannot be said that the 73rd Amendment of the Constitution is the basic feature of the Constitution. Article 40 cannot be said to qualify as the basic feature of the Constitution. The 73rd Amendment came to the Constitution by way of amendment under Article 368 and, therefore, it cannot be said to be a basic feature of the Constitution. It is an enabling provision and the State is empowered to eliminate, modify or cancel by exercising power under the enabling provision. Article 243-G is an enabling provision. Article 243-G enables the Panchayats to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Panchayats, subject to such conditions as may be specified therein, with respect to the implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule. The enabling provisions are further subject to the conditions as may be specified. Therefore, it is for the State Legislature to consider legal conditions and make the law accordingly. The devolution of exercise (sic) would also be open to the State to eliminate or modify. See Constitution Bench judgment in *M. Nagaraj v. Union of India* [(2006) 8 SCC 212] . Also see *Akhil Bharat Goseva Sangh (3) v. State of A.P.* [(2006) 4 SCC 162] and *Kuldip Nayar v. Union of India* [(2006) 7 SCC 1] where a Constitution Bench of this Court considered the basic structure theory in para 107 of the judgment and held as under: (*Kuldip Nayar case* [(2006) 7 SCC 1] , SCC p. 67)*

“107. The basic structure theory imposes limitation on the power of Parliament to amend the Constitution. An amendment to the Constitution under Article 368 could be challenged on the ground of violation of the basic structure of the Constitution. An ordinary legislation cannot be so challenged. The challenge to a law made, within its legislative competence, by Parliament on the ground of violation of the basic structure of the Constitution is thus not available to the petitioners.”



4.17. Hon'ble Apex Court in the case of *Gujarat*

Pradesh Panchayat Parishad in para-5, 6, 38 and 39

has held as follows:-

"5. The question raised by the appellants before the High Court as well as before us centres around the powers of the District Development Officer vis-à-vis the powers of the President of District Panchayat in the administration of District Panchayat under the Gujarat Panchayats Act, 1993 (hereinafter referred to as "the Act").

6. According to the appellants, Part IX of the Constitution read with the relevant provisions of the Act leaves no room for doubt that the District Development Officer is expected to exercise all executive powers of the District Panchayat, subject to the orders, if any, of the President of the District Panchayat.

xxxx

xxxx

xxxx

38. It was also urged by the learned counsel for the appellant that the High Court had committed an error of law in interpreting and relying on various rules framed under the Act and in upholding the power of the District Development Officer in relation to service matters under the District Panchayat. It was submitted that it is settled law that the delegated legislation must be subject to the parent Act and not vice versa. When the Act itself provides that the District Development Officer will exercise powers subject to the order passed by the President of the District Panchayat, rules cannot travel beyond the said provision nor can they be interpreted to mean that President of the District Panchayat has "no place" in services under the Panchayat. In other words, the authority of the District Development Officer cannot be upheld in Panchayat service on the basis of the rules framed under the Act.

39. Now it is true that the rules (delegated legislation) must be consistent with the provisions of the Act (parent legislation). But it cannot be said that the High Court was wrong in referring to those Rules while interpreting the provisions of the Act. Reading the relevant provisions of the Act and the Rules framed thereunder harmoniously, it appears to us to be crystal clear that in the matters of services under the Panchayats, the legislature wanted the District Development Officer and other officials of the District



Panchayats to exercise statutory powers and the High Court was right in referring to the Rules.”

4.18. This Court in the case of ***Fakir Mohan Das*** in para-3 & 7 has held as follows:-

“3. In nut shell, the Secretaries and also the Sarpanches of some of the Grama Panchayats have questioned the authority of the Government in making amendment of Sections 122 of 123 of the Act contrary to the spirit of self governance proclaimed by the Constitution in Article 243 G by curtailing independence of the Grama Panchayats and to get it controlled through deputed staffs i.e. Village Level Workers and Village Agricultural Workers (in short, "V.L.Ws and V.A.Ws"). Bone of contention of the petitioners is that by the impugned amendment of the statute not only the position of the Secretaries as the employee under the Grama Panchayat is minimized but also by induction of V.L.Ws. and V.A.Ws, the Grama Panchayats are kept under direct control of the Executive, which is controlled by the ruling political parties. Accordingly, petitioners pray to declare the aforesaid amendment to Sections 122 and 123 of the Act as ultra vires. Their further contention is that when the Rules under the pre-amended Act relating to the power and jurisdiction of the Secretaries has remained unaffected, the order dated 18.10.2004, issued by the Panchayatiraj Department and the consequential action taken by the Block Development Officers for handing over the charge of the relevant records by the Secretaries to the V.L.Ws. and V.A.Ws. is, illegal and liable to be quashed.

7. To appreciate the issue raised for its proper adjudication, it is appropriate to quote Sections 122 and 123 before and after the impugned amendment.

Before amendment

After amendment

122. Officers and servants of Grama Sasan (1) Subject to such general or special orders, if any, made in that behalf by the State Government there shall be a Secretary and such officers and servants for the Grama Sasan as may be necessary for enabling the Grama Panchayat to exercise its powers, discharge its duties,

122. Executive Officer or Grama Sasan:(1) There shall be an Executive Officer, for every Grama Sasan who shall :-

a) maintain the records of the proceedings of the meetings of Grama Panchayats:

(b) remain in custody of all and such records documents, cash and valuable securities

and perform its functions for carrying out the purposes of this Act and the rules made thereunder and the powers, duties and functions of such officers and servants shall be as may be prescribed.

(2) All matters relating to the appointment, qualification, manner of recruitment of the Secretary and offices and servants and to their salary, allowances, leave and all other conditions of service including the exercise of disciplinary control and supervision over such officers and servants shall be governed by the rules made in that behalf.

(3) Notwithstanding anything in any other law for the time being in force the State Government may, whenever they consider it expedient so to do, provide by rules made in that behalf a common cadre of posts and services -

(a) for all or any of the Grama Sasan within the State or a part thereof or within the State or a part thereof; or

(b) for all Grama Sasans and Samitis a district together. with the Parishad; or

(c) for all Grama Sasans together with all Samitis and Parishads within the State.

and all matters incidental or ancillary thereto and in the event of any conflict

belonging to or vested in or under the direction, management or control of the Grama Sasan as may be prescribed; and

(c) exercise such other powers, discharge such other duties and perform such other functions as may be prescribed.

(2) The VLWs and VAWS working in a district shall, for the purposes of Sub-section (1), act local area of such Grama or Gramas as Executive Officers within the as may respectively be assigned to them by the Collector,

Explanation - For the purposes of Sub-section (2):-

(a) "VLWS" shall mean the Village Level workers appointed by the Collector for implementing different developmental schemes relating to different levels of panchayats in the State; and

(b) "VCWS" shall mean the Village Agriculture Workers appointed for extension of agricultural activities in the State.

(3) Subject to the general superintendence and overall control of the Grama Panchayat, the Executive Officer shall function under the control and supervision of the Director, Collector and District Panchayat Officer.

123. Secretary and other employees of Grama Sasan :-(1) Subject to such general or special order as may be made in this behalf by the State Government, a Grama Panchayat may appoint a Secretary and such other employees for the Grama Sasan



between the provisions of any other law as aforesaid and the provisions of this Act, and the rules made thereunder the latter shall prevail.

123. Powers, duties and functions of Secretary Subject to such general or special orders issued from time to time by the State Government in that behalf the Secretary of the Grama Sasan shall -

(a) Maintain the records of the proceedings of the meetings of the Grama Panchayat.

(b) Remain in custody of all records and documents, cash and valuable securities. belonging to or vested in or under the direction,

management or control of the Grama Sasan as prescribed; and

(c) Exercise such other powers, discharge such other duties and perform such other functions as may be conferred or assigned to him by or under this Act.”

as may be necessary for enabling the Gram Panchayat to perform its functions who shall discharge such duties and perform such functions as may be prescribed.

(2) The expenditure on remuneration or allowances of the Secretary and other staff appointed, if any, under Sub-section (1) shall be borne by the Grama Panchayat.

(3) Notwithstanding anything to the contrary in Sub-section (1), any person appointed as a Secretary prior to the commencement of the Orissa Grama Panchayats (Amendment) Act, 2004 shall be deemed to have been appointed as such under the said Sub-section and he shall continue to receive the remunerations and other financial benefits, if any, as were admissible to him prior to such commencement.

4.19. This Court in the case of **Narayan Jena** in para-3 & 5 has held as follows:-

“3.The main ground of challenge and point of law involved in the present case is that the entire allegation has been made against the petitioner while he was working as Panchayat Executive officer i.e. PEO under the Gram Panchayat. If the earlier full Bench decision of this Court is relied, it has been held that the Secretary who is working under the Gram



*Panchayat is not holding a civil post in the Gram Panchayat. The State Government has no authority at all to take any disciplinary action against the Secretary and after amendment Section 122 of the Act, the power of superintendents and supervision was vested with the Collector but subsequently in view of the judgment passed in *Fakir Mohan v. Govt.* it has been declared as *ultravires* and subsequently in case of *Nabakishore Mishra, v. Collector, Dhenkanal* it has been observed that the Collector cannot have any control over the services of VLWs posted as Panchayat Executive Officers in the Gram Panchayats. It is also clear that if the VLWs are working under Gram Panchayat as Executive Officers their duties and responsibility with respect of to the duties in the Panchayat and their services within the control of Gram Panchayat and the gram Panchayat may deal with any indiscipline or negligence while carrying out the lawful order of the Sarpanch or the Panchayat.*

XXXX

XXXXXX

XXXX

5. In view of Article 243G of the Constitution of India, it has been directed that the implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule are purely in the domain of Gram Panchayat. Further, under Article 243(G), power has been given to the Gram Panchayat by the Constitution of India. For the reasons, disciplinary action has been vested to the State Government not to the Officers of the State by curtailing the independence of the Gram Panchayats. But, the aforesaid action of the Officers in interfering with the mandates of the Constitution does warrant an interference by this Court.”

4.20. Placing reliance on the provisions contained under Section 122(2) and (3) of the Act read with Article 243(G) of the Constitution of India and the decisions as cited (*supra*), learned counsel for the petitioner vehemently contended that since Opp. Party No.2 is not



the Disciplinary Authority of the petitioner, not only the initiation of the proceeding vide Memorandum No.1308 dated 22.03.2017 with passing of the order of punishment vide order dated 01.12.2022, which is the subject matter of challenge in W.P.(C) No.35134 of 2022 is bad in the eye of law but also the initiation of the proceeding vide Memorandum No.807 dated 01.08.2018 with the order of punishment of dismissal dated 22.11.2023, which is the subject matter of challenge in W.P.(C) No.39518 of 2023.

4.21. A further submission was also made that order of suspension passed by the District Panchayat Officer vide order of the Collector & District Magistrate on 24.09.2016, which is the subject matter of challenge in W.P.(C) No.17495 of 2016 is also bad in the eye of law as it has been passed by an incompetent authority.

5. Mr. P.K. Panda, learned Addl. Standing Counsel on the other hand made his submission basing on the stand taken in the counter affidavit so filed in W.P.(C) No.39518 of 2023. It is contended by the learned Addl.



Standing Counsel that petitioner which is not disputed while continuing as Grama Panchayat Secretary, was appointed as VLW vide order issued by the Opp. Party No.2-Collector, Kalahandi in the year 2011 on promotion. Post of VLW was subsequently re-designated as Panchayat Executive Officer and accordingly Collector, Kalahandi remained as the appointing authority of the petitioner.

5.1. It is contended that since Collector, Kalahandi is the appointing authority of the petitioner, in view of the settled position of law, the appointing authority being the Disciplinary Authority in all the cases, challenge made by the petitioner with regard to the competency of the Collector to initiate the proceedings and placing the petitioner under suspension, is not at all entertainable. Placing reliance on the provisions contained under Section 122(1) of the Act, it is contended that as provided under the said provision, for every Grama Sasan, there shall be a Panchayat Executive Officer to be appointed by the Collector.



5.2. It is accordingly contended that in view of the clear provision contained under Section 122(1) of the Act and Collector being the appointing authority of the petitioner, in terms of the provisions contained under OCS (CCA) Rules, 1962, it is the appointing authority who always functions as the Disciplinary Authority of an employee. Since it is not disputed that Collector, Kalahandi is not appointing authority of the petitioner, challenge made to his competency, placing reliance on the provisions contained under Section 122(2) and (3) of the Act read with Art-243(G) of the Constitution of India, is completely misconceived. Section 122(1) of the Act reads as follows:-

“122(1) For every Grama Sasan there shall be a Panchayat Executive Officer to be appointed by the Collector, who shall,-

(a) maintain the records of the proceedings of the meetings of Grama Panchayats;

(b) remain in custody of all such records and documents, cash and valuable securities belonging to or vested in or under the direction, management or control of the Grama Sasan as may be prescribed; and

(c) exercise such other powers, discharge such other duties and perform such other functions as may be prescribed.”



5.3. It is also contended that as provided under Section 122(2) of the Act, all such Panchayat Executive Officers, appointed Sub-Section(1) of the Act shall act as such within the Local Areas of such Grama or Gramas as many assigned to them by the Collector. However, since Panchayat Executive Officer is to function in a Grama Panchayat, as provided under Section 122(3) of the Act, Panchayat Executive Officer is required to function under the control and supervision of the Grama Panchayat.

5.4. It is accordingly contended that in view of the clear provision contained under Section 122(1) and Section 122(2) of the Act, Opp. Party No.2 being the Appointing Authority of the petitioner, is quite competent to take disciplinary action against the petitioner with initiation of the proceeding and imposition of the punishments in terms of the provisions contained under the 1962 Rules.

5.5. It is further contended that under Art-243(G) of the Constitution of India, nothing has been indicated



that the Appointing Authority cannot be the disciplinary authority. Article-243(G) only confers the power on the legislature of a State to frame the law and the Panchayat with such power and authority as may be necessary to enable them to function as institutions of self government.

5.6. Since in terms of the provisions contained under Art-243(G) of the Constitution of India, no power has been vested on the Grama Panchayat of the concerned Grama by the State as yet to be the Disciplinary Authority of the Panchayat Executive Officer as like the petitioner, Art-243(G) of the Constitution of India cannot be taken as a Bar for initiation of the proceeding by the Collector who is undisputedly the Appointing Authority of the petitioner.

5.7. It is accordingly contended that since both the proceedings which are the subject matter of challenge in W.P.(C) No.35134 of 2022 and W.P.(C) No.39518 of 2023, have been initiated by the Collector, Kalahandi, no illegality or irregularity can be found with the same.



It is also contended that Collector, Kalahandi being the Disciplinary Authority, he has rightly passed the order of suspension, vide order dated 24.09.2016, which is the subject matter of challenge in W.P.(C) No.17495 of 2016.

5.8. Learned Addl. Standing Counsel with regard to the decisions relied on by the learned counsel for the petitioner, contended that all the decisions save and except the decision in W.P.(C) No.29084 of 2019 having been passed prior to amendment of the Odisha Grama Panchayat Act vide Notification dated 27.06.2016 of this Court, all those decisions are not applicable to the facts of the present case. In the case of the petitioner all the orders, which are the subject matter of challenge in the Writ Petitions, have been passed after 27.06.2016.

5.9. It is contended that in terms of the amended provision so contained under Section 122(1) and (2) of the Act, Collector being the Appointing Authority of the petitioner, which is not disputed, he is competent to



exercise the power against such employees so appointed by him. It is further contended that the decision in the case of **Adwait Chandra Jena** was passed by this Court, where the issue was whether the Secretary of the Grama Panchayat hold a Civil post under the State Government or not. Similarly, decisions in the case of **Fakir Mohan Das** was delivered by this Court prior to amendment of the Grama Panchayat Act vide Notification dated 27.06.2016. It is accordingly contended that the decisions in the case of **Adwait Chandra Jena** and **Fakir Mohan Das** cannot be made applicable to the petitioner's claim, as in view of the amended provision to Section 122 of the Act, Collector being the Appointing Authority, he is also the Disciplinary Authority in terms of the provisions contained under the 1962 Rules.

5.10. It is also contended that decisions of the Hon'ble Apex Court so relied on by the learned counsel for the petitioner are not applicable to the facts of the



present case, as in terms of the provisions contained under Article-243(G) of the Constitution of India, no power has been vested on the Grama Panchayat to be the Disciplinary Authority of the petitioner. It is accordingly contended that the decision rendered by this Court in the case of **Narayan Jena** is per inquerim and cannot be relied on by this Court. With regard to the stand that the decisions in the case of Narayan Jena is per-inquerium, learned Addl. Standing Counsel relied on the decision in the case of **Hyder Consulting (UK) Ltd. v. State of Orissa, (2015) 2 SCC 189, National Insurance Co. Ltd. v. Pranay Sethi (2017) 16 SCC 680 & Dr. Shah Faesal and others vs. Union of India and Another, (2020) 4 SCC 1.**

5.11. Hon'ble Apex Court in the case of **Hyder Consulting** in Para-47 has held as follows:-

“47. Therefore, I am of the considered view that a prior decision of this Court on identical facts and law binds the Court on the same points of law in a later case. In exceptional circumstances, where owing to obvious inadvertence or oversight, a judgment fails to notice a plain statutory provision or obligatory authority running counter



to the reasoning and result reached, the principle of *per incuriam* may apply. The said principle was also noticed in *Fuerst Day Lawson Ltd. v. Jindal Exports Ltd.* [(2001) 6 SCC 356 : AIR 2001 SC 2293]

5.12. Hon'ble Apex Court in the case of **Pranay**

Sethi in Para-16, 18 and 28 has held as follows:-

“16. *In State of Bihar v. Kalika Kuer* [State of Bihar v. Kalika Kuer, (2003) 5 SCC 448] , it has been held : (SCC p. 454, para 10)

“10. ... an earlier decision may seem to be incorrect to a Bench of a coordinate jurisdiction considering the question later, on the ground that a possible aspect of the matter was not considered or not raised before the court or more aspects should have been gone into by the court deciding the matter earlier but it would not be a reason to say that the decision was rendered *per incuriam* and liable to be ignored. The earlier judgment may seem to be not correct yet it will have the binding effect on the later Bench of coordinate jurisdiction. ...”

The Court has further ruled : (SCC p. 454, para 10)

“10. ... Easy course of saying that earlier decision was rendered *per incuriam* is not permissible and the matter will have to be resolved only in two ways — either to follow the earlier decision or refer the matter to a larger Bench to examine the issue, in case it is felt that earlier decision is not correct on merits.”

xxxxx

xxxx

xxxx

18. *In this regard, we may refer to a passage from Jaisri Sahu v. Rajdewan Dubey* [Jaisri Sahu v. Rajdewan Dubey, AIR 1962 SC 83] : (AIR p. 88, para 10)

“10. Law will be bereft of all its utility if it should be thrown into a state of uncertainty by reason of conflicting decisions, and it is therefore desirable that in case of difference of opinion, the question should be authoritatively settled. It sometimes happens that an earlier decision [Dasrath Singh v. Damri Singh, 1925 SCC OnLine Pat 242 : AIR 1927 Pat 219] given by a Bench is not brought to the notice of a Bench [Ram Asre Singh v. Ambica Lal, AIR 1929 Pat 216] hearing the same question, and a contrary decision is given without reference to the earlier decision. The question has also been discussed as to the correct procedure to be followed when two such conflicting decisions are placed before a later Bench. The practice in the Patna High Court appears to be that in those cases, the earlier

decision is followed and not the later. In England the practice is, as noticed in the judgment in *Gundavarupu Seshamma v. Kornepati Venkata Narasimharao* [Gundavarupu Seshamma v. Kornepati Venkata Narasimharao, 1939 SCC OnLine Mad 367 : ILR 1940 Mad 454] that the decision of a Court of Appeal is considered as a general rule to be binding on it. There are exceptions to it, and one of them is thus stated in Halsbury's Laws of England, 3rd Edn., Vol. 22, Para 1687, pp. 799-800:

'1687. ... the court is not bound to follow a decision of its own if given per incuriam. A decision is given per incuriam when the court has acted in ignorance of a previous decision of its own or of a court of a coordinate jurisdiction which covered the case before it, or when it has acted in ignorance of a decision of the House of Lords. In the former case it must decide which decision to follow, and in the latter it is bound by the decision of the House of Lords.'

In *Katragadda Virayya v. Katragadda Venkata Subbayya* [Katragadda Virayya v. Katragadda Venkata Subbayya, 1955 SCC OnLine AP 34 : AIR 1955 AP 215] it has been held by the Andhra High Court that under the circumstances aforesaid the Bench is free to adopt that view which is in accordance with justice and legal principles after taking into consideration the views expressed in the two conflicting Benches, vide also the decision of the Nagpur High Court in *D.D. Bilimoria v. Central Bank of India* [D.D. Bilimoria v. Central Bank of India, 1943 SCC OnLine MP 97 : AIR 1943 Nag 340]. The better course would be for the Bench hearing the case to refer the matter to a Full Bench in view of the conflicting authorities without taking upon itself to decide whether it should follow the one Bench decision or the other. We have no doubt that when such situations arise, the Bench hearing cases would refer the matter for the decision of a Full Court."

xxxxx

xxxxx

xxxxx

28. In this context, we may also refer to *Sundeep Kumar Bafna v. State of Maharashtra* [Sundeep Kumar Bafna v. State of Maharashtra, (2014) 16 SCC 623 : (2015) 3 SCC (Cri) 558] which correctly lays down the principle that discipline demanded by a precedent or the disqualification or diminution of a decision on the application of the per incuriam rule is of great importance, since without it, certainty of law, consistency of rulings and comity of courts would become a costly casualty. A decision or judgment can be per incuriam any provision in a statute, rule or regulation, which was not brought to the notice of the court. A decision or judgment can also be per incuriam if

it is not possible to reconcile its ratio with that of a previously pronounced judgment of a co-equal or larger Bench. There can be no scintilla of doubt that an earlier decision of co-equal Bench binds the Bench of same strength. Though the judgment in Rajesh case [Rajesh v. Rajbir Singh, (2013) 9 SCC 54 : (2013) 4 SCC (Civ) 179 : (2013) 3 SCC (Cri) 817 : (2014) 1 SCC (L&S) 149] was delivered on a later date, it had not apprised itself of the law stated in Reshma Kumari [Reshma Kumari v. Madan Mohan, (2013) 9 SCC 65 : (2013) 4 SCC (Civ) 191 : (2013) 3 SCC (Cri) 826] but had been guided by Santosh Devi [Santosh Devi v. National Insurance Co. Ltd., (2012) 6 SCC 421 : (2012) 3 SCC (Civ) 726 : (2012) 3 SCC (Cri) 160 : (2012) 2 SCC (L&S) 167] . We have no hesitation that it is not a binding precedent on the co-equal Bench.”

5.13. Hon’ble Apex Court in the case of **Shah**

Faesar in Para-27 to 32 has held as follows:-

“27. Having discussed the aspect of the doctrine of precedent, we need to consider another ground on which the reference is sought i.e. the relevance of non-consideration of the earlier decision of a coordinate Bench. In the case at hand, one of the main submissions adopted by those who are seeking reference is that, the case of Sampat Prakash [Sampat Prakash v. State of J&K, AIR 1970 SC 1118] did not consider the earlier ruling in Prem Nath Kaul [Prem Nath Kaul v. State of J&K, AIR 1959 SC 749] .

28. The rule of per incuriam has been developed as an exception to the doctrine of judicial precedent. Literally, it means a judgment passed in ignorance of a relevant statute or any other binding authority [see Young v. Bristol Aeroplane Co. Ltd. [Young v. Bristol Aeroplane Co. Ltd., 1944 KB 718 (CA)]]. The aforesaid rule is well elucidated in Halsbury's Laws of England in the following manner [3rd Edn., Vol. 22, Para 1687, pp. 799-800.] :

“1687. ... the court is not bound to follow a decision of its own if given per incuriam. A decision is given per incuriam when the court has acted in ignorance of a previous decision of its own or of a court of a coordinate jurisdiction which covered the case before it, or when it has acted in ignorance of a



decision of the House of Lords. In the former case it must decide which decision to follow, and in the latter it is bound by the decision of the House of Lords.”

(emphasis supplied)

29. In this context of the precedential value of a judgment rendered *per incuriam*, the opinion of Venkatachaliah, J., in the seven-Judge Bench decision of A.R. Antulay v. R.S. Nayak [A.R. Antulay v. R.S. Nayak, (1988) 2 SCC 602 : 1988 SCC (Cri) 372] assumes great relevance : (SCC p. 716, para 183)

“183. But the point is that the circumstance that a decision is reached *per incuriam*, merely serves to denude the decision of its precedent value. Such a decision would not be binding as a judicial precedent. A coordinate Bench can disagree with it and decline to follow it. A larger Bench can overrule such decision. When a previous decision is so overruled it does not happen — nor has the overruling Bench any jurisdiction so to do — that the finality of the operative order, *inter partes*, in the previous decision is overturned. In this context the word “decision” means only the reason for the previous order and not the operative order in the previous decision, binding *inter partes*. ... Can such a decision be characterised as one reached *per incuriam*? Indeed, Ranganath Misra, J. says this on the point : (para 105)

‘Overruling when made by a larger Bench of an earlier decision of a smaller one is intended to take away the precedent value of the decision without effecting the binding effect of the decision in the particular case. Antulay, therefore, is not entitled to take advantage of the matter being before a larger Bench.’”

(emphasis supplied)

30. The counsel arguing against the reference have asserted that the rule of *per incuriam* is limited in its application and is contextual in nature. They further contend that there needs to be specific contrary observations which were laid down without considering the relevant decisions on the point, in which case alone the principle of *per incuriam* applies.

31. Therefore, the pertinent question before us is regarding the application of the rule of *per incuriam*. This Court while deciding Pranay Sethi case [National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680 : (2018) 3 SCC (Civ) 248 : (2018) 2 SCC (Cri) 205], referred to an earlier decision rendered by a two-



Judge Bench in Sundeep Kumar Bafna v. State of Maharashtra [Sundeep Kumar Bafna v. State of Maharashtra, (2014) 16 SCC 623 : (2015) 3 SCC (Cri) 558] , wherein this Court emphasised upon the relevance and the applicability of the aforesaid rule : (Sundeep Kumar Bafna case [Sundeep Kumar Bafna v. State of Maharashtra, (2014) 16 SCC 623 : (2015) 3 SCC (Cri) 558] , SCC p. 642, para 19)

“19. It cannot be overemphasised that the discipline demanded by a precedent or the disqualification or diminution of a decision on the application of the per incuriam rule is of great importance, since without it, certainty of law, consistency of rulings and comity of courts would become a costly casualty. A decision or judgment can be per incuriam any provision in a statute, rule or regulation, which was not brought to the notice of the court. A decision or judgment can also be per incuriam if it is not possible to reconcile its ratio with that of a previously pronounced judgment of a co-equal or larger Bench; or if the decision of a High Court is not in consonance with the views of this Court. It must immediately be clarified that the per incuriam rule is strictly and correctly applicable to the ratio decidendi and not to obiter dicta.”

(emphasis supplied)

32. *The view that the subsequent decision shall be declared per incuriam only if there exists a conflict in the ratio decidendi of the pertinent judgments was also taken by a five-Judge Bench decision of this Court in Punjab Land Development & Reclamation Corpn. Ltd. v. Labour Court [Punjab Land Development & Reclamation Corpn. Ltd. v. Labour Court, (1990) 3 SCC 682 : 1991 SCC (L&S) 71] : (SCC pp. 706-07, para 43)*

“43. As regards the judgments of the Supreme Court allegedly rendered in ignorance of a relevant constitutional provision or other statutory provisions on the subjects covered by them, it is true that the Supreme Court may not be said to “declare the law” on those subjects if the relevant provisions were not really present to its mind. But in this case Sections 25-G and 25-H were not directly attracted and even if they could be said to have been attracted in laying down the major premise, they were to be interpreted consistently with the subject or context. The problem of judgment per incuriam when actually arises, should present no difficulty as this Court can lay down the law afresh, if two or more of its earlier judgments cannot stand together.”



5.14. It is also contended that O.P. No.2 being the appointing authority, which is not disputed, in view of the provision contained under Art-311(1) of the Constitution of India. O.P. No.2 is competent to pass orders in the matter of disciplinary proceeding initiated against the petitioner. In support of such submission reliance was placed to a decision of the Apex Court reported in **2025 LiveLaw (SC)-368 (State of Jharkhand and Others Vrs. Rukma Kesh Mishra)**.

5.15. Hon'ble Apex Court in the case of **Rukma Kesh Mishra** in Para 21,22 & 33 has held as follows:-

21. As far back as in 1970, this Court in State of Madhya Pradesh v. Shardul Singh¹⁴ held that Article 311(1) does not in terms require that the authority empowered by that provision to dismiss or remove an officer should initiate or conduct the inquiry. This decision could count as the parent decision on the topic, declaring the law in paragraphs '6' and '10'. The said paragraphs are quoted below for ease of understanding as to how Article 311(1) was construed: "6. Article 311(1) provides that no person who is a member of Civil Service of the Union or of an All-India Service or Civil Service of a State or holds civil post under the Union or State shall be dismissed or removed by an authority subordinate to that by which he was appointed. This Article does not in terms require that the authority empowered under that provision to dismiss or remove an official, should itself initiate or conduct the enquiry preceding the dismissal or removal of the officer or even that that enquiry should be done at its instance. The only right guaranteed to a civil servant under that provision is that he shall not be dismissed or removed by an



authority subordinate to that by which he was appointed. But it is said on behalf of the respondent that that guarantee includes within itself the guarantee that the relevant disciplinary inquiry should be initiated and conducted by the authorities mentioned in the Article. The High Court has accepted this contention. We have now to see whether the view taken by the High Court is correct. *** 10. But for the incorporation of Article 311 in the Constitution even in respect of matters provided therein, rules could have been framed under Article 309. The provisions in Article 311 confer additional rights on the civil servants. Hence we are unable to agree with the High Court that the guarantee given under Article 311(1) includes within itself a further guarantee that the disciplinary proceedings resulting in dismissal or removal of a civil servant should also be initiated and conducted by the authorities mentioned in that Article”.

22. Then came the decision in *P. V. Srinivasa Sastry v. Comptroller and Auditor General* 15, where this Court reiterated that a departmental proceeding need not be initiated only by the appointing authority and that initiation by a subordinate authority, in the absence of rules, is not vitiated. We consider it appropriate to extract paragraph ‘4’ hereunder: “4. Article 311(1) says that no person who is a member of a civil service of the Union or an allIndia service or a civil service of a State or holds civil post under the Union or a State “shall be dismissed or removed by an authority subordinate to that by which he was appointed”. Whether this guarantee includes within itself the guarantee that even the disciplinary proceeding should be initiated only by the appointing authority? It is well known that departmental proceeding consists of several stages: the initiation of the proceeding, the inquiry in respect of the charges levelled against that delinquent officer and the final order which is passed after the conclusion of the inquiry. Article 311(1) guarantees that no person who is a member of a civil service of the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed. But Article 311(1) does not say that even the departmental proceeding must be initiated only by the appointing authority. However, it is open to Union of India or a State Government to make any rule prescribing that even the proceeding against any delinquent officer shall be initiated by an officer not subordinate to the appointing authority. Any such rule shall not be inconsistent with Article 311 of the Constitution because it will amount to providing an additional safeguard or protection to the holder of a



civil post. But in absence of any such rule, this right or guarantee does not flow from Article 311 of the Constitution. It need not be pointed out that initiation of a departmental proceeding per se does not visit the officer concerned with any evil consequences, and the framers of the Constitution did not consider it necessary to guarantee even that to holders of civil posts under the Union of India or under the State Government. At the same time this will not give right to authorities having the same rank as that of the officer against whom proceeding is to be initiated to take a decision whether any such proceeding should be initiated. In absence of a rule, any superior authority who can be held to be the controlling authority, can initiate such proceeding”.

xxxx

xxxx

xxx

xxxx

33. The final reason for interdicting the impugned order stems from non-consideration of Article 311(1) of the Constitution of India in its correct perspective by the Division Bench. If one looks at Article 311(1), the sole safeguard that it provides to any member, inter alia, of a civil service of a State or the holder of a civil post under the State is that he shall not be dismissed or removed by an authority subordinate to that by which he was appointed (emphasis supplied). Clause (1) does not on its own terms require that the disciplinary proceedings should also be initiated by the appointing authority. This is what Shardul Singh (supra) and P.V. Srinivasa Sastry (supra) have articulated, with which we wholeheartedly agree.”

5.16. Making all these submissions, learned Addl. Standing Counsel contended that since petitioner which is not disputed, was appointed by the Collector, Kalahandi, in view of the provisions contained under Section 122(1) and (2) of the Act, he being the appointing authority, has rightly exercised the power of disciplinary authority, in terms of the provisions contained under the 1962 Rules. It is also contended



that even though the proceeding vide Memorandum dated 01.08.2018 which is the subject matter of challenge in W.P.(C) No.39518 of 2023 was initiated on self-same charges as like the Vigilance Proceedings in Koraput Vigilance P.S. Case No.26 dated 03.07.2017, but since in the Vigilance Proceeding, petitioner was convicted and sentenced to undergo R.I. for 2 (two) years with fine of Rs.10,000/- in default R.I. for further period of 3 (three) months, in view of such order of conviction and sentence passed in the Vigilance Proceeding, placing reliance on the provisions contained under Rule-18(1) of the 1962 Rules read with Art-311(2)(b) of the Constitution of India, petitioner was dismissed from his services vide order dated 22.11.2023, which is the subject matter of challenge in W.P.(C) No.39518 of 2023. Rule-18(1) of the Rules and Art-311(2)(b) of the Constitution of India reads as follows:-

*“18. Special Procedure in certain cases
Notwithstanding anything contained in Rules 15, 16,
and 17-*



(i) where a penalty is imposed on a Government servant on the ground of conduct which has led to his conviction on a criminal charge; or

(ii) where the disciplinary authority is satisfied for reasons to be recorded in writing by that authority that it is not reasonably practicable to follow the procedure prescribed in the said rules; or

(iii) where the Governor is satisfied that in the interest of the security of the State it is not expedient to follow such procedure.

the disciplinary authority may consider the circumstances of the case and pass such orders thereon as it deems fit:

Provided that the Commission shall be consulted before passing such orders in any case in which consultation is necessary."

Xxxx

xxxx

xxx

xxxx

"311(2)(b) Where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry;"

5.17. A further submission is also made that, even though challenging the order of conviction and sentence, petitioner has already moved this Court by filing CRLA No.948 of 2023, but while admitting the appeal vide order dated 28.08.2023 under Annexure-17, order of conviction and sentence has not been stayed by this Court. It is accordingly contended that in absence of any order of stay being passed, staying the operation of the order of conviction and sentence, so



passed in the Vigilance Proceeding, no illegality or irregularity can be found with regard to passing of the impugned order of dismissal by Opp. Party No.2 vide order dated 22.11.2023.

5.18. It is further contended that since while dismissing the petitioner from his services vide order dated 22.11.2023, the period of suspension has been treated as such, prayer made in the W.P. (C) No.17495 of 2016 has become infructuous.

5.19. It is further contended that in view of such order of dismissal passed vide order dated 22.11.2023, order of punishment passed vide order dated 01.12.2022, which is the subject matter of challenge in W.P.(C) No.34134 of 2022 merges with the order dated 22.11.2023.

6. Having heard learned counsel for the parties and considering the submissions made, this Court finds that petitioner while continuing as Grama Panchayat Secretary, he was appointed as VLW in the Panchayat in question in the year 2011 vide order of the Collector,



Kalahandi which is not disputed. Post of VLW was subsequently re-designated as Panchayat Executive Officer and petitioner was allowed to continue as Panchayat Executive Officer of the Grama Panchayat.

6.1. It is found that petitioner while so continuing, he was placed under suspension vide order dated 24.09.2016, so issued by the District Panchayat Officer, Kalahandi vide order of Collector, Kalahandi. It is also found that the proceeding was initiated against the petitioner vide Memorandum dated 22.03.2017 with imposition of the punishment vide order dated 01.12.2022 of the Collector, Kalahandi, which is the subject matter of challenge in W.P.(C) No.35134 of 2022.

6.2. It is also found that after being put under suspension vide order dated 24.09.2016 with initiation of the proceeding vide Memorandum No.1308 dated 22.03.2017, petitioner was implicated in Koraput Vigilance P.S. Case No.26 dated 03.07.2017 for the offence under Section 13(2) read with 13(1)(c)(d) of the



P.C. Act read with Section 468/471/406/420/120-B of the IPC.

6.3. It is also found that because of his implication in the Vigilance case, a Departmental Proceeding was initiated against him vide Memorandum No. 804 dated 01.08.2018 of Opp. Party No.2. Even though the charge in both the Vigilance Proceeding and Disciplinary Proceeding as found is similar, but there is no order restraining the Disciplinary Authority from proceeding with the same during pendency of the Vigilance Proceeding.

6.4. It is also found that during pendency of the Departmental Proceeding so initiated vide Memorandum dated 01.08.2018, petitioner was convicted and sentenced in the Vigilance Case vide Judgment dated 11.08.2023. Petitioner was convicted and sentenced to undergo R.I. for 2 (two) years and to pay a fine of Rs.10, 000/- and in default R.I. for 3 (three) months. Even though such an order of conviction and sentence was assailed by the petitioner



by filing CRLA No.948 of 2023, but this Court, while admitting the appeal vide order dated 28.08.2023, never stayed the operation of the order of conviction and sentence.

6.5. Since during pendency of the departmental proceeding so initiated, petitioner was convicted in the Vigilance Proceeding vide judgment dated 11.08.2023 and such order of conviction and sentence was never stayed by this Court while admitting CRLA No.948 of 2023, as per the considered view of this Court, no illegality or irregularity can be found with regard to the order of dismissal passed by Opp. Party No.2 vide order dated 22.11.2023, which is the subject matter of challenge in W.P.(C) No.39518 of 2023, in exercise of the power conferred under Rule-18(1) of the Rules read with Art.311(2)(b) of the Constitution of India.

However, it is the view of this Court that such order of dismissal passed vide order dated 22.11.2023 will be subject to final outcome of the CRLA No.948 of 2023.



6.6. With regard to the plea raised by the learned counsel for the petitioner, regarding competency of the Collector, Kalahandi to initiate the proceedings, which are subject matter of challenge in W.P.(C) No.35134 of 2022 and W.P.(C) No.39518 of 2023 as well as the order of suspension passed on 24.09.2016, which is the subject matter of challenge in W.P.(C) No.17495 of 2016, placing reliance on the provisions contained under Section 122(1) and (2) of the Orissa Grama Panchayat Act, 1964, it is the view of this Court that Collector, Kalahandi being the Appointing Authority of the petitioner which is not disputed, is also the Disciplinary Authority in terms of the provisions contained under OCS(CCA) Rules, 1962 and Art-311(1) of the Constitution of India.

6.7. Therefore, the plea taken by the petitioner that Collector, Kalahandi cannot be the disciplinary authority, as per the considered view of this Court is not acceptable. With regard to the plea taken that in view of the provisions contained under Art-243(G) of



the Constitution of India, it is only the Grama Panchayat who is competent to take disciplinary action against the petitioner, this Court is of the view that in terms of the provisions contained under Article-243(G) of the Constitution of India, no legislation has been passed by the State of Odisha in allowing the Grama Panchayat to be the Disciplinary Authority of the employees, discharging duty under the Grama Panchayat.

6.8. Therefore, the plea taken by the petitioner that in view of the provisions contained under Article-243(G) of the Constitution of India, Collector cannot be the Disciplinary Authority as per the considered view of this Court is also not entertainable.

6.9. It is also the view of this Court that, decisions relied on by the learned counsel for the petitioner, in the case of **Adwait Chandra Jena** as well as **Fakir Mohan Das**, are not applicable to the facts of the present case, as all those decisions have been passed prior to amendment of the Grama Panchayat Act, so



made vide Notification dated 27.06.2016. The decision of the Hon'ble Apex Court so relied on by the learned counsel for the petitioner is also not applicable to the facts of the present case as in terms of Art-243(G) of the Constitution of India, no legislation has been made by the State as yet, vesting power on the Grama Panchayat to take disciplinary action against the petitioner as the Panchayat Executive Officer.

6.10. In view of the aforesaid analysis and in view of the decisions of the Hon'ble Apex Court in the case of **Hyder Consulting (UK) Ltd, Pranoy sethi & Shal Faesal** as cited (supra), it is the view of this Court that, decision rendered by this Court in the case of **Narayan Jena** is per-inquerium and cannot be made applicable to the facts of the present case.

6.11. In view of the aforesaid analysis and placing reliance on the decision of the Apex court in the case of **Rukma Kesh Mishra** as cited (supra) this Court is of the view that Opp. Party No.2 being the Appointing Authority is the Disciplinary Authority and has rightly



passed the order of suspension, which is the subject matter of challenge in W.P.(C) No.17495 of 2016. Not only that Opp. Party No.2 being the disciplinary authority not only initiated the proceeding against the petitioner vide Memorandum No.1308 dated 22.03.2017 but also passed the order of punishment vide order dated 01.12.2022, which is the subject matter of challenge in W.P.(C) N0.35134 of 2022. The impugned orders in all these three cases have not been passed by any other authority subordinate to the appointing authority, warranting interference by this Court.

6.12. This Court is also of the view that Collector, Kalahandi being the Disciplinary Authority, rightly initiated the proceeding vide Memorandum dated 01.08.2018 with imposition of the punishment vide order dated 22.11.2023, which is impugned in W.P.(C) No.39518 of 2023. Therefore, this Court is not inclined to interfere with any of the impugned orders which are the subject matter of challenge in the aforesaid 3



(three) Writ Petitions. This Court is also not inclined to interfere with the order of punishment passed by Opp. Party No.2, being the disciplinary authority, and dismiss all the 3(three) Writ Petitions.

7. All the Writ Petitions stand dismissed accordingly. However, there shall be no order as to cost.

(Biraja Prasanna Satapathy)
Judge

Orissa High Court, Cuttack
Dated the 12th December, 2025/Basudev