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**(2009) 05 OHC CK 0048**  
**In the Orissa High Court**

Sri Budhanath Lenka

APPELLANT

Vs

Collector-cum-District Magistrate ad Ors.

RESPONDENT

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**Date of Decision :** 14-05-2009

**Acts Referred:**

**Citation :** (2009) 2 OLR 359

**Hon'ble Judges :** M.M. Das, J

**Bench :** Single Bench

**Final Decision :** Allowed

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## **Judgement**

M.M. Das, J.—Heard learned Counsel for the petitioner and the learned Counsel for the State.

2. In spite of valid service of notice, the opposite party No.5-Sarpanch has not entered appearance. The facts reveal that the petitioner was appointed as Secretary of Similli Gram Panchayat on 01.06.1984. On 29.10.2002 a resolution was passed by the Gram Panchayat to suspend him with effect from the said date and the petitioner was accordingly intimated that he is put under suspension. On receiving copy of the said resolution, the District Panchayat Officer, Puri placed one Debendra Kumar Swain, Secretary of Sonara G.P. in additional charge of Simili Gram Panchayat in place of the petitioner by his order dated 08.01.2002.

3. Being aggrieved, the petitioner filed an appeal before the Sub-Collector-opposite party No. 3, being G.P. Appeal No. 16 of 2002.

4. The Sub-Collector-opposite party passed an interim order staying the order passed by the District Panchayat Officer and accordingly directed the petitioner to file an application before the Sarpanch-opposite party No. 5 to join in his duty. The Sarpanch, however, in spite of letters did not allow the petitioner to join in his post and preferred a Second Appeal, being G.P. Appeal No.2 of 2003 before the Collector on 27.01.2003. As the appeal was not disposed of, the petitioner approached this Court in W.P.(C) No. 5419 of 2003. The said writ application was

disposed of with a direction to the Collector, Puri to consider the Second Appeal and disposed of the same within a period of three months from the date of receipt of the said order. The petitioner alleges that much after the said period, the Collector disposed of the Second Appeal reversing the order of the Sub-Collector and allowing the Sarpanch to initiate a proceeding against the petitioner. It is only thereafter a notice to show cause under Annexure-10 has been issued to the petitioner framing charges against him. The petitioner alleges that the said charges were framed to harass him and to terminate him from service. However, the petitioner has filed a show cause to the said notice. At this stage, the petitioner filed a representation before the opposite party No. 1-Collector under Annexure-13 whereupon the Collector on considering the same has issued letter under Annexure-14 for reconsideration of the suspension order initiated against the petitioner. No. action on the said order has been taken by the Sarpanch till date and the petitioner further alleges that he has learnt that the Gram Panchayat has not considered his case for promotion to the post of Village Level Worker and the petitioner has also not been paid his subsistence allowance.

5. On perusal of the suspension order, it appears that when the petitioner was put under suspension, no proceeding was initiated against him by that date and on such ground, the appeal of the petitioner was allowed by the Sub-Collector and, rightly so. The Collector, while disposing of the Second Appeal filed by the Sarpanch misconstrued Rule 216(a) and 216(b) and allowed the Second Appeal directing the Sarpanch to initiate a proceeding against the petitioner.

6. It is trite law that if the provisions of enactment or Rule is unambiguous, it is not open for an authority, while exercising a quasi judicial power, to read into the said provisions something which has not been provided for. Rule 216(b) of the Orissa Gram Panchayat Rules clearly stipulates that the Gram Panchayat may suspend the Secretary from the Office of the Secretary of the Gram Sasan pending disposal of the proceeding against him under Rule 216(a) or if he has been detained in prison during trial under the provisions of any law, for the time being in force. As admittedly, no proceeding under Rule 216(a) was initiated against the petitioner on the date of the order of suspension, the said order is contrary to Rule 216(b) and, therefore, is untenable.

7. Considering the above aspects, this Court feels it appropriate to quash the order of suspension passed against the petitioner as well as the proceeding now initiated against him in its entirety and direct that the petitioner shall be reinstated as the Secretary of the Simili Gram Panchayat with immediate effect. The petitioner shall be permitted to join in his post on production of a certified copy of this order along with a joining report before the Sarpanch-opposite party No. 5 and shall be paid all his arrear salaries due to be paid to him from the date of his suspension till the date of his joining and his current salary regularly thereafter. The arrear salary/dues shall be paid to him within a period of three months from the date of production of the certified copy of this order before the

opposite party No. 5.

8. The writ petition is accordingly allowed.

9. Urgent certified copy of this order be granted on proper application.