



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Civil Writ Petition No. 12122/2025

Sarla Devi W/o Sh. Rati Ram, Aged About 38 Years, R/o Gram Panchayat, Napasar, Tehsil Bikaner, District Bikaner (Raj.).

----Petitioner

Versus

1. State Of Rajasthan, Through The Principal Secretary, Local Self Government Department, Secretariat, Jaipur, Rajasthan.
2. The Director And Special Secretary, Local Self Government Department, Jaipur, Rajasthan.

----Respondents

For Petitioner(s)	:	Mr. Rajesh Joshi, Sr. Advocate, assisted by Mr. Madhav Vyas
For Respondent(s)	:	Mr. Rajesh Panwar, Sr. Advocate – cum-Addl. Advocate General assisted by Mr. Monal Chugh and Mr. Ayush Gehlot

HON'BLE MR. JUSTICE SUNIL BENIWAL

Order

Reportable

Reserved on : **30/07/2025**
Pronounced on : **___/08/2025**

1. The petitioner has preferred the present writ petition with the following prayers:-

“(i) The impugned order dated 19.06.2025 (Annexure-18) may kindly be declared illegal and the same may kindly be quashed and set aside.
(ii) The respondents may kindly be directed to allow the petitioner to discharge duties as Chairperson and member of Municipality, Napasar.
(iii) The respondent authorities may kindly be restrained from undertaking inquiry under Section 39 of the Act of 2009 against the petitioner.”



2. The facts in nutshell are as under:-

2.1 The petitioner was elected as the Sarpanch of Gram Panchayat Napasar on 10.10.2020. Due to a staff shortage, the Gram Panchayat, during Gram Sabha meetings held on 20.11.2020 and 21.12.2020, decided to temporarily appoint three persons, namely, Kalyan Singh (Panchayat Assistant), Gajendra Pareek (Chowkidar), and Prem Singh (Peon) on a fixed remuneration basis, effective from 25.10.2020 and 21.12.2020.

2.2 Subsequently, on 25.02.2021, the Gram Panchayat sought approval for these contractual appointments from the Block Development Officer, Panchayat Samiti, Bikaner.

2.3 Following a complaint regarding these appointments, the Gram Panchayat resolved to terminate the engagements of the aforesaid three persons on 31.12.2021. An inquiry report dated 17.01.2022 concluded that prior approval from the Panchayat Samiti was mandatory and, in its absence, the appointments were irregular, warranting termination.

2.4 A further inquiry was initiated to examine the appointments and assess any financial loss incurred by the Gram Panchayat. The second inquiry report, dated 02.11.2022, recommended recovery of the amounts disbursed to the said three persons, noting that no such recovery had yet been made.

2.5 Based on the allegations of misuse of position and financial loss caused to the Gram Panchayat, the Panchayati Raj Department decided to initiate disciplinary proceedings against the petitioner (Sarpanch) and the Gram Vikas Adhikari. A communication regarding this was issued to the petitioner by the Vikas Adhikari, Panchayat Samiti, Bikaner, on 27.03.2023. Another



notice dated 21.06.2023 was issued seeking an explanation as to why action under Section 38 of the Rajasthan Panchayati Raj Act, 1994 (hereinafter referred to as "the Act of 1994") should not be initiated. The petitioner submitted her response on 01.11.2023. As the authorities found her explanation unsatisfactory, a notice for a personal hearing was issued on 28.02.2024. Subsequently, charges under Section 38 of the Act of 1994 were formally framed against the petitioner on 06.09.2024. The specific charges are reproduced below:



"यह है कि आपके ग्राम पंचायत नापासर में सरपंच के पद पर पदस्थापित अवधि के दौरान की सरपंच व ग्राम विकास अधिकारी ग्राम पंचायत नापासर के विरुद्ध पद का दुरुपयोग कर ग्राम पंचायत नापासर में अनियमितरूप से तीन व्यक्तियों को ग्राम पंचायत कार्यालय में लगाया जाकर प्रतिमाह अनियमित भुगतान किये जाने की शिकायत की जांच पंचायत समिति, बीकानेर के में पदस्थापित सहायक लेखाधिकारियों की कार्यालय गठित दो सदस्य केटी के माध्यम से करवायी गई, गठित कमेटी द्वारा प्रस्तुत जांच रिपोर्ट में ग्राम पंचायत नापासर द्वारा आपके स्तर से तीन व्यक्तियों श्री कल्याण सिंह श्री गजानन्द पारीक एवं श्री प्रेम सिंह की नियम विरुद्ध नियुक्तियां करने एवं उनको क्रमशः 196000/-, 160333/- व 160333/- कुल राशि 516666/- रुपये का अनियमित भुगतान होना उजागर होने पर श्रीमान मुख्य कार्यकारी अधिकारी जिला परिषद, बीकानेर के पत्रांक जिपबी/जांच/3033/488 दिनांक 13.01.2023 एवं समसंख्यक पत्रांक 930 दिनांक 30.01.2023, 5485 दिनांक 12.06.2023 में उक्त तीनों कार्मिकों को भुगतान की गई राशि मय ब्याज संबन्धित से वसूलने के निर्देशों की पालना में पंचायत समिति, बीकानेर के पत्रांक 2091 दिनांक 27.03.2023 एवं 2135 दिनांक 21.06.2023 द्वारा उक्त अनियमित भुगतान राशि 516666/- की आधी राशि रुपये 258333/- मय ब्याज पंचायत समिति, बीकानेर के राजकोष में शिघ्र जमा करवाते हुए उक्त अनियमितता के संबंध में अपना स्पष्टीकरण/पक्ष प्रस्तुत करने हेतु जिसमें भुगतान की कार्यवाही किन नियमों/प्रावधानों के तहत की गई के पूर्ण साक्ष्य मय ब्यौरा प्रस्तुत करने के निर्देशों के उपरांत भी आपके द्वारा आदिनांक तक वसूली योग्य राशि राजकोष में जमा नहीं करवायी गई एवं उक्त संबंध में ना ही स्पष्टीकरण प्रस्तुत किया गया है। आपका यह कृत्य राजकार्य में व्यवधान उत्पन्न करना, अपने पदीय कर्तव्यों एवं दायित्वों



के विपरीत आचरण करना एवं उच्चाधिकारियों के आदेशों की अवहेलना करने की श्रेणी में आता है जिसके लिये आपको आरोपित किया जाता है।”

2.6 Aggrieved by the initiation of an inquiry, the framing of charges, and the commencement of proceedings under Section 38 of the Act of 1994, the petitioner filed S.B. Civil Writ Petition No. 7192/2024. While notices were issued in the matter, the writ petition remains pending. As no interim relief was granted, the proceedings continued, and a notice dated 18.09.2024 was served on the petitioner by the Divisional Commissioner, Bikaner, seeking her explanation. The proposed inquiry was to be conducted under Rule 22 of the Rajasthan Panchayati Raj Rules, 1996 (hereinafter referred to as “the Rules of 1996”).

2.7 Before the inquiry could be concluded, a notification dated 07.11.2024 was issued, declaring Gram Panchayat, Napasar as a Class IV Municipality. Consequently, under the provisions of the Rajasthan Municipalities Act, 2009 (hereinafter referred to as “the Act of 2009”), the petitioner assumed the position of Chairperson of the Municipal Board, Napasar.

2.8 Upon assuming charge as Chairperson, another notice dated 28.05.2025 was issued under Section 39(1) of the Act of 2009, calling for an explanation and framing charges against the petitioner, which were identical to those previously framed under the Act of 1994. For ready reference, the same is reproduced as under:-

“यह है कि आप ग्राम पंचायत नापासर में सरपंच के पद पर कार्य करते हुए ग्राम पंचायत नापासर में पंचायत समिति बीकानेर से बिना अनुमोदन करवाये तीन कार्मिकों (श्री कल्याण सिंह, श्री गजानन्द



पारिक एवं श्री प्रेम सिंह) को नियम विरुद्ध नियुक्त किया गया है व नियम विरुद्ध उक्त तीनों कार्मिकों को भुगतान किया गया है, जिसके लिए आप आरोपित है।”

The petitioner submitted her reply on 02.06.2025, objecting to the initiation of a fresh inquiry under the Act of 2009. However, the authorities were not satisfied with her explanation. Consequently, by the impugned order dated 19.06.2025, the matter was referred to a Judicial Officer for inquiry under Section 39(3) of the Act of 2009, and the petitioner was simultaneously placed under suspension in accordance with Section 39(6) of the same Act.

Hence, this petition.

3. Learned Senior Counsel, appearing on behalf of the petitioner, while challenging the impugned order dated 19.06.2025, made the following submissions:-

(i) The allegation against the petitioner pertains to the appointment of three individuals on a contractual basis without obtaining prior approval from the Panchayat Samiti. These appointments were made in 2020 and were subsequently discontinued in December 2021. The Panchayati Raj Department initiated proceedings on the grounds that the petitioner had made these appointments unlawfully and had thereby caused a financial loss to the department.

(ii) The petitioner has challenged the delayed initiation of action by the respondents, arguing that when the same charges were previously considered during the inquiry initiated under Section 38 of the Act of 1994, the authorities did not find it necessary to



suspend her, considering the allegations. Therefore, the decision to suspend the petitioner now, after nearly three years and at the end of her tenure, is, according to her, unjustified. This belated suspension, therefore, reflects the arbitrary and high-handed conduct of the authorities, making the action not only unreasonable but also lacking in fairness. Hence, such action of the respondents is nothing but colourable exercise of power and on this ground alone, the impugned order deserves to be quashed and set aside.

(iii) It is submitted that the proceedings initiated against the petitioner under Section 39(1) of the Act of 2009 are without jurisdiction and, therefore, the impugned order is legally unsustainable. Referring to the provisions of Section 39(1), particularly clauses (d)(i), (ii), and (vi), learned counsel argued that these provisions can be invoked only in cases of misconduct committed by a Member in their capacity as such. In the present case, however, the allegations pertain to actions taken by the petitioner during her tenure as Sarpanch, prior to assuming office under the Municipal Board. As such, it is contended that the initiation of proceedings under Section 39(1) of the Act of 2009 is not legally tenable.

(iv) The petitioner cannot be subjected to two concurrent inquiries; one under the provisions of the Act of 1994, and another under the Act of 2009, as doing so would amount to double jeopardy.

(v) There is no valid justification for the respondents to place the petitioner under suspension, especially when the inquiry has



already been entrusted to a Judicial Officer. Learned counsel relied on the judgment of a Coordinate Bench of this Court in **Meena Vyas v. State of Rajasthan [2009 (1) RLW (Raj.) 870]**, where it was held that once an inquiry is referred to a Judicial Officer, any allegations of undue influence over the judicial process are baseless and cannot be accepted.

(vi) The allegations against the petitioner do not amount to misconduct. Although 'misconduct' is not expressly defined, it must be of such a nature that it directly impacts the character of the person holding the office of Sarpanch. To support this submission, learned counsel relied on the judgment of a Coordinate Bench in **Geeta Devi Narooka v. State of Rajasthan [2008 (2) WLC 261]**.

(vii) Additionally, in the present case, the three individuals were engaged purely on a temporary basis, and necessary approval was sought but not granted. Their services were subsequently discontinued. At most, this amounts to irregular appointments and cannot be classified as misconduct.

3.1 In conclusion, learned Senior Counsel appearing for the petitioner respectfully prayed that the writ petition be allowed and the impugned order be quashed and set aside.

4. Per contra, learned Senior Counsel – cum – AAG, Mr. Rajesh Panwar made the following submissions:-

(i) Section 78(1)(b) of the Act of 1994 expressly provides that the appointment of any staff must be made only with prior approval from the Panchayat Samiti. In the present case, it is an admitted fact that no such approval was obtained by the Gram



Panchayat. Accordingly, the petitioner cannot justify the unauthorized appointments or defend her conduct in this regard.

(ii) The Panchayati Raj Institution incurred a financial loss due to the petitioner's unlawful actions. Therefore, the authorities were well within their rights to initiate proceedings for the recovery of the said amount and to take appropriate legal action against the petitioner as per the applicable provisions of law.

(iii) By placing reliance on Section 32(f) of the Act of 1994, which outlines the duties of a Sarpanch, it is submitted that a Sarpanch is obligated to act strictly in accordance with the law and must not, on their own accord, deviate from statutory provisions. In the present case, the petitioner, while serving as Sarpanch, acted at her own behest in influencing the Gram Sabha's decision and proceeded to appoint three individuals in a wholly illegal and irregular manner. Such conduct amounts to a clear violation of her official duties and constitutes misconduct. Therefore, the action initiated by the competent authorities cannot be deemed either illegal or arbitrary.

(iv) The petitioner has been rightly placed under suspension in light of the significant financial loss caused to the public exchequer. An amount of approximately ₹5 lakhs was disbursed to the three individuals in question, and considering the gravity of the financial damage inflicted upon the Panchayati Raj Institution, the decision to suspend the petitioner is fully warranted. Furthermore, there exists a genuine apprehension that, if the petitioner is allowed to continue as Chairperson of the Municipal Board, Napasar, she may tamper with the evidence.



(v) By relying on the provisions of Section 38(1)(b) of the Act of 1994 and Section 39(1)(d) of the Act of 2009, which are pari materia in nature, it is evident upon a plain reading that the acts alleged against the petitioner clearly amount to misconduct under both statutes. Accordingly, the respondents were fully justified in proceeding against the petitioner under Section 39(1) of the Act of 2009.

(vi) Even though the alleged act was committed by the petitioner during her tenure as Sarpanch, the respondents are nevertheless empowered to initiate proceedings under Section 39 of the Act of 2009, by virtue of Section 3 of the same Act. Elaborating on this point, it is submitted that Section 3 of the Act of 2009 deals with the delimitation of municipalities and explicitly states that upon the inclusion of a local area into a municipality, all liabilities, rules, and orders applicable to the earlier local area shall be deemed to apply to the newly constituted municipality. Therefore, any act committed by the petitioner while serving as Sarpanch would be deemed to fall under the purview of municipal law, and as such, proceedings under the Act of 2009 are legally maintainable.

(vii) If the proposition advanced by the petitioner's counsel is accepted, it would render the authorities powerless to initiate or take any action against misconduct committed by an individual during their tenure as Sarpanch. Such an interpretation could not have been the intention of the Legislature. Moreover, no individual can be allowed to escape accountability merely on the basis of a technical objection.



(viii) In support of their submissions, learned counsel for the respondents relied upon the provisions of Section 3(1), (7), (8)(c), (d), and (f) of the Act of 2009, contending that liabilities arising from the past continue to remain enforceable. Accordingly, the petitioner's objection regarding the competence of the authorities to initiate proceedings under Section 39 of the Act of 2009 is without merit and liable to be rejected.

(ix) The earlier inquiry initiated against the petitioner under Section 38 of the Act of 1994 has effectively merged into the present inquiry under the Act of 2009. Consequently, the petitioner's claim that this constitutes double jeopardy, or that two parallel inquiries cannot be conducted, is untenable. In light of the subsequent developments, the authorities are now proceeding exclusively under the provisions of the Act of 2009, rendering the earlier inquiry under Section 38 of the Act of 1994 redundant and without further relevance.

(x) The suspension order is not arbitrary and has been passed by the competent authority and, therefore, no interference is required.

4.1 While concluding his arguments, learned counsel for the respondents submitted that, in the present case, the entire proceedings were fully justified given the circumstances. In support of his submissions, he relied on the judgment of a Coordinate Bench of this Court in **Nirmal Kumar Pitaliya v. State of Rajasthan; S.B. Civil Writ Petition No. 17285/2021** (decided on 01.02.2022), asserting that the State authorities are well within their powers to place an elected representative under



suspension upon deciding to initiate an inquiry under Section 39(1) of the Act of 2009.

He further cited the judgment rendered in the case of **Sita Devi Gurjar v. State of Rajasthan : S.B. Civil Writ Petition No. 11135/2024** (decided on 06.01.2025), by a Coordinate Bench of this Court, to argue that in matters of this nature, the Court should refrain from interference, as the discretion to act lies with the State authorities based on the facts and circumstances of each individual case.

Accordingly, it was prayed that the writ petition is devoid of merit and deserves to be dismissed.

5. In response, learned counsel for the petitioner submitted in rejoinder that the inquiry initiated under the Act of 1994 cannot be said to have merged with the present proceedings. He argued that if the respondents so desire, they are free to continue with the earlier inquiry under the 1994 Act. Relying on Rule 22 of the Rules of 1996, he contended that the prescribed procedure under the said Rule must be followed, and under no circumstances can the respondents invoke Section 39(1) of the Act of 2009 to proceed against the petitioner.

6. Heard learned counsel for the parties and perused the material available on record.

7. Before examining the matter on merits, it would be appropriate to re-look into the provisions, which are germane for deciding the present controversy:-



Act of 1994

“2. Definition.- (1) *In this Act, unless the context otherwise requires-*

... ..

(xiii) *"Member" means a member of a Panchayati Raj Institution and includes a Sarpanch;”*

“38. Removal and Suspension.- (1) *The State Government may, by order in writing and after giving him and opportunity of being heard and making such enquiry as may be deemed necessary, remove from office any member including a Chairperson or a Deputy Chairperson of a Panchayati Raj Institution, who-*

(a) *refuses to act or becomes incapable of acting as such; or*

(b) *is guilty of misconduct in the discharge of duties or any disgraceful conduct :*

Provided that any enquiry under this sub-section may, even after the expiry of the term of the Panchayati Raj Institution concerned be initiated or, if already initiated before such expiry, be continued thereafter and in any such case, the State Government shall, by order in writing, record its findings on the charges levelled.

(2) *The Chairperson or the Deputy Chairperson removed under Sub-sec. (1) may at the discretion of the State Government also be removed from the membership, of any of the Panchayati Raj Institution concerned.*

(3) *The member or the Chairperson or the Deputy Chairperson removed under Sub-sec.(1) or against whom finding have been recorded under the proviso to that sub-sec, shall not be eligible for being chosen under this Act for a period of five years from the date of his removal or, as the case may be, the date on which such findings are recorded.*

(4) *The State Government may suspended any member including a Chairperson or a Deputy Chairperson of a Panchayati Raj Institution against whom an enquiry has been initiated under Sub-sec. (1) or against whom any criminal proceedings in regard to an offense involving moral turpitude is pending trial in a Court of law and such person shall stand debarred from taking part in any act or proceeding of the Panchayati Raj Institution concerned while being under such suspension :*

Provided that the State Government may also suspend any Panch on the recommendation of the Ward Sabha or a Sarpanch on the recommendation of the Gram Sabha, but the State Government shall do so only when a resolution to that effect passed by a Ward Sabha, or a Gram Sabha, as the case may be, is referred by the State Government to the Collector for



convening a special meeting of the Ward Sabha or the Gram Sabha, as the case may be, for finally ascertaining the wished of the members and the members present in the meeting so convened by the Collector and presided over by his nominee, reaffirm the resolution seeking suspension of the Panch or the Sarpanch, as the case may be, by a majority of two-third of the members present and voting :

Providing further that no resolution seeking suspension of the Panch or Sarpanch shall be moved or passed before the completion of a tenure of two years by a Panch or a Sarpanch, as the case may be.

(5) The decision of the State Government on any matter arising under this section shall, subject to any order made under Sec. 97, be final and shall not be liable to be questioned in any Court of law.”

Rules of 1996

“22. Procedure of enquiry.

(1) Before taking any action under Sub-Section (1) of Section 38, where on its own motion or upon any complaint the State Government may ask the Chief Executive Officer or any other officer to get a preliminary enquiry done and to send his report to the State Government within one month.

(2) If, upon consideration of the report received as aforesaid or otherwise, the State Government is of the opinion that action under Sub-Section (1) of Section 38 is necessary, the State Government shall frame definite charges and shall communicate them in writing to the Chairperson, Deputy Chairperson or Member of the Panchayati Raj Institution together with such details as may be deemed necessary. He shall be required to submit a written statement within one month admitting or denying the allegations, giving his defence, if any and whether he desires to be heard in person.

(3) State Government may after expiry of prescribed period and considering such written statement, appointment an Enquiry Officer and also nominate any person to present the case before Enquiry Officer on behalf of the State.

(4) Enquiry Officer shall consider such documentary evidence and take such oral evidence as may be relevant or material in regard to the charges. Opportunity of cross examination of witness shall be provided to the opposite side.

(5) Enquiry Officer shall prepare a report on conclusion of enquiry, recording his findings on every charge as proved or not



proved or partly proved along with the reasons therefore, and submit it to the State Government for final decision.

(6) The provisions of the Rajasthan Disciplinary Proceedings (Summoning of witnesses and production of documents) Act, 1959 (Rajasthan Act No. 28 of 1959) and the rules made thereunder shall also apply mutatis mutandis to enquiries being conducted against the Chairperson, the Deputy Chairperson or Member of Panchayati Raj Institution as the case may be, under these rules.

(7) State Government shall consider the findings of enquiring Officer and after giving him opportunity of hearing, may either exonerate, or remove such Chairperson, Deputy Chairperson or Member from the Office or pass appropriate orders. In case of removal, it shall also be published in official gazetted:

Provided that findings shall be recorded against them if term of election of such Panchayati Raj Institution has already expired.”

Act of 2009

“2. Definitions. - In this Act, unless the context otherwise requires, -

... ..

(xxxvi) "member" means any person who is lawfully a member of a Municipality and includes, in case of a Municipal Corporation, a corporator, in case of a Municipal Council, a councillor and in case of a Municipal Board, a member;”

“3. Delimitation of Municipalities. -

(1) The State Government may, by notification published in the Official Gazette, declare any local area not included within the limits of a Municipality to be a Municipality, or include any such area in a Municipality, or exclude any local area from a Municipality, or otherwise alter the limits of any Municipality and when

(a) any local area is declared as, or included in, a Municipality, or

(b) any local area is excluded from a Municipality, or

(c) the limits of a Municipality are otherwise altered, by amalgamation of one Municipality into another or by splitting up a Municipality into two or more Municipalities, or

(d) any local area ceases to be a Municipality, the State Government may, notwithstanding anything contained in this Act or any other law for the time being in force, by an order published in the Official Gazette provide,-



- (i) in a case falling under clause (a), that the election of the members for the area or the additional area shall be held within a period of six months from the appointed day;
- (ii) in a case falling under clause (b), that the members who in the opinion of the State Government represent the area excluded from the Municipality shall be removed;
- (iii) in a case falling under clause (c), that until the term of the Municipality in which another Municipality is amalgamated expires under this Act, the Chairperson, Vice-Chairperson and members of such another Municipality shall be deemed to be the members of the Municipality in which such another Municipality is amalgamated and where a Municipality is split into two or more Municipalities, that the members representing the area included in the newly constituted Municipality shall be deemed to be the members of such new Municipality and such new Municipality shall continue, unless dissolved sooner, until original Municipality would have continued;
- (iv) in a case falling under clause (d), that the Municipality shall be dissolved.

Explanation. - In this sub-Section, "**appointed day**" means the day from which a change referred to in any of the clauses (a) to (d) takes effect.

... ..

(7) When any local area is included in a Municipality, all rules and bye-laws made, orders, direction, notifications and notices issued and powers conferred and in force throughout such Municipality at the time when the said area is so included, shall apply thereto, unless the State Government otherwise directs, from the date of such inclusion.

(8) When an area comprised in a village is specified as, or when any area is excluded from the village and included in, a municipal area, then with effect from the date on which such area is so specified or is so included, the following consequences shall ensue, namely: -

... ..

(c) until elections are held under sub-Section (1) or the term of the Municipality expires under this Act, whichever is earlier, the Sarpanch, Up-Sarpanch and the panch or panchas representing the area of the village so included in, or declared as a Municipality shall be deemed to be the additional members of the Municipality in which such area of the village is included or the Chairperson, Vice-Chairperson



and the members respectively of the Municipality declared for such area, as the case may be;

(d) the whole of the assets vesting in, and of the liabilities subsisting against, the panchayat so declared to be a Municipality or in case where only a part or whole of a village is so included in a Municipality, such portion of the said assets and liabilities as the State Government may direct, shall devolve upon the Municipality declared for such area or upon the Municipality in which such area of the village is so included;

... ..

(f) any such area shall cease to be subject to all rules, notifications, orders and bye-laws made under the Rajasthan Panchayati Raj Act, 1994 (Act No.13 of 1994).

... ..

(10) Save as otherwise provided in this Section its provisions shall have effect notwithstanding anything contained in this Act or in the Rajasthan Panchayati Raj Act, 1994 (Act No.13 of 1994) or any other law for the time being in force.”

“39. Removal of member. - (1) *The State Government may, subject to the provisions of sub-Sections (3) and (4), remove a member of a Municipality on any of the following grounds, namely: -*

(a) that he has absented himself for more than three consecutive general meetings, without leave of the Municipality:

Provided that the period during which such member was a jail as an under trial prisoner or as a detenue or as a political prisoner shall not be taken into account,

(b) that he has failed to comply with the provisions of Section 37,

(c) that after his election he has incurred any of the disqualification mentioned in Section 14 or Section 24 or has ceased to fulfil the requirements of Section 21,

(d) that he has

(i) deliberately neglected or avoided performance of his duties as a member; or

(ii) been guilty of misconduct in the discharge of his duties, or

(iii) been guilty of any disgraceful conduct, or

(iv) become incapable of performing his duties as a member; or



- (v) *been disqualified for being chosen as member under the provisions of this Act, or*
 (vi) *otherwise abused in any manner his position as such member:*

Provided that an order of removal shall be passed by the State Government after such inquiry as it considers necessary to make either itself or through such existing or retired officer not below the rank of State level services or authority as it may direct and after the member concerned has been afforded an opportunity of explanation.

- (2) *The power conferred by sub-Section (1) may be exercised by the State Government of its own motion or upon the receipt of a report from the Municipality in that behalf or upon the facts otherwise coming to the knowledge of the State Government:*

Provided that, until a member is removed from office by an order of the State Government under this Section, he shall not vacate his office and shall, subject to the provisions contained in sub-Section (6), continue to act as, and exercise all the powers and perform all the duties of, a member and shall as such be entitled to all the rights and be subject to all the liabilities, of a member under this Act.

- (3) *Notwithstanding anything contained in sub-Section (1) where it is proposed to remove a member on any of the grounds specified in clause (c) or clause (d) of sub-Section (1), as a result of the inquiry referred to in the proviso to that sub-Section and after hearing the explanation of the member concerned, the State Government shall draw up a statement setting out distinctly the charge against the member and shall send the same for enquiry and findings by Judicial Officer of the rank of a District Judge to be appointed by the State Government for the purpose.*

- (4) *The Judicial Officer so appointed shall proceed to inquire into the charge, hear the member concerned, if he makes appearance, record his findings on each matter embodied in the statement as well as on every other matter he considers relevant to the charge and send the record along with such findings to the State Government, which shall thereupon either order for re-inquiry, for reasons to be recorded in writing, or pass final order.*

- (5) *While hearing an inquiry under sub-Section (4), the Judicial Officer shall observe such rules of procedure as may be prescribed by the State Government and shall have the same powers as are vested in a civil Court under the Code of Civil Procedure, 1908 (Central Act No. 5 of 1908) while trying a suit in respect of the following matters, namely:*

- (a) *summoning and enforcing the attendance of any person and examining him on oath;*



- (b) requiring the discovery and production of any such document or any other material as may be predicable in evidence;
- (c) requisitioning any public record; and
- (d) any other matter which may be prescribed.

(6) Notwithstanding the foregoing provisions of this Section, the State Government may place under suspension a member against whom proceedings have been commenced under this Section until the conclusion of the inquiry and the passing of the final order and the member so suspended shall not be entitled to take part in any proceedings of the Municipality or otherwise perform the duties of a member thereof.

(7) Every final order of the State Government passed under this Section shall be published in the Official Gazette and shall be final and no such order shall be liable to be called in question in any Court.”

“40. Inquiry into certain allegations after expiry of term of office. - (1) In respect of any allegations of the nature specified in clause (d) of sub-Section (1) of Section 39 against any member or the Chairperson or Vice-Chairperson of a Municipality, the inquiry referred to in the proviso to the said sub-Section, and in sub-Sections (3) and (4) of that Section may be initiated against such member, Chairperson or Vice-Chairperson even after the expiry of the term of office of that Municipality or after he has ceased to be such member or Chairperson or Vice-Chairperson or, if already initiated before such expiry may be continued thereafter and in each such case except in the cases covered under sub-Section (3), the State Government shall, by order in writing, only record its findings in conformity with those of the Judicial Officer recorded under sub-Section (4) of Section 39.

(2) The provisions of sub-Section (6) of Section 39 shall apply to the findings of the State Government so recorded.

(3) In case of a member, Chairperson or Vice-Chairperson, who is reelected for the new term of the Municipality and against whom any inquiry referred to in sub-Section (1) is initiated or, if it has already been initiated, is continued, in respect of his previous term in the Municipality, the provisions of Section 39 shall *mutatis mutandis* apply.”

“41. Disability of members removed under Section 39. - A member who has been removed under clause (d) of sub-Section (1) of Section 39 or against whom adverse findings have been recorded under Section 40 shall not be eligible for re-election for a period of six years from the date of the order of his removal or of recording adverse findings as the case may be.”



8. Based on the arguments advanced by both the counsels, the issues which require consideration of this Court, are as under:-

(i) Whether the alleged act against the petitioner amounts to misconduct warranting the initiation of proceedings under Section 38 of the Act of 1994 or Section 39 of the Act of 2009?

(ii) Whether the decision of the State Government to initiate an inquiry under Section 39(1) of the Act of 2009 is legally sustainable in respect of the misconduct allegedly committed by the petitioner during her tenure as Sarpanch, especially after the Gram Panchayat, Napasar was declared a Municipal Board by the notification dated 07.11.2024?

(iii) Whether the decision to suspend the petitioner while invoking powers under Section 39(6) of the Act of 2009 is justified in the given circumstances, more particularly looking to the term of the present Municipal Board, which is to expire in October, 2025?

Issue No.(i)

9. Learned counsel appearing on behalf of the petitioner has questioned the initiation of inquiry against the petitioner under Section 39 of the Act of 2009 on the ground that the charge framed against the petitioner does not constitute misconduct so as to permit the authorities to proceed under Section 39 of the Act of 2009.

9.1 The allegation levelled against the petitioner is in relation to appointment of staff members in the Gram Panchayat, Napasar de-hors the rules. Section 78 of the Act of 1994 provides the procedure for appointment of Secretary and other staff. For ready



reference, Section 78 (1)(b) of the Act of 1994 is reproduced as under:-

*“78. Appointment of Secretary [***] [Deleted by Section 46, of the Rajasthan Panchayati Raj (Amendment) Act, 2000 published in Rajasthan Gazette Extraordinary Part IV-A dated 3.5.2000 with effect from 6.1.2000.] and other staff.*

(1) Subject to the provisions of this Act and rules made thereunder -

(a) xxx xxx

(b) every Panchayat may with the previous approval of the Panchayat Samiti, appoint such other staff as may be necessary for carrying out the duties imposed on it by or under this Act on such conditions of service of as may be prescribed.”

9.2 It is evident from the above provisions that a Panchayat may appoint staff members to perform necessary duties imposed under the Act, but such appointments require prior approval from the Panchayat Samiti. Although Section 78(1)(b) of the Act of 1994 uses the term "may," but this cannot be construed as merely directory. A plain reading shows that the word "may" was intended to grant Gram Panchayats the authority to appoint staff when necessary, but it does not absolve them from obtaining prior approval. Thus, the provision clearly mandates that any appointment of staff by the Gram Panchayat must be preceded by approval from the Panchayat Samiti.

9.3 In the present case, it is an undisputed fact that the petitioner, while serving as Sarpanch, did not obtain the requisite prior approval from the Panchayat Samiti before appointing the three individuals who are the subject of this dispute. It is also undisputed that no post-facto approval was ever granted by the Panchayat Samiti for these appointments. Whether the engagement of these three persons was necessary to discharge



the duties at that time, or whether the requisite resolution or decision under the Act or Rules was passed and the act of the petitioner whether constitutes misconduct, are disputed questions of fact, which require proper inquiry. Furthermore, even if prior approval was not obtained before engaging the staff persons, despite it being mandatory, the question whether such engagement without approval constitutes misconduct or mere irregularity, has to be decided in a regular inquiry. Therefore, the petitioner's submission that the alleged act does not constitute misconduct cannot be adjudicated by this Court in writ jurisdiction under Article 226 of the Constitution of India.

9.4 It is further noted that the petitioner had earlier challenged the initiation of inquiry under Section 38 of the Act of 1994 by filing S.B. Civil Writ Petition No. 7192/2024, but this Court declined to grant any interim relief.

9.5 In view of the above, this Court does not deem it appropriate to adjudicate on factual aspects under writ jurisdiction. Whether the acts of petitioner alleged as misconduct would come within the purview of 'misconduct' or not so as to initiate inquiry either under the Act of 1994 or the Act of 2009, can be decided only after factual inquiry being made by the concerned authority.

Issue No.(ii)

10. This issue pertains to the competence of the respondent authorities to proceed against the petitioner under Section 39(1) of the Act of 2009. A comparative reading of Section 38 of the Act of 1994 and Section 40 of the Act of 2009 clearly indicates that an inquiry initiated under either provision may continue even after



the expiry of the term of the elected member against whom the misconduct is alleged. What emerges from a plain reading of both provisions is that a person accused of misconduct cannot escape his/her accountability merely because his/her term has ended.

10.1 In the present case, before the petitioner's term as Sarpanch concluded, Gram Panchayat Napasar was declared a Municipal Board. When read in conjunction with Section 3(8)(f) of the Act of 2009, it becomes evident that once an area is declared as a municipality, it ceases to be governed by the rules, notifications, orders, and bye-laws made under the Act of 1994. In other words, from the date of such declaration, the provisions of the Act of 1994 no longer apply to the local area concerned.

10.2 Therefore, the inquiry originally initiated under Section 38 of the Act of 1994 no longer survives. The operation of Section 3(8)(f) of the Act of 2009 necessitates a suitable mechanism to ensure that any pending inquiry, such as the one in the present case, reaches its logical conclusion. If the argument of the petitioner that proceedings cannot be continued under Section 39 of the Act of 2009 is accepted, it would leave the State Government with no legal recourse to conclude the inquiry. This would result in an untenable situation where neither the Act of 1994 nor the Act of 2009 could be invoked, effectively allowing the misconduct to go unaddressed.

10.3 Section 39(1) of the Act of 2009 permits the State Government to remove a Member after holding inquiry on allegation of misconduct in discharge of his/her duties. The petitioner was earlier Member under the Act of 1994 and later



became Member under the Act of 2009 after the Gram Panchayat, Napasar being declared as Municipal Board, Napasar.

Once petitioner became Member under the Act of 2009, she shall be governed by the provisions of the Act of 2009 and any act of misconduct or any other disgraceful conduct would attract the action under Section 39(1) of the Act of 2009. After delimitation of Municipality under Section 3 of the Act of 2009, the consequences as provided therein would follow. After declaration of local area to be Municipality, all rules/provisions of Act of 1994 would cease and the local area so declared would be governed by the Act of 2009. Moreso, in view of Section 3 of the Act of 2009, the liability/assets of local area would also come within the purview of the Act of 2009. Therefore, the liability, such as loss caused to the Gram Panchayat funds and its recovery is to be effected while invoking the provisions of the Act of 2009 only and that being so, the State authorities can proceed under Section 39(1) of the Act of 2009 against the previous misconduct (under the Act of 1994 in this case) and the misconduct of a Member would mean to include the existing/past Members, therefore, the respondent-authorities have rightly proceeded under the provisions of the Act of 2009.

10.4 This issue may also be viewed from another perspective. While the petitioner has raised a plea of double jeopardy, such contention is entirely misconceived. Given that the Act of 1994 no longer applies due to the operation of Section 3(8)(f) of the Act of 2009, the authorities cannot proceed under Section 38 of the Act of 1994. As such, there is no question of parallel proceedings or double jeopardy.



10.5 Further, a perusal of Section 38 of the Act of 1994 and Section 39 of the Act of 2009 and so also the charges framed against the petitioner, it is revealed that the provisions are by and large pari-materia, so also the charge framed against the petitioner under Section 38 of the Act of 1994 and Section 39 of the Act of 2009 are also identical and, therefore, no prejudice would be caused to the petitioner if the judicial inquiry against the petitioner is allowed to be taken to its logical end.

10.6 In light of the above, this Court finds no merit in the argument that the initiation of inquiry under Section 39 of the Act of 2009 is without jurisdiction and the respondents-authorities are very much competent to proceed against the petitioner.

Issue No.(iii)

11. With regard to the issue of delayed suspension of the petitioner, it is pertinent to note that the alleged misconduct, namely, the engagement of three individuals on an urgent and temporary basis in October 2020, came to the knowledge of the Panchayat Samiti in February 2021. Following this, an inquiry report was prepared in January 2022 based on complaints regarding the said appointments. A second report was submitted in November 2022, and during the same month, the Divisional Commissioner, Bikaner, appointed the Chief Executive Officer, Zila Parishad, Bikaner, to conduct an inquiry under Rule 22 of the Rules of 1996.

11.1 Subsequently, in February 2024, a decision was taken to initiate proceedings under Section 38 of the Act of 1994. A communication dated 18.09.2024 was issued by the Divisional



Commissioner to the petitioner, enclosing the charge-sheet under the said provision. These facts clearly demonstrate that the Panchayati Raj Department was fully aware of the appointments in question and, based on two inquiry reports, decided to proceed with formal inquiry under Section 38 of the Act of 1994. However, no decision to place the petitioner under suspension was taken at that stage, perhaps indicating that the nature of the charge was not considered sufficiently grave or that there was a lack of material justifying such action.

11.2 Given this context, there appears to be no valid reason for invoking the power of suspension while initiating a subsequent inquiry under Section 39(1) of the Act of 2009, especially when the charge remained unchanged. When a specific query was raised by the Court to the learned counsel for the respondents regarding the existence of any additional material justifying the petitioner's suspension in the second inquiry, no satisfactory response was provided. Furthermore, a perusal of the respondents' reply reveals no indication that any new evidence had emerged to warrant suspension at that stage.

11.3 The learned Senior Counsel for the respondents relied upon a judgment of a Coordinate Bench of this Court in **Nirmal Kumar Pitaliya** (supra), to contend that the State Government is empowered to suspend a Member or Chairperson of a Municipality as soon as an inquiry is initiated under Section 39 of the Act of 2009. While the legal proposition is not in dispute, what is relevant is whether such power has been exercised reasonably and judiciously. If the Department, despite having sufficient time



and material, chose not to suspend the petitioner during the initial inquiry under Section 38 of the Act of 1994, possibly due to the limited seriousness of the charge, there appears to be no justification for invoking suspension in the subsequent inquiry based on the same charge.

11.4 The respondents also referred to the decision in **Sita Devi Gurjar** (supra) arguing that the writ court should refrain from interfering in matters concerning suspension orders. However, this Court finds no merit in that argument. The observations made in the case of **Sita Devi Gurjar** (supra) were specific to the facts of that case, and nothing in the judgment suggests a binding principle that would restrict judicial scrutiny in the present circumstances.

11.5 On the other hand, the learned counsel for the petitioner has relied on another decision of a Coordinate Bench of this Court in **Meena Vyas** (supra), wherein it was held that once a decision is taken to refer an inquiry to a Judicial Officer, the possibility of exerting influence or tampering with records becomes negligible.

11.6 Applying the above reasoning to the present case, it is evident that the inquiry has already been entrusted to a Judicial Officer. Once such referral is made, the relevant records come under the custody and supervision of the Judicial Officer, thereby significantly reducing, if not eliminating, the risk of any interference or tampering by the petitioner. As such, the respondents' justification for suspension on this ground appears unconvincing.



11.7 In view of the foregoing, this Court is of the considered opinion that the decision to suspend the petitioner is not justified in the facts and circumstances of the present case.

11.8 Another issue with regard to placing the petitioner under suspension after more than 3 years is concerned, since this Court has already observed that the suspension itself is unjustified, this Court does not propose to decide this issue at this stage.

12. In view of the discussion made above, this Court finds that the decision of the State Government to initiate inquiry under Section 39(1) of the Act of 2009 requires no interference. The decision to inquire for the alleged misconduct when petitioner was Sarpanch, is also within the power of the State Government to proceed under Section 39 of the Act of 2009. Since there is no question of double jeopardy or two parallel proceedings, the State Government would be at liberty proceed against the petitioner under Section 39(1) of the Act of 2009 and decide the same in accordance with law.

12.1 As far as suspension of the petitioner, based on the charge levelled against her, is concerned, the same cannot be justified, more particularly in view of the present facts and circumstances of the case.

13. Accordingly, the writ petition is **allowed in part**. The impugned order dated 19.06.2025 and so far as suspension of the petitioner is concerned, the same is quashed and set aside and the suspension of the petitioner is ordered to be revoked and she be permitted to join as Chairperson of the concerned Municipal Board forthwith. However, the respondents-authorities are at



liberty to proceed against the petitioner under Section 39(1) of the Act of 2009 and conclude the same expeditiously within a period of three months from the date of receipt of certified copy of this order.

14.1 Needless to observe that the petitioner shall fully cooperate in the inquiry and would not seek unnecessary adjournments. If the petitioner does not participate in the inquiry, then the respondents shall be at liberty to seek revival of the present writ petition.

15. Pending application (s), if any, shall also stand disposed of.

(SUNIL BENIWAL),J

skm/-