

Court No. - 6

Case :- WRIT - C No. - 9521 of 2023

Petitioner :- Riyaz Ahmad

Respondent :- State Of U.P Thru. Secy. Food And Civil
Supplies Civil Sectr. Lko. And 5 Others

Counsel for Petitioner :- Satish Kumar Sharma, Anurag Shukla

Counsel for Respondent :- C.S.C.

Hon'ble Rajnish Kumar,J.

1. Heard Shri Anurag Shukla, learned counsel for the petitioner and Shri Abhishek Srivastava, learned Standing Counsel.

2. Learned counsel for the petitioner submits that the impugned order has wrongly, illegally and without jurisdiction has been passed by the opposite party no.2/ District Magistrate, Sitapur under Section 12-J of the U.P. Panchayat Raj Act, 1947 (here-in-after referred as the Act), whereas the order could have only been passed under Section 12-H of the Act and accordingly the provisions of Section 11-B, Section 11-C and 12 are to be complied on account of death of Gram Pradhan.

3. He further submits that in case the order would have been passed under Section 12-H, the provisions of Section 11-B would come to operate and in such situation an Administrative Committee or Administrator is to be appointed under Section 11-B(2). He further submits that since the term of Gram Sabha in question is more than six months, therefore as per proviso appended to Section 12-H, the said provision would be applicable and not Section 12-J. He further submits that Section 12-J would be applicable only in case, the term of Gram Panchayat is less than six months and there is no requirement of election under Section 12-H, therefore the petitioner is constrained to approach this Court. Learned counsel for the petitioner relies on **Pushpendra Kumar Vs. State of U.P. through the Secretary, Panchayat Raj, U.P. Lucknow and Others; [2010 (110) RD 46]**.

4. Learned Standing Counsel vehemently opposed the submissions of learned counsel for the petitioner and submits that the order has rightly been passed under Section 12-J for making temporary arrangement on account of death of Gram Pradhan, therefore this petition is misconceived and liable to be

dismissed.

5. I have considered the submissions of learned counsel for the parties and I have gone through the records.

6. At the outset, this Court is constrained to record that learned counsel for the petitioner has argued against the pleadings made in the petition and the case which has not been set out in the petition at all, despite being warned by the Court. He also has not argued even a single word on the pleadings made in the petition, therefore it is apparent that the petitioner has no case on the basis of pleadings, which is liable to be dismissed.

7. However in regard to the legal arguments advanced by the learned counsel for the petitioner Section 12-H and 12-J are relevant, which are extracted here-in-below:-

"12-H. Casual Vacancy – If a vacancy in the office of the Pradhan, Up-Pradhan or a member of a Gram Panchayat arises by reason of his death, removal, resignation, voidance of his election or refusal to take oath of office, it shall be filled before the expiration of a period of six months from the date of such vacancy, for the remainder of his term in the manner, as far as may be, provided in Sections 11—B, 11- C, or 12, as the case may be :

Provided that if on the date of occurrence of such vacancy the residue of the term of the Gram Panchayat is less than six months, the vacancy shall not be filled.

12-J. Temporary arrangement in certain cases – Where the office of Pradhan is vacant by reason of death, removal, resignation or otherwise or where the Pradhan is incapable to act by reason of absence, illness or for any reason whatsoever, the prescribed authority shall nominate a member of the Gram Panchayat, to discharge the duties and exercise the powers of Pradhan until such vacancy in the office of Pradhan is filled in, or until such incapacity of Pradhan is removed."

8. Section 12-H provides that if a vacancy in the office of the Pradhan, UpPradhan or a member of a Gram Panchayat arises by reason of his death, removal, resignation, voidance of his election or refusal to take oath of office, it shall be filled before the expiration of a period of six months from the date of such vacancy, for the remainder of his term in the manner, as far as may be, provided in Sections 11-B, 11-C, or 12, as the case may be. Proviso appended to the section provides that if on the date of occurrence of such vacancy the residue of the term of the Gram Panchayat is less than six months, the vacancy shall not be filled. Therefore, in case of vacancy under Section 12-H, the provisions of Section 11-B, 11-C or 12, as the case may be, would be applicable. Section 11-B provides the election of Pradhan, which is extracted here-in-below:-

"11-B. Election of Pradhan – (1) The Pradhan of the Gram Panchayat shall be elected by the persons registered in the electoral rolls for the

territorial constituencies of the Panchayat area from amongst themselves.

(2) If at any general election to a Gram Panchayat, the Pradhan is not elected, and less than two-thirds of the total number of members of Gram Panchayat are elected, the State Government or an officer authorized by it in this behalf may, by order, either appoint –

(i) an Administrative Committee consisting of such number of persons qualified to be elected as members of the Gram Panchayat, as it may consider proper; or

(ii) an Administrator.

(3) The members of the Administrative Committee or the Administrator shall hold office for such period not exceeding six months as the State Government may specify in the order referred to in sub-section (2).

(4) On the appointment of an Administrative Committee or and Administrator under sub-section (2), the person, if any, chosen as Pradhan or member of the Gram Panchayat before such appointment shall cease to be such Pradhan or member, as the case may be, and all powers, functions and duties of the Gram Panchayat, its Pradhan and Committees shall vest in and be exercised, performed and discharged by such administrative committee or the Administrator, as the case may be.

(5) The Administrative Committee or the Administrator shall be deemed to be duly constituted Gram Panchayat for the purposes of this Act :
 Provided that if at any time after the appointment of the Administrative Committee or the Administrator under sub-section (2) the State Government is satisfied that there is no difficulty in duly constituting the Gram Panchayat, the State Government may, notwithstanding that the period for which the Administrative Committee or the Administrator had been appointed has not expired, direct the State Election Commission for holding the elections for constituting the Gram Panchayat.

(6) Except as otherwise provide."

9. Section 11-B(2) provides that if at any general election to a Gram Panchayat, the Pradhan is not elected, and less than two-thirds of the total number of members of Gram Panchayat are elected, the State Government or an officer authorized by it in this behalf may, by order, either appoint an Administrative Committee consisting of such number of persons qualified to be elected as members of the Gram Panchayat, as it may consider proper; or an Administrator. Therefore, Administrative Committee or Administrator in the said section can be appointed after general election in the Gram Panchayat, if the Pradhan is not elected and less than 2/3rd of the total number of members of Gram Panchayat are elected and not in any other exigency.

10. So far as the submission of learned counsel for the petitioner in regard to the proviso to Section 12-H is concerned, it only provides that if on the date of occurrence of the permanent vacancy, residue of the term of the Gram Panchayat is less than six months, the vacancy shall not be filled, therefore, if the term of the office of the Gram Panchayat is less than six months on the date of vacancy on account of the exigencies given in 12-H, the vacancy shall not be filled in on regular basis for the remaining period of six months, which has

no concern with the provision made in Section 12-J for temporary arrangement, which has to be made in both the cases, therefore the contention of learned counsel for the petitioner is misconceived and not tenable and is hereby rejected.

11. Section 12-J provides about the temporary arrangement in certain cases, where the office of the Pradhan is vacant by reason of death, removal, resignation or otherwise or where the Pradhan is incapable to act by reason of absence, illness or for any reason whatsoever, the prescribed authority shall nominate a member of the Gram Panchayat, to discharge the duties and exercise the powers of Pradhan until such vacancy in the office of Pradhan is filled in, or until such incapacity of Pradhan is removed. Therefore, in case of death of Gram Pradhan, the temporary arrangement is to be made under Section 12-J, whereas, Section 12-H is for permanent vacancy and not for making any temporary arrangement and it provides only filling of the post of the Pradhan, UpPradhan or a member of a Gram Panchayat arisen on account of exigencies provided under the said section.

12. A Division Bench considered this issue in the case of **Pushpendra Kumar Vs. State of U.P. through the Secretary, Panchayat Raj, U.P. Lucknow and Others (supra)**, relied by learned counsel for the petitioner, and held that Section 12-H and 12-J have to be read harmoniously. Section 12-H deals with permanent vacancy, which may occur by resignation or otherwise on the post of Pradhan. It provides for filling up the vacancy by way of election as provided under Section 11-B and Section 12 of the Act, where the residual term is more than six months. However, till the elections are held, a temporary arrangement has to be made taking recourse to the provisions of Section 12-J of the Act and the Prescribed Authority has been given power to nominate a Gram Pradhan to discharge the duty of the Pradhan and relying on a Division Bench judgment of this Court in the case of Udaivir Vs. State Election Commission of U.P. through its Chairman and Others [2009 (106) RD 151], this Court has held that the Prescribed Authority has to act in accordance with the majority opinion of the member of the concerned Gram Panchayat while nominating the officiating Pradhan and observed that the law laid down in the aforesaid case is in consonance with the spirit of provisions of Chapter-IX inserted in our Constitution by the Constitution (73rd) Amendment Act 1992. The relevant paragraph-8 is extracted here-in-below:-

"8. From a perusal of the provisions mentioned herein above, we are of the considered opinion that section 12-H and 12-J have to be read harmoniously. Section 12-H deals with the permanent vacancy which may

occur by resignation or otherwise on the post of Pradhan. It provides for filling up the vacancy by way of election as provided under section 11-B and section 12 of the Act where the residual term is more than 6 months. However, till the elections are held, a temporary arrangement has to be made taking recourse to the provisions of section 12-J of the Act and the Prescribed Authority has been given power to nominate a Gram Pradhan to discharge the duty of the Pradhan. The provisions of section 12-J came up for consideration before a Division Bench in the case of Udaivir (supra) and this Court has held that the Prescribed Authority has to act in accordance with the majority opinion of the Members of the concerned Gram Panchayat while nominating the officiating Pradhan. The law laid down in the aforesaid case is in consonance with the spirit of the provisions of Chapter IX inserted in our Constitution by the Constitution (Seventy third) Amendment Act 1992 which provides for constitution of Panchayats at the village, empowering the villagers to manage their affairs at the local level themselves. The learned Counsel for the appellant has not been able to persuade us to take a different view. We are in respectful agreement with the view taken by the Co-ordinate Bench in the case of Udai Veer (supra). In this view of the matter, we are of the considered view that the learned Single Judge was right in directing the District Magistrate to ascertain the wishes of the Members of the Gram Panchayat before nominating any person on officiating basis to discharge the duties and functions of the Gram Pradhan."

13. In view of above and considering over all facts and circumstances of the case, this court is of the view that submissions advanced by learned counsel for the petitioner are totally misconceived and liable to be repelled and repelled.

14. This petition is, accordingly, **dismissed**. No order as to costs.

(Rajnish Kumar, J.)

Order Date :- 3.11.2023
Haseen U.