

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.10566 of 2015

Date of decision:25.5.2015

Maman Chand and another

....Petitioners

VERSUS

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA

HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Mukesh Yadav, Advocate for the petitioners.

HEMANT GUPTA, J.(Oral)

The challenge in the present writ petition is to the instructions dated 20.11.2014 (Annexure P-2) whereby the posts of Sarpanch of Gram Panchayat Mohanpur and Sundrah Block Kanina, Tehsil and District Mahendergarh were reserved for Scheduled Caste Sarpanch.

The argument of learned counsel for the petitioner is that the numbers of Scheduled Caste voters in the village are not substantial, therefore, reservation of Sarpanch as belonging to Scheduled Caste is not tenable.

The similar question was examined by a Division Bench of this Court in CWP No.3403 of 2010 titled Pawan Kumar and others v. State of Haryana and others, decided on 14.09.2010 wherein it has been held that provision of sub-Section (7) of Section 9 of Haryana Panchayati Raj Act, 1994 would apply to the extent of reservation and

not to the concept of rotation. The relevant extract from the judgment reads as under:-

“A combined reading of the extracted portions makes it clear that the principle of rotation has been super-scribed on the principle of reservation so as to obviate the possibility of the office of Sarpanch of a particular village either being reserved in perpetuity despite there being a size-able number of general category voters in the said village or, being not reserved in perpetuity despite there being a size-able percentage of SC persons in a village. Thus, in view of the authoritative pronouncement of the Hon'ble Supreme Court, the plea of the learned counsel for the petitioners has to be accepted and it has to be held that the provisions of sub-section (7) of Section 9 of the Act would apply to the extent of reservation and not to the concept of rotation.

Before parting with the judgment, two subsidiary arguments of learned Advocate General Haryana must be considered. The first relates to the fact that there are Parliamentary Constituencies/State Legislature Constituencies which have been reserved constantly since the first general elections. This argument can be dealt with simply by saying that there is no constitutional imperative of rotation for Parliamentary/State Legislature Constituencies. The second argument of learned Advocate General Haryana is that there are some villages which have negligible proportion of Scheduled Castes or even zero percent and, thus, it would be impossible to reserve the post of Sarpanch and, thus, the interpretation of the concept of rotation sought to be made by learned counsel for the petitioners would not be possible. In this context, guidance may be had from sub-section 1) of Section 9 of the Act. As per this sub-section, reservation would be on the same proportion as the population of Scheduled Castes bears to the population of general category voters. Consequently, if no post can be reserved for a Panch of Scheduled Caste in a particular village, obviously that village would have to be excluded from the principle of rotation”

It is the said finding which has been made basis by the State Government while issuing instructions (Annexure P-2) on 20.11.2014.

In view of the earlier decision in Pawan Kumar's case
(supra), we do not find any merit in the present writ petition.

Dismissed.

(HEMANT GUPTA)
JUDGE

MAY 25, 2015
'D. Gulati'

(LISA GILL)
JUDGE