

CWP No.25949-2014

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

CWP No.25949-2014

Date of Decision:16.02.2015

Amandeep

... Petitioner(s)

Versus

State of Punjab and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

- 1) Whether Reporters of the local papers may be allowed to see the judgment ?.
- 2) To be referred to the Reporters or not ?.
- 3) Whether the judgment should be reported in the Digest ?

Present: Mr. D.S.Khurana, Advocate,
for the petitioner.

Mr. Rupam Aggarwal, DAG, Punjab.

Paramjeet Singh, J. (Oral)

Instant writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of direction to respondents no.1 to 4 for holding fresh election to fill up the vacancy of Sarpanch occurred on account of death of Smt. Ram Piari, earlier Sarpanch who expired on 30.03.2014, in accordance with the provisions of the Punjab Panchayati Raj Act, 1994 (in short, 'the Act').

Brief facts of the case are to the effect that election for the post of Sarpanch of village Lakhe Ke Musahib, Block Jalalabad (W), District Fazilka was held on 03.07.2013 and Smt. Ram Piari was elected as Sarpanch. Smt. Piari expired on 30.03.2014. As a result thereof, post of

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Sarpanch fell vacant. It is the case of the petitioner that he had given representations to the Director, Rural Development and Panchayats, Punjab and Chief Election Commissioner, Punjab which are placed on record as Annexures P-3 and P-4, respectively. After the receipt of representation (Annexure P-4), State Election Commission, Punjab addressed communication dated 16.09.2014 to the Director, Rural Development & Panchayati Raj and Deputy Commissioner, Fazilka for holding the election. Even, District Development and Panchayat Officer, Fazilka was also made aware of the situation by the Gram Panchayat, Lakhe Ke Musahib, vide letter dated 28.05.2014 (Annexure P-6). In spite of moving such representations/letters, election has not been held till date.

In pursuance of notice of motion, Director, Rural Development and Panchayats, Punjab has filed reply in Court today which is taken on record. In reply, it is submitted that it is the function of the Deputy Commissioner to hold election to fill up vacancy of Sarpanch or Panch caused on account of death or resignation etc. Along with reply, application dated 01.09.2014 (Annexure R-1/T) written to Election Commission, Punjab by Gram Panchayat, village Lakhe Ke Musahib, Block Jalalabad, District Fazilka and letter dated 16.10.2015 (Annexure R-2/T) written by the Deputy Director, Panchayats to Deputy Commissioner, Fazilka have been annexed.

I have heard learned counsel for the parties and perused the record.

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Admittedly, Smt. Ram Piari, earlier Sarpanch, expired on 30.03.2014 and even after a lapse of more than six months, no election has been held till date. Section 21 of the Act refers to the cessation from the office of Sarpanch or Panch, Section 22 of the Act refers to the filling of casual vacancy of a Sarpanch or a Panch. It provides that whenever vacancy of a Sarpanch or a Panch occurs by death, resignation, removal or otherwise, the same shall be filled up by way of election. It also provides that a person elected to the casual vacancy under sub-section (1) shall be elected for the remainder period of his predecessor's term of office. It also provides that if term of office of Sarpanch or Panch is to expire in less than six months, no election is required to be held. A Division Bench of this Court in *Sukhdip Singh vs. State of Punjab*, 2008 (2) LAR 249 has held that election is to be held by the competent authority within six months from the date of death, removal or resignation of Sarpanch or Panch. Perusal of paper-book reveals that intimation of death of Smt. Ram Piari, the then Sarpanch was given to the Director, Rural Development and Panchayats, Punjab vide application dated 20.05.2014 (Annexure P-3) i.e. within two months of the date of the death. Thereafter, intimation was also sent to the Chief Election Commissioner vide application dated 01.09.2014 (Annexure P-4). The State Election Commission, Punjab, vide letter dated 16.09.2014, also issued directions to the Director, Rural Development and Panchayats and Deputy Commissioner, Fazilka for holding the election. Admittedly, no election has been held till date.

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Part IX – 'The Panchayats' of the Constitution of India containing Articles 243 to 243-G clearly envisages that election of Gram Panchayat shall be held immediately. Panchayat is the basic functional institution of democratic process which the country is following and it is the duty of the competent authority including the Deputy Commissioner and Director, Rural Development & Panchayats to look into this aspect. It cannot be believed that once the matter is brought to the notice of the Director, Rural Development & Panchayats and the Deputy Commissioner by the State Election Commissioner, they will not proceed in that direction. After the death of Smt. Ram Piari, a period of more than ten months has elapsed till date but the election has not been held. Unnecessary delay appears to have been caused by the authorities. In these circumstances, this Court deems it fit and appropriate to direct the respondents specifically the Deputy Commissioner, Fazilka, Director, Rural Development and Panchayats, Punjab and the State Election Commission to hold the election of Gram Panchayat within two months from today. For the lapses on the part of the concerned official/officials in not performing their statutory duties as required under Section 22 of the Act, this Court deems it fit and proper that they should be burdened with costs of Rs.50,000/- to be deposited with the State Legal Services Authority, Punjab. Ordered accordingly. Initially, the costs of Rs.50,000/- shall be paid by the State, however, the same shall be recovered from the officer/officers, who are responsible for the lapses.

Disposed of in the aforementioned terms.

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Copy of this order be sent to the Chief Secretary, Punjab, Station Election Commissioner, Punjab, Director, Rural Development and Panchayats, Punjab and Deputy Commissioner, Fazilka for compliance.

16.02.2015

parveen kumar

(Paramjeet Singh)
Judge