

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

CWP No.23073 of 2017
Date of decision: 01.11.2017

Harnek Singh

... Petitioner

versus

State of Punjab & ors.

... Respondents

CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present: Mr. S.S.Rangi, Advocate
for the petitioner.

Ms. Sunint Kaur, AAG, Punjab.

Mr. J.S.Mundi, Advocate
for respondent No.7.

Rakesh Kumar Jain, J.(Oral)

Separate replies filed on behalf of respondents No.1 to 6 and 7 respectively are taken on record.

The petitioner has challenged the appointment of respondent No.7 as authorised Panch of General Category of Gram Panchayat, village Rohno Khurd, Block Khanna, District Ludhiana to look after the affairs of panchayat after the suspension of Baljinder Kaur, Sarpanch (SC category) on account of registration of FIR No.188 dated 30.09.2015 under Section 409 IPC at Police Station Sadar Khanna, District Ludhiana against her.

The only argument raised by learned counsel for the petitioner is that since the Sarpanch Baljinder Kaur was belonging to SC category, therefore, the authorised Panch should also be elected from the SC category and has referred to the provisions of the The Punjab Panchayati Raj Act, 1994. He has also referred to the instructions issued by the Government

dated 07.12.2016 in this regard.

Learned counsel for the respondents, however, submits that Section 22 would not apply in case of election of an authorised Panch as the authorised Panch would be elected in case of suspension of Sarpanch in terms of Section 20 of the Punjab Panchayati Raj Act, 1994.

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

The question involved in the present case is as to whether the case in which Sarpanch is suspended after registration of the FIR, the authorised Panch is to be elected in terms of Section 22 or in terms of Section 20(5) of the Act?

In order to answer this question, reference is made to Section 22 as well as Section 20(5) of the Act which reads as below:

Section 22 Filling of casual vacancies of Sarpanches and Panches. (1) *Whenever a vacancy occurs by death, resignation, removal or otherwise of a Sarpanch or of a Panch the vacancy shall be filled up by way of election :*

Provided that if the vacancy relates to the Scheduled Castes, Backward Classes or to Women, the vacancy shall be filled up out of the persons belonging to the category to which category of person the vacancy relates.

(2) *A person elected to fill a casual vacancy under sub-section (1) shall be elected for the remainder of his predecessor's term of office:*

Provided that where the remainder of period for which a Panch or Sarpanch is to be elected is less than six months, it shall not be necessary to

hold any election under this section to fill such a vacancy.

Section 20(5) A Sarpanch or Panch, suspended under this section shall not take part in any act or proceeding of the Gram Panchayat during the period of suspension and shall hand over the records, money and other property of the Gram Panchayat in his possession or under his control to the Panch as may be elected by the Panches from amongst panches in a meeting called by the Block Development, and Panchayat Officer for this purpose.

Section 20 deals with the suspension and removal of the Panch and Sarpanch. The grounds for removal are provided in Section 20(1) whereas the grounds for suspension are provided in Section 20(3 & 4).

In the present case, the Sarpanch Baljinder Kaur has been suspended in terms of Section 20(3) of the Act because of registration of a criminal case against her which is under investigation.

Section 20(5) further provides that in case the Sarpanch is suspended then he would not take part in any act or proceedings of the Gram Panchayat during the period of suspension and would also hand over the records, money and other property of the Gram Panchayat in his possession or under his control to the Panch, who would be elected by the Panches from amongst themselves in a meeting, which would be called by the Block Development and Panchayat Officer for that purpose.

Section 22 of the Act deals with the filling up of the post of Sarpanch and Panch in case Sarpanch is removed. It provides that if the vacancy of Sarpanch or Panch occurs may be by way of death, resignation removal or otherwise then the said vacancy can be filled up only by way of

election. First proviso to Section 22(1) says that the said vacancy would be filled up out of the persons belonging to the category to which category of person the vacancy relates meaning thereby if the vacancy of Sarpanch arise from the SC/BC category then the vacancy of Sarpanch would be filled up by way of election from the same category to which the earlier Sarpanch belonged.

Section 22(2) further provides that the person so elected would fill up the casual vacancy and would continue for the remainder period of his predecessor's term of office. It further provides that where the remainder of period for which a Panch or Sarpanch is to be elected is less than six months then it would not be necessary to hold any election to fill such a vacancy.

Thus, there are separate provisions to deal with the separate situations i.e. suspension and also with regard to the vacancy arising from removal, resignation, death or otherwise of a Sarpanch or Panch. The instructions dated 07.12.2016 issued by Department of Rural Development and Panchayat, Punjab are not in consonance with the aforesaid provision of Section 22(2) as it is provided therein that even the authorised Panch should also be elected from that category. This is not provided in Section 20(5) of the Act and anything different is, thus, violative of the provisions of the Act.

In view of the above discussion, the question posed is decided in favour of the respondent holding that the in case of suspension of Panch or Sarpanch, regard should be had to Section 20(5) of the Act for the purpose of electing authorised Panch and for that matter, the election has not to be made from the particular category of the Panch and in case of removal, resignation, death or otherwise of Panch or Sarpanch, regard

should be had to the provision of Section 22(1) of the Act.

Accordingly, the present petition is dismissed.

01.11.2017
sonia

(Rakesh Kumar Jain)
Judge

Whether speaking/non-speaking?	Yes/No
Whether reportable?	Yes/No