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

CWP-9618-2014

Date of decision : 13.02.2017

Sharda Kumari

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. R.S. Manhas, Advocate
for the petitioner.

Mr. Yatinder Sharma, Addl. A.G., Punjab.

Mr. H.C. Arora, Advocate
for the respondent(s).

AMIT RAWAL, J. (ORAL)

The petitioner is aggrieved of the letter dated 21.04.2014 (Annexure P-8) i.e. proposed action to be taken in pursuance to the report dated 24.01.2014 (Annexure P-7).

Mr. R.S. Manhas, learned counsel appearing on behalf of the petitioner submits that the petitioner had contested the elections for the post of Sarpanch of Village Palli Block Talwara and he was elected for the tenure 1998-2003. On the basis of complaint made by the private respondent(s), an inquiry was initiated on 11.05.2012 (Annexure P-3) which ultimately found that the work done was in excess than the grant received, but it was found that it was not a case of embezzlement. The aforementioned inquiry report is dated 11.09.2012. However the private respondent(s) i.e. Jamiat Singh Palial has filed a writ petition bearing

No.23963 of 2011 seeking disposal of the representation without disclosing the factum of pendency of the inquiry and the said writ petition was disposed of on 16.08.2012. It is, on the basis of the aforementioned fact, the inquiry report (Annexure P-7) has come, which has not taken the cognizance of the previous report. There could not have been an order of second inquiry once the proceedings have been brought to the rest. He has drawn the attention of this Court to the provisions of sub-Section 4 of Section 216 of the Punjab Panchayati Raj Act, 1994, to contend that proceedings for recovery after expiry of four years can not be proceeded against the Sarpanch, much less, two years from the date he ceased to hold the office. Inquiry proceedings were initiated only in May 2012, which was 10 years after the cessation of work and 8 years after the completion of the tenure. All these factors have not been taken care of, thus, the order under challenge is wholly erroneous, much less, perverse. In support of his contentions, he relies upon the *ratio decidendi* culled out by the Division Bench of this Court in **“Gurdial Singh and others V/s State of Punjab and others” 2013 (1) RCR (Civil) 139** to contend that as per the provisions of law referred above, inquiry could not have been initiated, thus, urges this Court for allowing of the present writ petition.

Mr. H.C. Arora, learned counsel appearing on behalf of the private respondent(s) submits that the inquiry report is sacrosanct. The recommendation is for elections and there cannot be a estoppel of taking criminal action under the provisions of Indian Penal Code. There is no limitation as the purported offence involves the punishment of more than three years.

He further submits that the Authority had taken the action in

pursuance to the order dated 16.08.2012 passed in CWP- No.23963 of 2011 (Annexure P-4), thus, the inquiry cannot be faulted.

Similar are the arguments of Mr. Yatinder Sharma, Addl. A.G., Punjab.

I have heard the learned counsel for the parties and appraised the paper book. In order to appreciate the controversy, noticed above, it would be apt to reproduce the provisions of sub-Section 4 of Section 216 of the Act which reads thus:-

“216. Liability of members of Panchayat.

(4) Notwithstanding anything contained in this section no person shall be called upon to explain why he should not be required to make good any loss, after the expiry of four years from the occurrence of the loss, waste or misapplication or after the expiry of two years from his ceasing to be a member, whichever is later.”

On going through the provisions aforementioned, it is crystal clear that no person shall be called upon to explain why he should not be required to make good any loss, after the expiry of four years from the occurrence of the loss, waste or misapplication or after the expiry of two years from his ceasing to be a member, whichever is later. Concededly the petitioner remained as Sarpanch for the period 1998-2003 and the inquiry report dated 11.09.2012 (Annexure P-3) exonerated him from all the allegations. Once the matter had already been recorded, the same could not be revisited in the absence of any challenge to the aforementioned inquiry. Withholding of the pendency of the inquiry in the writ petition seeking a direction cannot be taken as a precedent and the authorities should have been more vigilant while conducting the inquiry in compliance of the order.

If at all there was a conclusion, it could have been cleared by moving an appropriate application, but not in the manner and mode as indicated above.

The aforementioned letter (Annexure P-8) and the inquiry report (Annexure P-7), in my view, are not sustainable in view of the fact that already the Division Bench of this Court had an occasion to ponder upon the jurisdiction of the inquiry, much less, initiation after lapse of more than four years and two years, as indicated above. For the sake of brevity, the relevant paragraphs of the judgment cited supra reads thus:-

"5. After hearing the learned counsel for the parties and going through the impugned order, we do not find any substance in the submissions made by the learned counsel.

6. Undisputedly, respondent No.5 ceased to be the Sarpanch of the Gram Panchayat from July, 2003. The allegations of mismanagement and misappropriation of the Panchayat funds pertained to her tenure as Sarpanch from 1998 to 2003. Though in the written statement filed by the official respondents it was stated that against respondent No.5 a complaint was filed in the year 2003 before the Deputy Commissioner and on the complaint notice was issued by the Block Development and Panchayat Officer, Khanna to respondent No.5 to appear before him on 27.9.2004 for enquiry on the said complaint, yet thereafter nothing was done and finally in the year 2010 the fresh notice dated 8.3.2010 (Annexure P4) was issued to respondent No.5 to appear and explain the position. In these facts, it cannot be held that the enquiry initiated against respondent No.5 in the year 2003 was pending against her. The fresh notice dated 8.3.2010 was issued in pursuance of the fresh complaint made by the appellants against respondent No.5 in the year 2006. Therefore, the learned Single Judge has rightly come to the conclusion that no enquiry could have been initiated against respondent No.5 in pursuance of the impugned notice dated

*8.3.2010 (Annexure P4) after a period of seven years from the expiry of her term of Sarpanch of the Gram Panchayat. While placing reliance upon **Ram Kanwar vs. The State of Haryana and others**, (2011-1) 161 P.L.R. 359, wherein it has been held that no inquiry can be initiated against the petitioner after two years of expiry of his term as a Sarpanch, the learned Single Judge held that the notice dated 8.3.2010 (Annexure P4) could not legally be maintained and thus allowed the writ petition and quashed the said notice and all other enquiry proceedings arising therefrom. We do not find any illegality in the said order passed by the learned Single Judge. Hence, the appeal is dismissed.”*

For the foregoing reasons, letter dated 21.04.2014 (Annexure P-8) i.e. proposed action to be taken and inquiry report dated 24.01.2014 (Annexure P-7) were not sustainable in the eyes of law and the same are hereby set aside. Resultantly, the present writ petition stands allowed.

13.02.2017
Yogesh Sharma

(AMIT RAWAL)
JUDGE

	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No