

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CWP No.15680 of 2018 (O&M)

Date of decision: 27.06.2018

Shamsher

..... Petitioner

Versus

Principal Secretary to Government of Haryana
and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Bhuwan Vats, Advocate
for the petitioner.

Mr. S.S. Sahu, Advocate
for the caveator-respondent.

ANIL KSHETARPAL, J. (ORAL)

The petitioner herein has been removed from the office of the Sarpanch by the Deputy Commissioner, Fatehabad vide order dated 26.03.2018 after recording a finding that the petitioner does not possess the requisite educational qualification as required under the Haryana Panchyati Raj Act, 1994.

The petitioner along with the nomination papers filed a certificate allegedly issued by SLD inter-college, Sandhan, Meerut to claim that he is class 8th passed. On complaint being received, the competent authority directed the District Development and Panchayat Officer to conduct an enquiry. It is not in dispute that the District Development and Panchayat Officer issued notice to the petitioner and statement of the petitioner was recorded on 22.03.2016. The petitioner was again called upon to appear along with the original educational qualification certificate.

He produced the original educational qualification certificate. On production of the original qualification certificate, letters were written to the concerned principal of the educational institution for verification. The District Education Officer, Meerut and Principal of the institution replied that the certificate produced by the petitioner is fake and does not bear the signatures of the Principal. Accordingly, the Enquiry Officer submitted a report to the competent authority. On receipt of enquiry report, the competent authority i.e. Deputy Commissioner issued a show-cause notice to the petitioner vide order dated 22.09.2016. The petitioner filed a reply to the show-cause notice and claimed that since a civil suit and an election petition are pending, therefore, the Deputy Commissioner has no jurisdiction to proceed in the matter. During the course of arguments before the Deputy Commissioner, a contention was raised that the petitioner has not been supplied the relevant documents. The Deputy Commissioner at page-73 of the paper book noted zimni order dated 16.11.2017 wherein it was specifically recorded that the document i.e. copy of the report of the Education Department, UP as requested by learned counsel for the petitioner has been supplied and he is ready for arguments.

The Deputy Commissioner after noticing the contentions raised by counsel for the petitioner and the complainant and the report submitted by the District Development and Panchayat Officer passed the order in exercise of powers given under Section 51(3)(b) read with Section 177(1) (a) and Section 175(v) of the Haryana Panchayati Raj Act, 1994 removing the petitioner from the post of Sarpanch of Gram Panchayat.

The petitioner filed an appeal which was also dismissed by the learned Principal Secretary exercising the powers of the Government vide

order Annexure P-11 at page-83. This order has been challenged in the present writ petition.

This Court has heard learned counsel for the petitioner and the caveator at length.

Learned counsel for the petitioner has submitted that the documents submitted by the petitioner has not been considered by the authorities. He has further submitted that adequate opportunity was not granted to the petitioner during the enquiry proceedings. He further submitted that the Deputy Commissioner has referred to this enquiry as a preliminary enquiry and therefore, regular enquiry was required to be held before forming any final opinion. He further submitted that the documents relied upon by the Enquiry Officer were not supplied.

On the other hand, learned counsel for the respondent has pointed out that neither in the reply to the show-cause notice nor before the Principal Secretary, the petitioner did not raise these contentions/submissions and therefore, the petitioner cannot be permitted to raise these points for the first time in the writ petition.

As far as first argument of learned counsel for the petitioner, it will be noted that the learned Enquiry Officer initially directed the petitioner to produce the alleged original certificate issued by the educational institution which was duly supplied by the petitioner, therefore, the Enquiry Officer verified its genuineness from the concerned authorities. It was reported by the concerned authorities that such certificate is fake and such certificate has never been issued by the educational institution. The only document submitted by the petitioner were the certificate showing that he has passed 8th class along with an alleged affidavit of the Principal of the

Educational Institute which has been considered by the competent authority i.e. Deputy Commissioner as well as the Principal Secretary, therefore, this Court does not find any force in the first submission of learned counsel for the petitioner.

Second submission of learned counsel for the petitioner is that the petitioner has not been granted adequate opportunity, it will be noted that neither in the reply to the show-cause notice nor before the competent authority i.e. Deputy Commissioner or before the Principal Secretary, the petitioner did raise any such contention. In any case, the petitioner admittedly was given notice by the Enquiry Officer and the Enquiry Officer recorded the statement of the petitioner on 22.03.2016. Thereafter, once again the petitioner was given an opportunity when he was called to supply the original educational qualification certificate. After the enquiry, the Deputy Commissioner issued show-cause notice on 22.09.2016. The petitioner filed the reply and after filing reply, the petitioner demanded a copy of the report of the Education Department which was also duly supplied. Hence, this Court finds that the adequate opportunity has been granted to the petitioner. It is not the allegation of the petitioner either before the Deputy Commissioner or before the Principal Secretary to the effect that he was not provided sufficient opportunity or any evidence sought to be produced by the petitioner was not taken on record.

Next argument of learned counsel for the petitioner is that no regular enquiry has been conducted. He has submitted that even Deputy Commissioner has referred this enquiry as a 'preliminary enquiry'. This Court has considered the submission. It is not in dispute that the petitioner was associated in the enquiry being held by the District Development and

Panchayat Officer. He was given opportunity to give his statement in evidence. He was also permitted to produce the documents. In these circumstances, it would not be correct to submit that the enquiry so held was only a preliminary enquiry. Sub-section (3) of Section 51 enables the Director and the Deputy Commissioner concerned to hold such enquiry as he may deem fit. Section 51 of the Haryana Panchayati Raj Act, 1994 is extracted as under:-

“51. Suspension and removal of a Sarpanch or Panch.

(1) The Director or the Deputy Commissioner concerned may, suspend any Sarpanch or Panch as the case may be -

(a) where a case against him in respect of any criminal offence is under investigation, enquiry or trial, if in the opinion of the Director, or Deputy Commissioner's concerned the charge made or proceeding taken against him, is likely to embarrass him in the discharge of his duties or involves moral-turpitude or defect of character;

(b) during the course of an enquiry for any of the reasons for which he can be remove, after giving him adequate opportunity to explain.

(2) Any Sarpanch or Panch, as the case may be, suspended under sub-section (1), shall not take part in any act or proceeding of the Gram Panchayat during the period of his suspension and shall hand over the records, money or any other property of the Gram Panchayat in his possession or under his control.

i) if he is a Sarpanch to a Panch commanding majority in the Gram Panchayat;

ii) if he is a Panch to Sarpanch;

Provided that the suspension period of a Panch or a Sarpanch, as the case may be, shall not exceed one year from the date of handing over the charge in pursuance of the suspension order except in criminal cases, involving moral turpitude.

(3) The Director or the Deputy Commissioner concerned may,

after such enquiry as he may deem fit and after giving an opportunity of being heard to a Sarpanch or a Panch, as the case may be, ask him to show cause against the action proposed to be taken against him, and by order remove him from his office-

(a) if after his election he is convicted by a criminal court for an offence involving moral turpitude and punishable with imprisonment for a period exceeding six months;

(b) If he was disqualified to be a member of the Gram Panchayat at the time of his election;

(c) If he incurs any of the disqualifications mentioned in section 175 after his election as member of the Gram Panchayat;

(d) If he is absent from five consecutive meetings of the Gram Panchayat without prior permission or leave of Gram Panchayat; and

(e) If he has guilty of misconduct in the discharge of his duties and his continuance in the office is undesirable in the public interest.

(4) A person who has been removed under sub-section (3) may be disqualified for re-election for such period as may be mentioned in the order but not exceeding the period of six years.

(5) Any person who aggrieved by an order passed under sub-sections (1), (3) and (4), may within a period of thirty days from the communication of the order, prefer an appeal to the Government.

[(6) Any Sarpanch or Panch, as the case may be, removed under sub-section (3), shall hand over the records, money or any other property of the Gram Panchayat in his possession or under his control-

(i) if he is Sarpanch to a Panch commanding majority in the Gram Panchayat;

{(i-a) if he is Sarpanch belonging to reserve category, to a Panch of that reserve category commanding majority, and if no Panch in that category is available, to a Panch of general category commanding majority in the Gram Panchayat; and}

(ii) if he is a Panch to Sarpanch.] ”

The words which needs consideration are 'after such enquiry as

he may deem fit'. Such enquiry has to be after granting opportunity of hearing to the effected parties as also granting them opportunity to produce the evidence, if the parties so desired.

However, the words as extracted above cannot be read in a manner as suggested by learned counsel for the petitioner. Discretion has been given to the Director or the Deputy Commissioner concerned to hold or get the enquiry conducted in a manner he likes provided such enquiry is held after following the principles of natural justice. Still further, learned counsel for the petitioner could not point out any objection taken by his client while filing reply to the show-cause notice issued by the Deputy Commissioner or from the order passed by the Principal Secretary. Further, counsel for the petitioner could not establish any prejudice caused to his client.

Last submission of learned counsel for the petitioner is that the documents filed by the petitioner have not been considered by the Enquiry Officer. In this regard, at the cost of repetition, it will be noted that the petitioner during the enquiry only produced original educational certificate, the alleged letter written by the Principal of the educational institution on its letter head supported by an affidavit. These documents have been duly considered by the Deputy Commissioner and since it has now been reported by the educational institution as well as the District Education Officer, Meerut that the documents produced by the petitioner are fake, the petitioner cannot be heard to say that the documents relied upon by the petitioner have not been considered by the Enquiry Officer.

This Court has permitted the petitioner to argue and make submissions even if these were not pressed before the authorities below.

Taking into consideration the aforesaid facts, this Court does not find any good ground to interfere with the impugned orders passed by the authorities.

The Civil Writ Petition is dismissed.

27.06.2018
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

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