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

**CWP No. 4769 of 2016
Date of decision : 10.09.2018**

Smt. Bimla Devi ......Petitioner

versus

Union of India and ors. ...Respondents

CORAM: **HON'BLE MS. JUSTICE RITU BAHRI**

Present: Mr. Sardavinder Goyal, Advocate
for the petitioner.

Mr. V.K. Kaushal, Advocate
for respondent No. 1

Ms. Palika Monga, DAG, Haryana

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RITU BAHRI , J. (Oral)

The present petition has been filed under Article 226/227 of the Constitution of India for quashing letter dated 07.09.2010 issued by respondent No. 2 (Annexure P-2) and letter dated 20.06.2013 whereby services of the petitioner from the post of Anganwari worker has been terminated.

The petitioner after undergoing the training during the year 1981 for the post of Anganwari worker, was appointed as Anganwari worker in the month of February, 1982 at Mangali Mohabat, Tehsil and District Hisar. There was no complaint/enquiry pending against the petitioner. Respondent No. 2 vide his office memo dated 28.11.1994 addressed to all Programme Officers and all Child Development Project Officers in Haryana State granted permission to file nomination papers for contesting elections by Anganwari Workers and Anganwari Helpers.

Pursuant to above mentioned instructions, the petitioner after obtaining the leave for the period of 01.07.2010 to 23.07.2010 contested the election for Member Block Samiti Hisar-I in the year 2010. Upon winning the elections, she joined her duty as Anganwari Worker as she was entitled to work on both posts in accordance with the above mentioned guidelines issued by Government of India.

Thereafter, in view of office memo dated 07.09.2010 issued by respondent No. 2 to all programme officers in Haryana, respondent No. 3 issue memo dated 29.10.2010 to the petitioner directing her either to tender her resignation from the post of Anganwari worker till 02.11.2010 or the matter will be referred to higher authorities for dismissing her from the service. The petitioner submitted her reply to respondent No. 3 raising all the pleas regarding non-applicability of instructions upon the petitioner and prayed for allowing her to continue in service.

A civil suit was filed by the petitioner for declaration to the effect that letter dated 07.09.2010 issued by respondent No. 2 has no effect on the rights of the petitioner and letter dated 29.10.2010 issued to the petitioner is against law, null and void. The civil suit was dismissed by the learned trial Court on 09.05.2013 and upheld by the learned Appellate Court on 21.02.2015. Hence the present writ petition.

Learned counsel for the petitioner submits that the petitioner should not have been dismissed from service, as implementation of memo dated 07.09.2010 is neither applicable to the petitioner nor the same is to be implemented retrospectively.

On the other hand learned State counsel has referred to statement has been filed on behalf of respondent Nos. 2 to 4 wherein it has been stated that the petitioner wants to pick and choose the things as per her convenience. At the time of filling the nomination and for contesting the election, the petitioner is relying upon office memo dated 28.11.1994 of respondent No. 2 and when the same authority issued another letter dated 07.09.2010, petitioner denied to accept the same and challenged by filing suit. The letter dated 07.09.2010 was issued by the competent authority for the betterment of ICDS scheme as it had come to the knowledge of respondent No. 2 that the engagement of Anganwari workers and helpers simultaneously in other activities is adversely affecting the delivery of services under ICDS scheme and for continuance functioning of the same, the Anganwari workers should focus on their work instead of all collateral service. On the basis of this letter, the letter dated 29.10.2010 was issued to the petitioner.

The letter dated 18.11.1994 was in force till the issuance of letter dated 07.09.2010 and thereafter, the policy framed by respondent No. 2 vide letter dated 18.11.1994 was modified qua Anganwari workers/Helpers. The petitioner is relying that letter dated 07.09.2010 is having prospective affect and not retrospective affect, but a bare perusal of letter dated 07.09.2010 shows that it has nowhere been mentioned in the letter that the same is having prospective affect and would apply prospectively. It has been mentioned in the letter that the instructions mentioned in the letter be strictly adhered to.

The question for consideration before this Court is that whether the services of the petitioner can be terminated on account of contesting elections in the year 2010.

This issue has been considered by Hon'ble the Supreme Court of India in a case of ***Anokh Singh vs. Punjab State Election Commission, 2011 AIR (SC) 230*** wherein before this Hon'ble Court, one petition was filed by a lambardar seeking to contest the election, as lambardar and anganwari workers were barred from contesting election of Member Panchayat on the ground that they hold office of profit. Similarly, Anganwari workers/helpers filed writ petitions on the same ground as they were also disqualified for contesting elections. This Court dismissed the writ petition filed by the Lambardar on the ground that Lambardar is an office of profit but allowed the writ petitions filed by the Anganwari workers on the ground that they do no hold any civil post under the government. They do not hold any office of profit under the State Government. The memorandum was quashed so far as it pertained to the Anganwari workers. However, Hon'ble the Supreme Court allowed the appeal filed by the Lambardar as well and held that the conclusion reached by the High Court that receipt of honorarium worth Rs.900/- is not compensatory, cannot be accepted. In para 25, 26, 29 and 32, it has been observed as under:-

25. In Gatti Ravanna, son of Gatti Subanna, Gubbi Taluk, Mysore State Vs. G.S.Kaggeerappa, Merchant, Gubbi6 considered whether a person holding the position of the Chairman of Gubbi Taluk Development Committee, could be said to be holding an `office of profit' under the Government. In that case, the Chairman was entitled to a fee of Rs.6/- for each sitting of the aforesaid Committee. It was clearly held by this Court that a fee of Rs.6/- which the Chairman was entitled to draw for each sitting of the Committee was neither meant to be payment by way of remuneration nor it could amount to profit; and the fee was paid to the Chairman to enable him to meet "outof pocket expenses, which he has to incur for attending the meetings of the Committee." It was held as under:-

> *"The plain meaning of the expression seems to be that an office must be held under Government to which any pay, salary, emoluments or allowance is attached. The word "profit" connotes the idea of pecuniary gain. If there is really a gain, its quantum or amount would not be material; but the amount of money receivable by a person in connection with the office he holds may be material in deciding whether the office really carries any profit.*
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> *From the facts stated above, we think it can reasonably be inferred that the fee of Rs 6 which the non-official Chairman is entitled to draw for each sitting of the committee, he attends, is not meant to be a payment by way of remuneration or profit, but it is given to him as a consolidated fee for the out-of-pocket expenses which he has to*

incur for attending the meetings of the committee. We do not think that it was the intention of the Government which created these Taluk Development Committees which were to be manned exclusively by non-officials, that the office of the Chairman or of the members should carry any profit or remuneration."

26. The High Court gives no reason for concluding that the honorarium received by a Lambardar is not compensatory in nature. The High Court erred in not analyzing the real and substantive nature of the honorarium. The High Court failed to take notice of the fact that the respondents had placed no material on the record to establish that the honorarium of Rs.900/- would result in a net gain to the Lambardar. In other words, the out of pocket expenses for attending to the duties of a Lambardar would be less than Rs.900/- per month. This court in S.Umrao Singh Vs. Darbara Singh & Ors.7 has clearly held :-

"5.The payment to a Chairman, Panchayat Samiti, under Rule 3 is described in the rule as a monthly consolidated allowance in lieu of all other allowances for performing all official duties and journeys concerning the Panchayat Samiti within the district, including attending of meetings, supervision of plans, projects, schemes and other works, and also for the discharge of all lawful obligations and implementation of Government directives. This provision in very clear language shows that the allowance paid is not salary, remuneration or honorarium. It is clearly an allowance paid for the purpose of ensuring that the Chairman of a Panchayat Samiti does not have to spend money out of his own pocket for the discharge of his duties. It envisages that, in performing the duties, the Chairman must undertake journeys within the district and must be incurring expenditure when attending meetings, supervising plans, projects, schemes and other works and also in connection with the discharge of other lawful obligations and implementation of Government directives. No evidence has been led on behalf of the appellant to show that a Chairman of a Panchayat Samiti does not have to perform such journeys in the course of his official duties and to incur expenditure in that connection. The State Government, which was the competent authority, fixed the allowance for a Chairman of a Panchayat Samiti at Rs 100 per month, obviously because it was of the opinion that this sum will be required on an average every month to meet the expenses which the Chairman will have to incur in this connection. In these circumstances, the burden lay on the appellant to give evidence on the basis of which a definite finding could have been arrived at that the amount of Rs.100 per month was excessive and was not required to compensate the Chairman for the expenses to be incurred by him in the discharge of his official duties as envisaged in the rule. That burden clearly has not been even attempted to be discharged by the appellant.

8. Our attention was drawn by learned counsel to the fact that in Rule 7 the persons entitled to daily allowance are divided into two categories and a Chairman of a Panchayat Samiti belonging to Category I is entitled to Rs 6 per diem when a Member of the Samiti belonging to Category II is only entitled to Rs 4 per diem. The argument was that there was no explanation for payment at a higher rate to the Chairman and, consequently, it must be held that the Chairman must be making gain out of the payment to him of daily allowance. We are unable to accept this submission. The daily allowance is invariably fixed after estimating what extra expenditure in a day the person concerned would have to incur. A Chairman, it *appears, was expected to incur more expenditure per day than a Member, and that seems to be the reason why a higher rate of daily allowance was prescribed for him. In any case, such a payment is clearly meant only to cover additional expenditure and out-of-pocket expenses of the Chairman and, while no evidence has been advanced to show that out of the amount received as daily allowance the Chairman will in fact invariably make a saying, it cannot be held that this payment would result in gain so as to make the office an office of profit."*

The aforesaid observations are squarely applicable to the facts and circumstances of this case. Even the payment of allowances to Chairman Panchayat Samiti was held to be out of pocket expenses. It was emphasised that the burden lay on the appellant to give evidence to show that amount paid would be in excess of the expenses. It was further observed that even with regard to higher allowance paid to Chairman for performing duties outside the district, there was no evidence from which an inference could be drawn that the allowance paid would be in excess of the expenditure incurred in performance of the duties by the Chairman.

29. The expression `office or profit' was reconsidered in detail by this Court in the case of ***Shibu Soren Vs. Dayanand Sahay, 2001(4) R.C.R (Civil) 425****. This Court, apart from reiterating the ratio of law in the aforesaid two cases i.e.* ***K.B. Rohamare Vs. Shanker Rao Genuji Kolhe (Supra) and Shivamurthy Swami (Supra)*** *observed as follows:-*

"27.With a view to determine whether the office concerned is an "office of profit",the court must, however, take a realistic view. Taking a broad or general view, ignoring essential details is not desirable nor is it permissible to take a narrow view by which technicality may overtake reality. It is a rule of interpretation of statutes that the statutory provisions are so construed as to avoid absurdity and to further rather than defeat or frustrate the object of the enactment.

28. While interpreting statutory provisions, courts have to be mindful of the consequences of disqualifying a candidate for being chosen as, and for being, a Member of the legislature on the ground of his holding an office of profit under the State or the Central Government, at the relevant time. The court has to bear in mind that what is at stake is the right to contest an election and to be a Member of the legislature, indeed a very important right in any democratic set-up. "Apractical view, not pedantic basket of tests" must, therefore, guide the courts to arrive at an appropriate conclusion. A ban on candidature must have a substantial and reasonable nexus with the object sought to be achieved, namely, elimination of or in any event reduction of possibility of misuse of the position which the legislator concerned holds or had held at the relevant time. The principle for debarring a holder of office of profit under the Government from being a Member of Parliament is that such person cannot exercise his functions independently of the executive of which he becomes a part by receiving "pecuniary gain".Under Article 102(1)(a), of course, Parliament has the jurisdiction to declare an "office"as not to disqualify its holder to be a Member of Parliament and likewise under Article 191(1)(a) the State Legislature has the jurisdiction to declare an "office"as not to disqualify its holder to be a Member of the State Legislatures. Moreover, apart from the *office being an "office of profit",it must also be an office under the State or Central Government.*

33. In view of the aforesaid conclusion, we need not consider the effect of Section 2 (a) of the Punjab State Legislative (Prevention of disqualifications) Act, 1952, on Section 11(g) of the State Election Commission Act. By virtue of the aforesaid Act a Lambardar would be qualified to contest the elections for legislative assembly. This could be a stepping stone for becoming the Chief Minister of the State. Therefore, it would seem a little incongruous that a Lambardar would not be permitted to seek election to the Panchayat. The village level democracy is the bedrock of the Indian National Democracy. Being a member of Panchayat can be the beginning of a long career in public life. Therefore, the disqualification introduced though the impugned circular could prove disastrous to democracy at the grassroots level in Punjab. But we need not go into controversy, as we have already held that the office of a Lambardar would not be an `office of profit'.

Thus, following the ratio of law laid down by the judgment of Hon'ble the Supreme Court, the post of Anganwari Worker/Helper cannot be held to hold any office of profit under State Government. The petitioner has every right to contest election. The petitioner after winning elections, shall continue on to hold her post of Anganwari worker.

In view of the above factual position, letter dated 07.09.2010 issued by respondent No. 2 (Annexure P-2) and letter dated 20.06.2013 are hereby quashed. The respondents are directed to reinstate the service of the petitioner as Anganwari Worker with continuity of service. She is entitled to all consequential benefits.

September 10, 2018 **(RITU BAHRI)**
G Arora **JUDGE**

Whether speaking/reasoned ***Yes***
Whether reportable ***No***