

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

CWP No.2451 of 2018

Date of Decision: 05.02.2018

Smt. Suresh

....Petitioner

Versus

State of Haryana and others

....Respondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Ashok Gupta, Advocate
for the petitioner.

Mr. Rajender Kumar, Advocate
for the Caveator/respondents.

DAYA CHAUDHARY, J.

The prayer in the present petition is for quashing of impugned notices dated 19.01.2018 (Annexure P-4) and 22.01.2018 (Annexure P-5), whereby, meeting was convened for no confidence motion against the petitioner. A prayer has also been made for stay of the proceedings further.

Briefly, the facts of the case, as made out in the present petition, are that the petitioner was elected as member of the Panchayat Samiti, Lakhan Majra, District Rohtak during the elections held on 17.01.2016. Thereafter, he was elected as Chairman of the Panchayat Samiti on 09.03.2016. No confidence motion against the petitioner was moved by nine members of the *Panchayt* Samiti and for that purpose, a meeting was convened on 05.07.2017 in the Office of Block Development

and Panchayat Officer, Lakhan Majra to discuss no confidence motion against the petitioner-Chairman.

Aggrieved by notice dated 27.06.2017, the petitioner had approached this Court by way of filing **Civil Writ Petition No.15171 of 2017** which was allowed vide order dated 20.12.2017 and the impugned notice dated 27.06.2017 and resolution dated 05.07.2017 were set aside. Again on 19.01.2018, a notice for 'no confidence motion' was received by the petitioner. Thereafter, another similar notice dated 22.01.2018 was also sent. In response to said two notices dated 19.01.2018 and 22.01.2018, the petitioner sent a letter to respondent No.4 i.e the Additional Deputy Commissioner, Rohtak stating therein that previously also, 'no confidence motion' was moved against her and the writ petition filed by her was allowed in view of provisions of Section 62 of the Haryana Panchayati Raj Act, 1994 (here-in-after referred to as 'the Act, 1994) as 'No confidence motion' could not be moved within a period of one year.

Both the notices dated 19.01.2018 and 22.01.2018 (Annexures P-4 and P-5) have been challenged in the present petition by raising various grounds.

Learned counsel for the petitioner submits that subsequent 'No Confidence Motion' was moved within a period of one year from the date of issuance of earlier 'No Confidence Motion' and the same is not maintainable. Learned counsel also submits that as per proviso to Section 62 of the Act, 1994, no proposal or meeting can be convened for consideration of proposal against the Chairman or Vice-Chairman for a period of at least one year intervening between the last failure and the date on which the next further meeting is convened. At the end, learned counsel

for the petitioner submits that previously 'No Confidence Motion' meeting was called by the respondents on 05.07.2017 and thereafter, before the expiry of period of one year, the second 'No Confidence Motion' has been moved, which is not only illegal, unlawful but contrary to the provisions of Section 62 of the Act, 1994.

Mr. Rajender Kumar, Advocate for the Caveator-respondents has also been heard.

Facts regarding the election of the petitioner as member of the Panchayat Samiti and thereafter, as Chairman of Panchayat Samiti, are not disputed. It is also not disputed that 'No Confidence Motion' was moved against the petitioner which was challenged by way of filing **CWP No.15171 of 2017** and the following order was passed :-

“ In view of the fact that the meeting was called to consider no confidence motion against the petitioner, the Chairman of the Panchayat Samiti, in which she has not been served, therefore, the proceedings initiated on the basis of that requisition and the resolution passed on it by the members present in the said meeting are patently illegal as the petitioner is required to be served to be present in the meeting.

Consequently, the present petition is hereby allowed and the impugned notice dated 27.06.2017 (Annexure P-2) and resolution/result dated 05.07.2017 (Annexure P-3 colly) are hereby set aside.

It is needless to mention that the respondents may hold a fresh meeting in accordance with law, if they so desire.”

Subsequently, two notices dated 19.01.2018 (Annexure P-4) and 22.01.2018 (Annexure P-5) were issued, whereby, 'No Confidence Motion' has been moved against the petitioner, which are under challenge in

the present petition. Said notices have been challenged by the petitioner only on the ground that subsequent notices have been issued before expiry of period of one year, which are contrary to the provisions of Section 62 of the Act, 1994. Section 62 of the Act, 1994 is reproduced as under :-

“62. Term of Office of Chairman and Vice-

Chairman:- (1) *The term of office of the Chairman and Vice-Chairman of a Panchayat Samiti shall be five years:*

Provided that the Chairman or Vice-Chairman shall cease to be the Chairman or Vice-Chairman if by a resolution passed by not less than two-thirds of the total number of its elected members, the Panchayat Samiti decides at a meeting convened in the manner prescribed that he shall vacate his office;

Provided further that no such meeting shall be convened before the expiry of one year from the date on which the election of the Chairman as the case may be, was notified and, after the expiry of such period, whenever such a meeting is convened during his term of office and the proposal for vacating the office fails, no further meeting shall at any time thereafter be convened for considering a similar proposal against the Chairman or Vice-Chairman unless a period of at least one year intervenes between the last failure and the date on which such further meeting is convened.

(2) An outgoing Chairman or Vice-Chairman shall be eligible for fresh election if otherwise qualified.”

Initially, 'No Confidence Motion' was moved on 05.07.2017, which was challenged by way of filing **CWP No.15171 of 2017** and the said writ petition filed by the petitioner was allowed and the impugned notice was set aside.

While allowing the writ petition i.e **CWP No.15171 of 2017** on

20.12.2017, it was also mentioned that the respondents may hold a fresh meeting in accordance with law, if so desire.

On perusal of documents available on the file, it is apparent that only the notices were issued for convening a meeting for considering 'No Confidence Motion' against the petitioner but the meeting was not held.

As per provisions of Section 62 of the Act, 1994, the second meeting for the said purpose cannot be convened unless a period of at least one year intervenes between the last failure and the date on which said further meeting is convened. From the proviso to Section 62 of the Act, 1994, it can safely be said that 'No Confidence Motion' cannot be moved before the expiry of period of one year from the date of previous meeting, wherein, 'No Confidence Motion' was lost. Meaning thereby, 'No Confidence Motion' was not accepted as no meeting could be convened because of intervention of this Court. Thereafter, it can be said that there was no meeting and as such, there is no legal hitch in convening the next meeting. Had it been a case of loss of 'No Confidence Motion' in the meeting held earlier, no confidence motion would be there. Earlier 'No Confidence Motion' was not given effect to. The provision is applicable only in case, the first 'No Confidence Motion' against the Chairman is lost but in the present case, the situation is different. However, a liberty was given to the respondents to hold a fresh meeting in accordance with law. The period of one year is relevant, in case, there is a failure on one date and thereafter, the subsequent meeting is convened. Previously, 'No Confidence Motion' was called on 05.07.2017 but only the notice was issued and no meeting could take place and as such, the period of one year is not relevant.

In view of the facts and law position as discussed above, there

is no merit in the contentions raised by learned counsel for the petitioner
and the present petition, being devoid of any merit, is hereby dismissed.

05.02.2018
gurpreet

(DAYA CHAUDHARY)
JUDGE

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