

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

103

FAO-5016-2015 (O&M)
Date of Decision : 23.5.2018

Gurwinder Singh

....Appellant

vs.

Kulwaran Singh Gill and others

....Respondents

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present: Mr. H.S.Brar, Advocate for the appellant.

Mr. G.N.Malik, Advocate
for the respondents No. 1 and 5.

AJAY TEWARI, J. (Oral)

This appeal has been filed against the order dated 12.5.2015 of the Election Tribunal, Balachaur allowing an election petition filed by the respondent No.1.

The admitted facts are that the election of Sarpanch, Village Gram Panchayat Thandian, Tehsil Banga, District S.B.S Nagar was fixed on 3.7.2013. The respondent No.1 had also filed his nomination for the post of Panch from ward No.7. His nomination was rejected and he had filed election petition alleging that his nomination papers were wrongly rejected. The election petition having been allowed the appellant is before this Court.

Counsel for the appellant has argued that respondent No.1 was working as a teacher in the school which was covered 95% grand-in-aid and consequently, would be barred under Section 208 of the Punjab Panchayati Raj Act, 1994 (for short 'the Act') which is reproduced here in below :-

“208. Disqualification for Membership. (1) A person shall be disqualified for being chosen as and for being a member of a Panchayat if. –

(a) he is so disqualified by or under any law for the time being in force for the purposes of elections to the Legislature of the State.

Provided that no person shall be disqualified on the ground that he is less than twenty-five years of age, if he has attained the age of twenty-one years;

(b) has been found guilty of any corrupt practice in any election of a Gram Panchayat, Panchayat Samiti or Zila Parishad;

(c.) has been convicted of any offence involving moral turpitude or an offence implying of any defect of a Sarpanch or Panch of Gram Panchayat or member of a Panchayat Samiti or Zila Parishad, unless a period of five years has elapsed since his conviction, or (d) has been convicted of an election offence, or 106

(e) has been ordered to give security for good behavior under section 110 of the Code of Criminal Procedure, 1973 , or

(f) has been notified as disqualified for appointment as public servant except on medical grounds ; or

(g) is a whole-time salaried employee of any local authority, Statutory, Corporation or Board or a Co-operative Society, registered under the Punjab Co-operative Societies Act, 1961, or of the State Government or the Central Government ; or

(h) is registered as a habitual offenders (Control and Reforms) Act, 1952 or any other law for the time being in force; or

(i) has not paid the arrears of tax imposed by a Gram Panchayat, Panchayat Samiti or Zila Parishad, as the case may be; or

(j) is a tenant or lessee or contractor or share-holder in any property of the Gram Panchayat, Panchayat Samiti and Zila Parishad, or

(k) is in unauthorised occupation of property belonging to any local authority; or

(l) being a Sarpanch has cash in hand exceeding the amount, permitted under the rules made-under this Act;

(m) is member of either House of Parliament or of the Legislature of the Punjab State:

Provided that a member of either House of the Parliament or Legislature of Punjab State may be elected as a Sarpanch or member of

Gram Panchayat, Panchayat Samiti or Zila Parishad if, along with his nomination paper gives undertaking to the effect that he shall resign the membership of either House of Parliament or of the Legislature of the Punjab State, as the case may be, and so resigns before taking the oath or making affirmation for taking over the office of Sarpanch of a Gram Panchayat or a member of any Gram Panchayat, the Panchayat Samiti and Zila Parishad;

(n) has been convicted of an offence under the protection of the Civil Rights Act, 1955 within a period of five years immediately preceding the last date of the filing of the nomination papers; or

(o) being a Sarpanch or Panch does not attach certificate with his nomination papers to the effect that he has handed over to the Block Development and Panchayat Officer complete charge of the record of the Gram Panchayat and of the cash, if any, with him”

The Tribunal held that the respondent No.1 was not covered by the disqualifications described under Section 208 of the Act because he was neither the employee of a Local Authority, Statutory, Corporation or Board or a Cooperative Society, registered under the Punjab Co-operative Societies Act, 1961, or of the State Government or the Central Government. The argument that he was an employee of an aided school has rightly been rejected by the Tribunal as being not covered under Section 208 of the Act.

Consequently, the appeal stands dismissed.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

23.5.2018
anuradha

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned	-	Yes/No
Whether reportable	-	Yes/No