

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

CWP No.8858 of 2018

Date of Decision: 06.04.2018

Ashok Kumar

....Petitioner

Versus

State of Haryana and others

...Respondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Kabul Singh, Advocate
for the petitioner.

DAYA CHAUDHARY, J.

The present petition has been filed under Articles 226/227 of the Constitution of India for quashing of impugned order dated 16.03.2018 (Annexure P-12) passed by respondent No.1, whereby, the order of revocation of suspension of the petitioner on the post of *Sarpanch* has been set aside.

Briefly, the facts of the case, as made out in the present petition, are that the petitioner was elected as *Sarpanch* in the elections held in the month of January, 2016. A complaint was made against him by one Harjit Singh, which was marked to Deputy Chief Executive Officer, Zila Parishad, Jagadhri for conducting an enquiry into the context of complaint. After conducting an enquiry, the report was sent to District Development and Panchayat Officer, Yamuna Nagar, wherein, charges No.1 to 3 and 5 to 10 were not proved. However, it was recommended that the complaint be filed as the complainant failed to produce any evidence in support of the

allegations. Thereafter, again a complaint was made by one Capt. Kirpal Singh Sandhu and sought re-enquiry in the matter. Said complaint was re-enquired. A preliminary enquiry report was sent to the Deputy Commissioner, Yamuna Nagar on 22.03.2017. The petitioner was held guilty with regard to allegations No.4 and 6 to 8. On the basis of report in the enquiry, a Show Cause Notice was issued to the petitioner under Section 51 of the Haryana Panchayati Raj Act, 1994 (here-in-after referred to as 'the Act, 1994'), whereby, the petitioner was asked to file response within a period of ten days. Thereafter, another show cause notice dated 06.04.2017 was issued vide which the petitioner was directed to deposit a sum of Rs.3,36,400/-. Reply of Show Cause Notice was submitted by the petitioner but finding it to be unsatisfactory, he was placed under suspension. Apart from placing the petitioner under suspension, an FIR was also registered. Petitioner filed an appeal under Section 51(5) of the Act, 1994 and the impugned order was stayed. Ultimately, the said appeal was dismissed on 07.07.2017 by the Additional Chief Secretary to Government of Haryana, Development and Panchayats Department, Haryana, Chandigarh. However, a direction was issued to the Deputy Commissioner, Yamuna Nagar to complete the regular enquiry within a period of one month by passing a speaking order in accordance with law. Meanwhile, the petitioner also deposited the alleged amount on 11.04.2017 under protest. Petitioner was reinstated as a temporary measure during pendency of the regular enquiry. Subsequently, the order of re-instatement was revoked vide order dated 16.03.2018, which is subject matter of challenge in the present petition.

Learned counsel for the petitioner submits that initially the complaint filed against the petitioner was enquired into and he was not

found to be involved. Subsequently, on the same set of allegations, another complaint was made against him and thereafter, the order of enquiry was passed. Learned counsel also submits that the petitioner was placed under suspension and the amount was deposited under protest. A specific ground was raised that without affording any opportunity of hearing to the petitioner, the order placing him under suspension was passed. Said order was challenged in the appeal which was accepted vide order dated 14.12.2017 and the case was remanded to the BDPO with the direction to give personal hearing to the petitioner. Learned counsel also submits that the allegations against the petitioner, on the basis of which FIR was registered, were false and the investigation conducted was not taken into consideration. Subsequently, the order of suspension was revoked keeping in view the earlier enquiry. At the end, learned counsel for the petitioner submits that the lodging of FIR was misuse of process of law as the same was lodged without taking into consideration the allegations in the complaint and enquiry report earlier conducted. The order of revocation of suspension was contrary to the facts and findings recorded in the enquiry.

Heard the arguments of learned counsel for the petitioner and have also perused the impugned order as well as other documents available on the file.

A perusal of order dated 16.03.2018 shows that the case has been remanded to the Deputy Commissioner, Yamuna Nagar with a direction to get the regular enquiry completed within a period of maximum two months. It has also been directed that the matter be finally decided within a period of one month after hearing both the parties in accordance with the provisions of law. The reasons for order of revocation of

suspension have been mentioned in para No.8 of the order, which is reproduced as under :-

“8. I have considered the oral as well as written arguments advanced by both the parties and have gone through the record available on file in the light of the relevant provisions of the Haryana Panchayati Raj Act, 1994. The main grounds of challenge to the reinstatement is that charges against the respondent No.2 are of serious nature involving embezzlement of public funds punishable under section 409, 420 IPC in which rigorous imprisonment upto 10 years is prescribed and that the said charges come under the category of moral turpitude and therefore as such are covered within the ambit of Section 51(1)(a) of the Haryana Panchayati Raj Act, 1994. The counsels for the respondent no.2 argued that till the criminal matter is finally adjudicated, the answering respondent cannot be held guilty or termed as culprit. The proviso clause of Section 51(2) of the Haryana Panchayati Raj Act, 1994 provides 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 of the charge in pursuance of the suspension order except in criminal cases involving moral turpitude. Admittedly, respondent no.2 was suspended by the Deputy Commissioner vide his order dated 16.05.2017 and was under suspension till 30.01.2018. The arguments of learned counsel for respondent no.2 are not tenable since neither the period of one year is over nor such a limitation will apply in present case as criminal case is still pending. As regards his plea of not being found guilty as yet, the provision of suspension merely requires pendency of criminal proceedings involving moral turpitude. It has also been pointed out by the counsel for the appellant/complainant

that the charges under Section 409 and 420 IPC have already been framed against the respondent no.2. These offences come under the category of moral turpitude. The order of suspension has, so to say, become final as the CWP against the same has been dismissed by the Hon'ble High Court. There are no changes in circumstances after the passing of aforesaid order by the Hon'ble High Court. The plea regarding complainant being overseas citizen of India etc. is meaningless since even the charges in the criminal case have been framed. The occasion to revoke the suspension orders after dismissal of CWP by the Hon'ble High Court, could have arisen only if the Sarpanch was not found guilty in the enquiry proceedings and in the criminal proceedings. Since, there are no such circumstances, the revocation of suspension orders cannot be sustained.”

It is apparent from perusal of said finding that the order of re-instatement was passed without taking into consideration the seriousness of allegations of embezzlement of public funds and proviso to Section 51(1)(a) of the Act, 1994. The period of suspension of Panch or a Sarpanch shall not exceed one year from the date of handing over of the charge in pursuance of the order of suspension except in criminal cases involving moral turpitude. The petitioner was placed under suspension by the Deputy Commissioner vide order dated 16.05.2017 and remained suspended until 30.01.2018. It was mentioned that neither the period of one year was over nor the condition of period of limitation would apply in the case at hand as the criminal case is still pending. In FIR case, the charges under Sections 409 and 420 IPC have been framed against the petitioner. The order of suspension was affirmed by the order passed in the Civil Writ Petition,

which was dismissed by this Court. It has also been mentioned that the petitioner was not held guilty in criminal proceedings and accordingly, a direction was issued to conduct and complete the enquiry within a period of two months and thereafter decide the matter finally within a period of one month after hearing the parties concerned.

Accordingly, I do not find any illegality or irregularity in passing the impugned order dated 16.03.2018 as simply a direction has been issued to conclude the enquiry within a period of two months and to decide the matter finally. Finding no merit in the contentions raised by learned counsel for the petitioner, the present petition is hereby dismissed.

(DAYA CHAUDHARY)
JUDGE

06.04.2018
gurpreet

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No