

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

**CWP No. 3366 of 2021 (O&M)
Date of Decision:12.02.2021**

Darshan Singh

.....Petitioner

Versus

State of Punjab through Principal Secretary Social Justice, Empowerment
and Minorities, Punjab Civil Secretariat, Chandigarh.

.....Respondent

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present:- Mr. Naveen Bawa, Advocate for the petitioner.

TEJINDER SINGH DHINDSA J.(Oral)

This case has been taken up through Video Conferencing via Webex facility in the light of Pandemic Covid-19 situation and as per instructions.

Challenge in the instant petition is to the order dated 27.01.2021 (Annexure P-11) whereby petitioner has been removed from the post of Non Official Member of Punjab State Commission for Scheduled Castes.

Counsel submits that prior to passing of the impugned order, a show cause notice dated 10.06.2019 had been served. Action had been initiated pursuant to a complaint dated 15.03.2019 made by one Jagdish Kumar Jassal alleging that the petitioner had participated in certain political activities during the Model Code of Conduct for Lok Sabha elections 2019. It is further submitted that after submitting reply to the show cause notice, two enquiries were conducted. The first enquiry report dated 03.01.2020 (Annexure P-9) was not conclusive. Thereafter a second enquiry was conducted and a report dated 23.09.2020 had been submitted by the Deputy

Director, Head Office, SAS Nagar Mohali at Annexure P-10 and in which it has been opined that the petitioner has not violated the Model Code of Conduct. It is vehemently argued that since the enquiry reports do not indict the petitioner, there would be no basis to sustain the impugned order dated 27.01.2021 (Annexure P-11) removing the petitioner as a Non Official Member of the Punjab State Commission for Scheduled Castes.

Counsel for the petitioner has been heard at length and pleadings on record have been perused.

Section 4 of the Punjab State Commission for Scheduled Castes Act 2004 reads in the following terms:-

4. (1) The Chairperson and non-official members shall hold office for a period of three years:

Provided that where the Chairperson attains the age of sixty-five years before the expiry of the aforesaid term of three years, he shall vacate his office on the day, on which he attains the such age.

(2) The Chairperson and non-official members may, at any time, by writing and addressed to the Government, resign from the office of the Chairperson or of the office of the member, as the case may be.

(3) Notwithstanding anything contained in sub-section (1), the Government may, remove a person from the office of the Chairperson or member if, that person-

(a) becomes an undischarged insolvent;

(b) is convicted and sentenced to imprisonment for an offence which, in the opinion of the Government, involves moral turpitude;

(C) becomes of unsound mind and stands so declared by a competent court;

(d) refuses to act or becomes incapable of acting;

(e) is, without obtaining leave of absence from the Commission, absent from three consecutive meetings of the Commission ; and

(f) in the opinion of the Government, has so abused the position of the Chairperson or member as to render that person's continuance in office detrimental to the public interest or is otherwise unfit or unsuitable to continue as such Chairperson or member:

Provided that, no person shall be removed under this clause until that person has been given a reasonable opportunity of being heard in the matter.

(4) A vacancy caused under sub-section (2) or sub-section (3) or in any other manner, shall be filled in, as soon as may be, by a fresh appointment by the Government; and the person so appointed, shall hold office for the remainder of the term of office of the person in whose vacancy such person has been appointed, would have held office, if the vacancy had not occurred :

Provided that, if the vacancy of a member other than

that of the Chairperson occurs within six months preceding the date on which the term of office of the member expires, then such a vacancy shall not be filled in.

(5) The salary and allowances payable to, and the other terms and conditions of holding the office of the Chairperson and the members shall be such, as may be prescribed.”

Section 4 (3) lays down the disqualifications and on the basis of which a person may be removed from the Office of Chairperson or Member of the Punjab State Commission for Scheduled Castes. Section 4 (3) (f) lays down a ground for removal i.e. if in the opinion of the Government, the member in question has abused his position so as to render continuance in office detrimental to public interest or he is otherwise unfit or unsuitable to continue as the Chairperson or Member.

In the facts of the present case petitioner has been called upon so show cause on the following two grounds:-

- 1. According to the news published in the News Paper Ajit dated 13.03.2019 and Punjab Kesri dated 13.03.2019, as a member of the commission of Punjab State Scheduled Castes, participating in the political activities, you have violated the code of conduct.*
- 2. Despite the member of the Punjab State Scheduled Castes commission and being President of S.C. Wing of Doaba Zone of political party, you are participating in the political activities.”*

The petitioner having responded to the show cause notice two

detailed enquiries have been conducted.

The first enquiry report dated 03.01.2020 was furnished by Parminder Singh Gill, Deputy Director and who has clearly opined that as per the news item alongwith the photograph published in Rozana Ajit dated 13.03.2019 as also in the newspaper Punjab Kesri, petitioner had participated in the activities of a political party which was in violation of the Code of Conduct that had been imposed by the Election Commission on 10.03.2019.

The second enquiry report is 23.09.2020 at Annexure P-10 wherein even though in the concluding part it has been stated that the petitioner has not violated the Election Code of Conduct but such conclusion apparently is not happily worded as the immediate preceding observation by such enquiry officer are in the following terms:-

“On the other hand, if at the time of joining Shiromani Akal Dal by Shri Amarjit Sidhu from the Bahujan Samaj Party, the photo published on 14 March, 2019 in News Paper Jagbani and on 13 March, 2019 in Ajit News Paper, may be seen very carefully and then it is generally cleared from this photo that the role played by Shri Darshan Singh for joining the Shiromani Akal Dal with Shri Sukhbir Singh Badal and with the other more Akali leaders was very important and Shri Darshan Singh is saying that he had absolutely no business relations with any political activity, it makes doubtful to this point. In addition to it, the statement of Shri Darshan Singh that this memory picture belongs to the period prior to the period of imposing the election code. How his point

may be accepted because the photos along with the news are published in two news papers, are of the dates 13 March and 14 March, 2019 and the Election Commission had declared the Model Code of Conduct on 10 March, 2019 for the Lok Sabha Elections-2019. It is clear from it that Shri Darshan Singh, Member, Punjab State Scheduled Castes Commission had joined the political activities during the Lok Sabha Elections-2019”.

The news item as also photographs have been placed on record at Annexures P-4 and P-5. Counsel does not dispute the contents thereof. He does not even dispute the photographs. The petitioner herein is clearly seen in the presence of a political personality heading a political party at the stage of induction of another person into the fold of the political party concerned.

Suffice it to observe that presence of the petitioner at such an event cannot be termed as a co-incidence.

The decision taken by the competent authority is in the light of such uncontroverted news item/photographs after the imposition of the Model Code of Conduct. Due opportunity has been afforded to the petitioner prior to passing of the impugned order. Two enquiries have also been conducted and the findings returned therein conclude that the petitioner has participated in political activities even after imposition of the Model Code of Conduct. This in turn has led to the removal of petitioner as per Section 4 (3) (f) of the Punjab State Commission for Scheduled Castes Act, 2004.

There would be no occasion for this Court to take a different view in the matter.

Petition is dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

February 12, 2021

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No