

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

CWP-8964-2021 (O&M)

Date of decision: 04.05.2021

RANI DEVI

... Petitioner

Versus

STATE OF HARYANA AND ORS.

... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present : Mr. Vinod Bhardwaj, Advocate for the petitioner.

ANIL KSHETARPAL, J.

Through this writ petition, the petitioner prays for issuance of a writ in the nature of certiorari to quash the order dated 10.11.2020 by which her service as Gramin Safai Karamchari (Sweeper) with Gram Panchayat Dherdu has been dispensed.

The petitioner has pleaded that she was appointed as Sweeper in the village Dherdu, Tehsil Pundri, Block Dhand, District Kaithal. She further claims that she was working under the control of the Sarpanch of the Gram Panchayat. She did not cast her vote in favour of the elected Sarpanch in the elections held in the year 2016, therefore, he nourished grudge against the petitioner. In the year 2018, when she was ill, then her son used to help her. On 15.12.2018, when she alongwith her son went to the house of the Sarpanch, he accused her of not doing the work properly and misbehaved her while using derogative words towards her caste. She and her son were also given beatings. She moved an application before the

police after having been medically examined on 17.12.2018, however, with the intervention of the villagers and respectable persons, the matter was settled on 08.01.2019. Still the Sarpanch kept looking for an opportunity. The Block Development and Panchayat Officer issued a show cause notice to her on 04.11.2020 at the behest of the Gram Panchayat. She submitted reply on 11.11.2020, however, without holding any inquiry or granting opportunity of hearing, her relieving order was issued on 10.11.2020. She claims to have represented to the Deputy Commissioner, Kaithal, for redressal of her grievances, however, no action thereon has been taken. Hence, the petitioner has been forced to file the petition.

At the outset, it is important to note that the petitioner has not disclosed following facts:-

1. Neither the name/designation of her appointing authority has been disclosed nor the appointment letter containing the terms of appointment has not been produced .
2. The amount of salary has also not been disclosed. It is not clear whether the petitioner was appointed on contract basis or on regular basis against regular post.
3. The petitioner does not allege violation of statute.

On careful reading of the petition, it is apparent that the Block Development and Panchayat Officer while issuing notice dated 04.11.2020 has noticed that the Gram Panchayat before passing the resolution to recommend her removal, had given her three notices complaining that she

was not doing her work properly. However, she did not chose to submit any explanation. Even when the Block Development and Panchayat Officer gave her three days for filing reply, she did not chose to file any reply. As per her stand, she submitted the reply on 11.11.2020 whereas the order under challenge had already been passed on 10.11.2020 i.e. a day before the alleged reply was submitted. On careful reading of the order dated 10.11.2020, it is apparent that the Gram Panchayat had issued three notices on 06.07.2020, 21.07.2020 and 18.08.2020 to the petitioner. The Block Development and Panchayat Officer also issued two notices to the petitioner on 27.10.2020 as well as 04.11.2020. However, the petitioner did not file any reply. It is further apparent that as per instructions of the Government dated 03.11.2017, a five members committee is competent to appoint or remove a Sweeper. The Gram Panchayat passed a resolution recommending her removal on 31.08.2020. A meeting of the Committee was convened on 09.11.2020 and all the members of the Committee unanimously passed a resolution removing the petitioner from service.

Still further, the petitioner while submitting reply on 11.11.2020 did not dispute that she has been given three notices by the Gram Panchayat and two notices by the Block Development and Panchayat Officer. In the reply sent to the Block Development and Panchayat Officer, she has not taken a stand that the Sarpanch keeps a grudge. She has taken a stand that although she was not negligent, however, she will carry out her duties sincerely.

Heard learned counsel for the petitioner at length and with his

able assistance perused the paper book.

Learned counsel for the petitioner was requested to draw the attention of the Court to the terms of appointment. However, he has submitted that no appointment order was issued.. He has also failed to draw attention of the Court to any statute making provision for security of service. He has also failed to draw attention of the Court to any regular cadre or post in the service of Gram Panchayat.

As per 73rd amendment of the Constitution of India, a separate chapter i.e. part IX with the Panchayats was added. Article 243-A defines the Gram Sabha. The constitution of Gram Panchayats is provided in Article 243-B. As per Article 243-D, the Panchayat is an institution of self government constituted under Article 243-B for the rural areas.

In view of amendment in the Constitution (73rd amendment) Act, 1992, the legislature of Haryana enacted the Haryana Panchayati Raj Act, 1994, which came into force with effect from 22.04.2019. Section 193 provides that the services of a Government servants can be placed at the disposal of the Gram Panchayat, Panchayat Samiti and Zila Parishad. Section 197 provides that servants of the Gram Panchayat, Panchayat Samiti and Zila Parishad or a government servant placed at their disposal shall be deemed to be a public servant within the meaning Section 21 of the Indian Penal Code, 1860. Section 198 provides that the Government Employees (Conduct) Rules, 1966, as amended from time to time shall apply mutatis mutandis to the servants of Gram Panchayat, Panchayat Samiti and Zila Parishad in so far as these are not inconsistent with the provision of this Act

and the rules made thereunder.

Apart from the aforesaid provisions the attention of the Court has not been drawn to any other provision dealing with the employees of the Gram Panchayat. The Government Employees (Conduct) Rules, 1966, were comprehensively amended in February, 2009, by the Haryana Government and these rules do not provide for security of service to the employees of the Gram Panchayats. Even Sections 193, 197 and 198 of the Haryana Panchayati Raj Act, 1994, do not provide any protection/security of service to the employees against termination.

Keeping in view the aforesaid facts, the question which arises is whether the petitioner is entitled to maintain a writ of certiorari to quash the order passed on 10.11.2020. It may be significant to note that Section 14 of the Specific Relief Act, 1963, provides that the Court will not grant specific performance of a contract for non-performance of such contract where the compensation in money is adequate relief. Clause (b) provides that a contract which runs into such a minute and numerous details and which are so dependent on the personal qualifications or volitions of the parties or otherwise from its nature is such that the Court cannot enforce its material terms, then the decree of Specific Performance shall not be granted. Similarly there are various other provisions. The aforesaid provision has been interpreted by a Five Judge Bench of the Hon'ble Supreme Court in **Sirsi Municipality by its President Sirsi Vs. Cecelia Kom Francis Tellis, 1973 1 SCC 409**. The relevant discussion is in paras 15 to 18 and 24 which are extracted as under:-

15. The cases of dismissal of a servant fall under three broad heads. The first head relates to relationship of master and servant governed purely by contract of employment. Any breach of contract in such a case is enforced by a suit for wrongful dismissal and damages. Just as a contract of employment is not capable of specific performance similarly breach of contract of employment is not capable of founding a declaratory judgment of subsistence of employment. A declaration of unlawful termination and restoration to service in such a case of contract of employment would be indirectly an instance of specific performance of contract for personal services. Such a declaration is not permissible under the Law of Specific Relief Act.

16. The second type of cases of master and servant arises under Industrial Law. Under that branch of law a servant who is wrongfully dismissed may be reinstated. This is a special provision under Industrial Law. This relief is a departure from the reliefs available under the Indian Contract Act and the Specific Relief Act which do not provide for reinstatement of a servant.

17. The third category of cases of master and servant arises in regard to the servant in the employment of the State or of other public or local authorities or bodies created under statute.

18. Termination or dismissal of what is described as a pure contract of master and servant is not declared to be a nullity however wrongful or illegal it may be. The reason is that dismissal in breach of contract is remedied by damages. In the case of servant of the State or of local authorities or statutory bodies, courts have declared in appropriate cases the dismissal to be invalid if the dismissal is contrary to rules of natural justice or if the dismissal is in violation of the provisions of the statute. Apart from the intervention of statute there would not be a declaration of nullity in the case of termination or

dismissal of a servant of the State or of other local authorities or statutory bodies.

24. This Court in **S. R. Tewari v. District Board Agra (1964) 3 S.C.R. 55**, **Life Insurance Corporation of India v. Sunil Kumar Mukherjee (1964) 5 S.C.R. 528**, **Calcutta Dock Labour Board v. Jaffar Imam & Ors. (1965) 3 S.C.R. 453** and **Narain- das Barot v. Divisional Controller, S.T.C. (1966) 3 S.C.R. 40** dealt with power of statutory authorities and bodies to dismiss servants. These decisions establish that the dismissal of a servant by statutory including local authorities or bodies in breach of the provisions of the statutes or orders or schemes made under the statute which regulate the exercise of their power is invalid or ultra vires and the, principle of pure master and servant contractual relationship has no application to such cases.

Thereafter, there is three Judge Bench judgment in **Executive Committee of Vaish Degree College Shamli and others vs. Laxmi Narain and others, (1976) 2 SCC 58**. The relevant discussion which is important for the decision of this case is in para 18 which is extracted as under:-

On a consideration of the authorities mentioned above, it is, there fore, clear that a contract of personal service cannot ordinarily be specifically enforced and a Court normally would not give a declaration that the contract subsists and the employee, even after having been removed from service can be deemed to be in service against the will and consent of the employer. This rule, however, is subject to three well recognised exceptions-(i) where a public servant is sought to be removed from service in contravention of the provisions of Art. 311 of the Constitution of India; (ii) where a worker is sought to be reinstated on being dismissed under the Industrial Law, and (iii) where a statutory body acts in breach or violation of the

mandatory provisions of the statute.

From the reading of the aforesaid declaration of law, it is apparent that the order of directing reinstatement in service or declaration that the employee continues in service and consequently, the order of termination can be declared to be void and the employee can be ordered to be reinstated in service only in two eventualities noticed by the Hon'ble Supreme Court. With regard to employees of the public bodies, it has been held in para 18 of the judgment in **Sirsi Municipality (supra)** that the relief of reinstatement can be granted only if the order is in violation of the rules of natural justice or is in violation of the provision of the statute. In the present case, the petitioner does not allege violation of any statutory provision. It is not her case that her service was protected by some statute.

The petitioner no doubt alleges violation of the rules of natural justice, however, as is apparent, the petitioner was given show cause notices by the Gram Panchayat on 06.07.2020, 21.07.2020 and 18.08.2020 but she failed to submit any explanation. Thereafter, the Gram Panchayat passed a resolution on 31.08.2020. Subsequently, the Block Development and Panchayat Officer also issued two show cause notices to the petitioner on 27.10.2020 as well as 04.11.2020. However, the petitioner failed to furnish any explanation within the time prescribed. In these circumstances, the petitioner has been granted sufficient opportunity to explain her conduct. She is alleged to have submitted a reply on 11.11.2020 i.e. after the decision to remove her from service had already been taken.

Keeping in view the aforesaid facts, this Bench is of the

considered view that the writ petition filed by the petitioner is not maintainable. Therefore, the petitioner is relegated to the alternative remedy.

With these observations, the writ petition is dismissed.

04.05.2021

ashok

Whether speaking/reasoned:
Whether reportable:

(ANIL KSHETARPAL)
JUDGE

Yes / No
Yes / No