

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

CWP-8414-2020 (O&M)
Date of Decision: 24.09.2021

ARSHDEEP KAUR

...Petitioner

Versus

ELECTION TRIBUNAL-CUM-SUB-DIVISIONAL
MAGISTRATE, BARNALA AND OTHERS

...Respondents

(2)

FAO-2403-2020

JASPAL KAUR

...Appellant

Versus

ELECTION TRIBUNAL-CUM-DEPUTY COMMISSIONER,
BARNALA AND OTHERS

...Respondents

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MR. JUSTICE ARUN MONGA**

Present : Mr. J.S. Khiva, Advocate
for the petitioner in **CWP-8414-2020**.

Mr. Narinder S. Lucky, Advocate
for the appellant in **FAO-2403-2020**.

Mr. Vikas Mohan Gupta, Addl. A.G., Punjab.

Mr. Gaurav Chopra, Sr. Advocate
with Mr. Reshabh Bajaj, Advocate
for respondent No.2 in **FAO-2403-2020**.

(Presence marked through video conferencing)

ARUN MONGA, J.

Instant order/judgment is qua two cases i.e. a Civil Writ Petition bearing **CWP-8414-2020** and an appeal bearing **FAO-2403-2020** arising out of the same impugned order dated 19.02.2020, passed by the Election Tribunal-cum-Sub Divisional Magistrate, Barnala, whereby an elected lady

sarpanch has been declared as disqualified for making a false declaration in her nomination paper.

2. Statutory appeal under Section 71 of the State Election Commission Act, 1994 has been also preferred by the disqualified candidate (respondent No.3 in the writ petition) seeking to set aside the aforesaid order passed by the Tribunal.

3. Petitioner-Ms. Arshdeep Kaur in the writ petition, *inter alia*, seeks issuance of a writ in the nature of *mandamus* and/or any other order directing the official respondents to declare her as a winner/elected candidate, instead of respondent no.3-Ms. Jaspal Kaur, for the post of Sarpanch, Gram Panchayat Village Chauhanke Khurd, Tehsil and District Barnala. Claiming that vide order dated 19.02.2020, since Election tribunal has declared respondent No.3 as disqualified by rejecting her nomination papers, there is resultantly no other candidate, except the petitioner, to be considered for the post of Sarpanch. Hence, the writ petition seeking the aforesaid *mandamus*.

4. For facility of reference, here-in-after, the description of private parties and of the documents in both cases is as given in **CWP-8414-2020**.

5. Succinct facts first. Arshdeep Kaur-petitioner contested the election held on 30.12.2018 for Sarpanch, Gram Panchat of Village Chuhanke Khurd, Tehsil and District Barnala. Having secured 569 valid votes, she lost to Jaspal Kaur/respondent no.3 who secured 582 valid votes. In the petition filed before the Election Tribunal, election of Jaspal Kaur as Sarpanch as well as her nomination paper were challenged by defeated candidate, Ms. Arshdeep Kaur. Tribunal framed following issues:

“1. Whether respondent No.1-Jaspal Kaur constructed her residential house on illegal occupation of land measuring 1

kanal 5 marla bearing Khasra No.30//21/1/2(0-17), 30//22/2/2 (0-8) Khewat No.342/322 Khatoni No.593? OPP

2.Whether Respondent No.2 in connivance with Jaspal Kaur has not mentioned correct detail of Polled votes regarding result in Annexure IX and he committed fraud? OPP

3.Whether Mahinder Singh, husband of respondent No.1 was remained Sarpanch of Village during 2013-2018 and he embezzled Government Grants during his tenure ? OPP

4.Whether respondent No.1 mentioned wrong facts and filed wrong self declaration at the time of filling nomination paper due to which her nomination is required to be cancelled ? OPP

5. Relief”

Another Issue No.1-A was framed as under :-

“[1A]: Whether respondent No.1-Jaspal Kaur is a permanent and full time regular employee in Baba Gandha Singh Public School, Barnala ? OPP”

On appraisal of evidence, the Tribunal decided issues No. 1, 2 and 3 against the petitioner. However, issues No. 4 and 1-A were decided in her favor and consequently the election petition was allowed. The nomination filed by private respondent has been declared as cancelled vide impugned order (P/4) passed by tribunal. Hence the writ petition and the cross FAO.

6. We have heard the learned counsel for the petitioner and the private respondent as also the learned Additional Advocate General representing the official respondent and with their able assistance, have gone through the record.

7. Learned counsel for the petitioner would argue that once the Tribunal had allowed her election petition; and declared the nomination filed by private respondent as cancelled; and when there was no other candidate except the petitioner for the post of Sarpanch, it was incumbent upon the Tribunal to declare the petitioner as the winner/elected candidate for the

post of Sarpanch. He urged that a writ to this effect be issued by this Court. Learned Additional Advocate General representing the official respondent has defended the order of the Tribunal.

8. Learned counsel for the private respondent would urge that the Tribunal misread/misinterpreted the relevant statutory provisions and wrongly declared the nomination filed by private respondent as cancelled and, therefore, the impugned order is liable to be set aside.

9. Before proceeding further, it may be noted here that under Section 100 of the Punjab State Election Commission Act. 1994 (No. 19 of 1994), an appeal shall lie to the High Court on any question whether it pertains to law or fact from every order made by an Election Tribunal under Section 87 or Section 88 of the Act. Instead of appeal, the petitioner has filed the instant writ petition. Since her appeal would also lie to this Court, and given the time already gone past since the passing of the impugned tribunal order and keeping in view the fixed term of sarpanch, of which considerable period has already lapsed, in the interest of justice the writ petition for the redressal of her grievance against the impugned order is being entertained for disposal on merits, instead of relegating it with liberty to file an appeal.

10. Under section 79 of the Act (No. 19 of 1994), a petitioner may in addition to claiming a declaration that the election of all or any of the returned candidates is void, claim further that he himself or any other candidate be declared as duly elected. Vide section 87 of the Act *ibid*, at the conclusion of the trial of an election petition, the Tribunal may make an order for-

(a) dismissing the election petition;

or

(b) declaring the election of all or any of the returned candidates to be void;

or

(c) declaring the election of all or any of the returned candidates to be void and the petitioner or any other candidate to have been duly elected.

Under Section 89 (1)(a) of the Act, if the Tribunal is of the opinion that on the date of his election a returned candidate was not qualified, or was disqualified to be chosen to fill the seat under the Constitution of India or under this Act, the Tribunal shall declare the election of the returned candidate to be void.

11. In the case in hand, learned Tribunal decided issues No.4 and 1-A in petitioner's favor and against the private respondent. Vide operative part of impugned order dated 19.02.2020 (Annexure P/4), it allowed the election petition and declared the nomination filed by private respondent as cancelled. The learned Tribunal did not, in so many words, declare the election of the returned candidate (private respondent) to be void. But the obvious import of its order is to the same effect i.e. that the election of the private respondent was void.

12. Now let us examine the correctness and legality of the impugned order. Here the finding returned by the Tribunal under issue No. 1-A is that the private respondent was a permanent and full time regular employee of Baba Gandha Singh Public School, Barnala while under issue No. 4, it found that the private respondent disclosed this fact and filed wrong self declaration at the time of filing nomination paper due to which her nomination was required to be cancelled. On these findings, the learned Tribunal allowed the election petition and declared the nomination filed by private respondent as cancelled.

13. From the tone and tenor of the impugned order, it seems that the learned Tribunal proceeded on the premise firstly that the permanent and full time regular employment of the private respondent in Baba Gandha Singh Public School, Barnala was a disqualification for her being chosen as Sarpanch and secondly that the non-disclosure of the fact of this employment by her in the self declaration was fatal to her nomination.

14. In our opinion, the learned Tribunal acted wrongly and illegally on both counts while allowing the election petition and declaring the nomination filed by private respondent as cancelled.

15. Relevant part of Section 11 of the Punjab State Election Commission Act, 1994 (19 of 1994) shows that a person shall be disqualified for being chosen as, and or being a member of a Panchayat or a Municipality *inter alia* as below :-

(f) if holds an office of profit under a Panchayat or a Municipality;

or

(g) if he holds an office of profit under the Government of India or any State Government;

or

(j) if he, having held any office under the State Government or any Panchayat or any Municipality or any other State level authority or any Government company or corporate body owned or controlled by the State Government or Government of India, has been dismissed from service, unless a period of four years has elapsed from the date of his dismissal.

16. Vide Section 208(1)(g) of the Punjab Panchayati Raj Act, 1994 (9 of 1994), a person shall be disqualified for being chosen as and for being a member of a Panchayat if he 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.

17. The Tribunal itself noticed the statement of Sarbjeet Singh, Clerk office of the Additional Registrar-cum-General Manager, District Industries, Malerkotla in the impugned order Annexure P-4 stating that he had brought the record of registration of societies regarding registration of Baba Gandha Singh Education Trust; and that Exhibit P-1 was the certificate of its registration with the District Industries Centre, Malerkotla. The learned Tribunal also noted the statement of Manjeet Singh, Registry Clerk office of Sub Registrar, Barnala to the effect that a Trust Deed dated 04.02.1999 (Ex. P-2), registered in zaayadbahi No. 1, page No. 3152, in favour of Baba Gandha Singh Public School, Barnala had been executed by Mahant Gurbachan Singh Chela of Mahant Raghbir Singh, Dera Baba Gandha Singh, Barnala.

18. It is obvious from the above contents of the impugned order that the School in question is a private institution run by Baba Gandha Singh Education Trust, a registered Trust. Employment of private respondent in the said institution at the time of filing nomination did not attract any disqualification for her being chosen as and for being a member of a Panchayat either under the aforesaid provisions of the Punjab State Election Commission Act, 1994 (19 of 1994) or the Punjab Panchayati Raj Act, 1994 (9 of 1994).

19. It is not shown if the private respondent derived or could derive any undue benefit by not disclosing the fact of her employment in the said School run by a Trust. In our considered opinion, mere lapse/omission of

the private respondent to disclose the fact of her employment in the said private School run by a Trust was not of such a substantial character, as to be fatal to her nomination and/or election. Especially, as already noted above, when such an employment is not a disqualification.

20. It follows, therefore, that the learned Tribunal proceeded on the erroneous premise that as the private respondent, being employed in the private school run by a Trust, was not qualified or was disqualified to be chosen to fill the seat. As opined above, mere lapse/omission of the private respondent to disclose the fact of her employment in the private school was/is not of such a substantial character as to be fatal to her nomination/election. Learned Tribunal thus fell in error and acted wrongly and illegally by proceeding on the premise that the non-disclosure of the fact of her employment in Baba Gandha Singh Public School, Barnala in the self-declaration was fatal to her nomination.

21. Learned counsel for the petitioner relied on **Mairemab Prithviraj v. Pukhrem Sharatchandra Singh (2017) 2 SCC 487**, wherein the appellant had filed nomination for election to the State Legislative Assembly. In supporting affidavit, he declared that he held an MBA degree. Since 2008, he had been making the statement that he had an MBA degree. He was given an opportunity by the Returning Officer to produce the relevant document in support of his declaration, but he did not do so. His declaration about holding an MBA degree was found false. In these circumstances, it was held as under:

“19.....The false declaration relating to his educational qualification cannot be stated to be of not a substantial character. It is no more res-integra that every candidate has to disclose his educational qualifications to sub-serve the right to information of the voter. Having made a false declaration relating to his

educational qualifications, the appellant cannot be permitted to contend that the declaration is not of a substantial character. For the reasons stated supra, we uphold the findings recorded by the High Court that the false declaration relating to the educational qualification made by the appellant is substantial in nature. “

22. We are of the opinion that the judgment *ibid* relied upon by the learned counsel for the petitioner is not applicable in the facts and circumstances of the instant case, being totally different.

23. As an upshot of the above discussion, **CWP No. 8414/2020** filed by petitioner-Arshdeep Kaur is dismissed and **FAO No. 2403/2020** filed by the returned candidate Jaspal Kaur is allowed. The **impugned order dated 19.02.2020 (Annexure P-4)** passed by the Election Tribunal-cum-Sub Divisional Magistrate, Barnala is set aside. Needless to say, the appellant shall be allowed to complete the rest of her term as Sarpanch.

(RITU BAHRI)
JUDGE

(ARUN MONGA)
JUDGE

September 24, 2021
gurpreet

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No