

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

CWP-10764-2017 (O&M)

Date of Decision: 08.12.2022

Balbir Singh

....Petitioner

Versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Deepak Grover, Advocate
for Mr. Inderjit Sharma, Advocate
for the petitioner.

Mr. Saurabh Mohunta, D.A.G., Haryana.

Mr. Ashok Kaushik, Advocate for respondent No.6.

ARUN MONGA, J. (ORAL)

Petitioner before this Court is aggrieved by the discontinuation of his services as Part Time Sweeper by respondents No.4&5 i.e., BDPO & President, Panchayat Samiti respectively, pleading that he was appointed after following due process of law. Further prayer has been made for issuance of a writ in the nature of Certiorari for quashing of Resolution No.5 dated 12.04.2017 (Annexure P-8) passed by respondents No.4 and 5 vide which petitioner has been removed from service.

2. In somewhat similar circumstances, I have had an occasion even earlier also to adjudicate on similar controversy, in a writ petition bearing CWP No.15970 of 2021 titled *Sandeep Kumar vs. State of Haryana and others*, decided on 20.08.2021. Reference may also be had

to a judgment dated 20.04.2022 rendered in CWP No.4741 of 2022, titled ***Karan Singh vs. State of Haryana and others.*** For ready reference, relevant part of the order dated 20.04.2022 passed in CWP No.4741 of 2022 is extracted below:-

“On advance service, learned State counsel appears and strenuously opposes the writ petition and relies on order passed in CWP No.15970-2021 decided on 20.08.2021, which is reproduced herein below for ready reference:

“Petitioner herein, inter alia, seeks issuance of a writ in the nature of certiorari to quash the impugned Resolution dated 17.01.2021 (Annexure P-4) passed by respondent No.5 being Sarpanch of the Gram Panchayat. Yesterday, the matter was heard and following order was passed:

“On a Court query, how are instant proceedings maintainable against an order passed by Sarpanch of a Gram Panchayat directly before this Court under extra ordinary writ jurisdiction and why should petitioner be not relegated to seek his ordinary civil remedy by filing a civil suit or any other remedy, if so available otherwise, learned counsel for the petitioner seeks time to address arguments stating that writ remedy is the only option. At his request, adjourned to 20.08.2021.”

Apropos the aforesaid, learned State counsel has drawn my attention to Section 47 of the Haryana Panchayati Raj Act 1994, which reads as below:

47.Power to suspend action of Gram Panchayat.

(1) The District Development and Panchayat Officer or Sub Divisional Officer (Civil), as the case may be, by written order, suspend the execution of any resolution or order of the Gram Panchayat or prohibit the doing of any act which is about to be done or is being done under the provision of this Act. However, in special circumstances if in the opinion of the Director, the Gram Panchayat has committed gross negligence to perform its duties and functions, the Director may suo motu or on a complaint or report of the District Development and Panchayat Officer or Sub Divisional Officer (Civil), as the case may be, received in this behalf, and after giving a reasonable opportunity to explain to the Gram Panchayat

concerned, may take necessary action and pass such orders as he may deem fit.

(2) In case the resolution or order is suspended by the District Development and Panchayat Officer or Sub-Divisional Officer (Civil), as the case may be, he shall forthwith send a copy of the order passed by him in this behalf with a statement of reasons and with such explanation as the Gram Panchayat may offer, to the Director and the Director may thereupon confirm, modify or rescind the order.

(3) Any Gram Panchayat aggrieved by an order passed under this section, may within a period of thirty days from the date of communication of the order, prefer an appeal to the Government. Control and subordination.”

A perusal of the above leaves no manner of doubt that petitioner has got alternative efficacious remedy. In the premise, this Court, therefore, refrains to directly entertain the writ petitions under extra ordinary writ jurisdiction qua the order and/or resolution assailed stated in to be passed by the Gram panchayat.

Dismissed with liberty to the petitioner to seek his remedy, in accordance with law.

The argument of learned counsel for the petitioner that writ petition is maintainable against the Gram Panchayat being State is completely irrelevant as writ petition is not being dismissed on the ground that Gram Panchayat is not a State but on the ground of alternative remedy.”

I have heard learned counsel for the parties and gone through the case file. Disposed of in terms of above said order dated 20.08.2021 passed in CWP No.15970-2021, with liberty to the petitioner to seek alternative remedy.”

3. I see no reason as to why I should take a different view in the present case, as is being canvassed by the learned counsel for the petitioner and am not inclined to agree with his arguments.

4. Petition is accordingly disposed of with liberty to the petitioner to invoke alternative remedy under section 47 of The Haryana Panchayati Raj Act, 1994.

5. While granting liberty to seek alternative remedy, I am conscious that writ petition has been pending here since the year 2017 but given the factual dispute involved, it is not possible to adjudicate the controversy under extraordinary writ jurisdiction and it is thus imperative that the petitioner approaches the competent authority under the Act *ibid*, who is better equipped to look into the rival factual assertions.

6. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

December 08, 2022
ashish

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