

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

CWP-21084-2018 (O&M)

Date of decision: December 05, 2022

Khurshid

.....Petitioner

versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Deepak Kumar, Advocate for
Mr. R.S. Mamli, Advocate for the petitioner.

Mr. Saurabh Mohunta, DAG Haryana.

ARUN MONGA, J. (ORAL)

Petition herein, *inter alia*, is for issuance of a writ in the nature of Certiorari seeking to quash the impugned action of respondent No.6 the Gram Panchayat whereby petitioner was replaced by respondent No.8 to work as Pump Operator and further to issue a writ to allow the petitioner to work as Pump Operator in the village Dasora, Tehsil Jagadhri, District Yamuna Nagar.

2. Vide court order dated 23.08.2018, respondent No.6 was directed to allow the petitioner to work as Tube-well Operator.

3. In the return dated 14.02.2019 filed on behalf of respondent No.6- Gram Panchayat Dasora, it has *inter alia* been stated in Paras-4 to 6 of the preliminary submissions as below:-

“4. *That there was difficulty in management of the tubewell regarding maintenance etc as they use to delay the maintenance as the tubewell was under the management of the PHED. The Gram Panchayat Dassora had requested to the PHED to handover the management of the tubewell infavour of the Gram Panchayat. That as per the instruction of the Government the management of the tubewell was handed over to Panchayat under the Panchayati Raj Institution. The management had been handover with the*

*instruction to hire the tubewell operator who is having the qualification of ITI or in case the ITI qualified is not available then at least 10+2 qualification with science stream. The copy of the instruction dated 17.07.2009 is annexed herewith as **Annexure R-6/2**.*

5. *It is pertinent to mention here that the service of the petitioner had never been hired as a tubewell operator either by the PHED or by the Gram Panchayat. The petitioner is claiming only on the basis of resolution which was never been finalized in the meeting of the Gram Sabha and the same was obtained by the connivance with the earlier Sarpanch. Beside this the petitioner had attached the attendance register which is self preparatory and not having the authenticity or authority of the Gram Panchayat or any other officials. So, the petitioner had not come with clean hands before this Hon'ble Court and concealed the true and the material facts. So the above noted writ petition is liable to be dismissed on this ground alone.*

6. *That as per the instruction or rules of the PHED the tubewell operator should be ITI qualified or at least 10+2 from science stream qualified and he should be from the village itself. The father of the petitioner is about 80 years old and not able to manage the work of the tubewell operator."*

4. In somewhat similar circumstances, I have had an occasion even earlier also to adjudicate on the nature of controversy, as is involved herein 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 suomotu 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 abovesaid order dated 20.08.2021 passed in CWP No.15970-2021, with liberty to the petitioner to seek alternative remedy.”

5. 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 appearing on behalf of the petitioner, and am not inclined to agree with his arguments.

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

7. For enabling the petitioner to invoke the alternative remedy as above, the interim order dated 23.08.2018 shall continue to operate for two months from the uploading of this order on the Court's website after which its continuance or otherwise will be subject to the decision of the competent authority.

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

(ARUN MONGA)
JUDGE

December 05, 2022
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No