

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

(1) CWP No. 26153 of 2017 (O&M)
Date of Decision: 18.10.2022

Jagjeet Singh and anotherPetitioners

Versus

State of Punjab and othersRespondents

(2) CWP No. 28435 of 2017 (O&M)

Jagjeet SinghPetitioner

Versus

State of Punjab and othersRespondents

(3) CWP No. 29181 of 2017 (O&M)

Satpal Singh and anotherPetitioners

Versus

State of Punjab and othersRespondents

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Rajinder Sharma, Advocate,
for the petitioner(s) in CWP-26153 & 28435-2017.

Mr. Ashish Aggarwal, Advocate,
for the petitioner(s) in CWP-29181-2017.

Mr. Charanpreet Singh, AAG, Punjab.

MAHABIR SINGH SINDHU. J.

This order shall dispose off present three writ petitions as the common questions of facts and law are involved in these cases.

2. Facts are not in dispute.

3. CWP No. 26153 of 2017 has been filed by two petitioners, namely,
- (i) Jagjeet Singh, Gram Sewak {re-designated as Village Development Organiser (*for short* “VDO”) on 29.10.1998} and,
 - (ii) Smt. Kulwant Kaur, Sarpanch, Gram Panchayat, Block Bhaini Rajputan, Block Attari, District Amritsar. Both the petitioners are aggrieved against the impugned letter(s) dated 18.10.2017 issued by respondent No. 3 - District Development & Panchayat Officer, Amritsar (*for short* “DDPO”), whereby respondent No. 4 –Block Development and Panchayat Officer, Block Attari, District Amritsar (*for short* “BDPO”) was asked to recover an amount of Rs. 5,93,071/- from Sarpanch & responsible officer/official(s). Further challenge is to the impugned letter dated 27.10.2017, whereby respondent No. 4 directed the petitioners to deposit the aforesaid amount in favour of the Gram Panchayat, within seven days.
4. CWP No. 28435 of 2017 has been filed by Jagjeet Singh, Gram Sewak (VDO), Gram Panchayat Khasa, Attari, District Amritsar for quashing of the impugned letter 10.11.2017, whereby respondent No.4 directed him to deposit an amount of Rs.11,08,000/- in the account of Gram Panchayat, Khasa.
5. CWP No. 29181 of 2017 has been filed by:-
- (i) Satpal Singh, Panchayat Secretary &
 - (ii) Ranjit Singh, Sarpanch of Gram Panchayat, Baghrian Block Attari, District Amritsar, for quashing of the impugned letter dated 08.11.2017 issued by respondent No. 3, whereby respondent No. 4 was asked to recover an amount of Rs. 2,31,968/- from Sarpanch & responsible officer/official(s). Further challenge is to the impugned letter dated 28.11.2017, whereby respondent No. 4 directed the petitioners to deposit aforesaid amount in the account of Gram Panchayat, within fifteen days.

6. Learned counsel for the petitioners contented that due to political rivalry, respondent No.3 (DDPO) ordered an enquiry with regard to consumption and utilization of panchayat funds and in pursuance thereof, the Executive Engineer (Panchayati Raj, Public Works Division), Amritsar submitted his report dated 22.09.2017, without supplying the copy thereof to the petitioners. Still further, respondent No. 3 (DDPO) issued impugned letter dated 18.10.2017 & 27.10.2017; thereby asking the BDPO to recover the aforesaid amount from petitioners without affording any opportunity of hearing and again respondent No.4 (BDPO) directed the petitioners vide impugned letters dated 27.10.2017, 10.11.2017 & 28.11.2017 to deposit the amount in question in favour of Gram Panchayat without granting any hearing.

Also contended that the post of Gram Sewak (VDO) is governed under the Punjab Department of Rural Development and Panchayats (Class-III) Service Rules, 1988 (*for short 'the Rules of 1988'*) and disciplinary action, if any, against Gram Sewak (VDO) is to be taken as per the provision of Punjab Civil Services (Punishment & Appeal) Rules, 1970 (*for short 'the Rules of 1970'*); but the same has been given complete go by; hence the action of respondents is not legally sustainable. Again contended that for recovery of loss, if any, against a Sarpanch of Gram Panchayat, also procedure contemplated under Section 216 of the Panchayati Raj Act, 1994 (*for short "the Act"*), is to be followed; but no such course has been adopted in the present cases.

7. On the other hand, it is contended by learned State counsel that in pursuance of the impugned letter(s), petitioners have neither deposited any amount; nor submitted their reply; hence, there is no illegality at the end of the respondents.

8. Heard learned counsel for the parties and perused the paper-books.

9. There is no dispute that service conditions for the post of Gram Sewak (VDO) are governed by the rules of 1988 and rule 17 thereof as well as Appendix ‘C’ are extracted as under:-

“17. Discipline, Penalties and Appeals.-(1) *In the matter of discipline, punishment and appeals, the members of the Service shall be governed by the Punjab Civil Services (Punishment and Appeal) Rules, 1970, as amended from time to time.*

(2) The authority empowered to impose penalties as specified in rule 5 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970 and the appellate authority thereunder in respect of the members of the service shall be as specified in Appendix ‘C’ to these rules.

(3) The authority competent to hear an appeal against an order specified in rule 15 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970 other than an order imposing any of the penalties as mentioned in Appendix ‘C’ to these rules, shall be as specified in Appendix ‘D’ to these rules.”

*Appendix ‘C’
See Rule 17 (2)*

<i>Sr. No.</i>	<i>Designation</i>	<i>Nature of Penalty</i>	<i>Punishing Authority</i>	<i>Appellate Authority</i>
<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>	<i>5</i>
Directorate of Panchyats Headquarters staff other than Intelligence unit Staff				
<i>1 to 13</i>				
CADRE II (FIELD STAFF)				
<i>1 to 5</i>		Minor Penalties-	<i>Director</i>	<i>Government</i>
<i>6</i>	<i>Gram Sewaks</i>	<i>(i)....</i>		

7 to 12		(ii).... (iii) recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government by negligence or breach of orders; (iv)..... Major Penalties- (v) to (ix).....		
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A perusal of rule 17 read with Appendix 'C' (*ibid*), makes it apparently clear that competent authority for imposing the punishment against Gram Sewak (VDO) is specified as the “Director”. However, in the present case, impugned recovery notice(s) (which although amounts to minor penalty) have been issued by respondent No. 4, without any power or authority under the aforesaid rules; thus the action is beyond competency.

10. So far as the recovery of loss, if any, caused by a “member” of Panchayat is concerned, the same can be effected in terms of the provisions contained under Section 216 of the Act. Also relevant to mention here that as per Section 2(zf) of the Act, “member” means a member of Gram Panchayat and includes, Sarpanch as well. For reference Section 2 (zf) as well Section 216 are re-capitulated as under:-

“Section 2- In this Act, unless the context other requires,-

(zf) “member” means a member of a Gram Panchayat, a Panchayat Samiti, or Zila Parishad and includes Sarpanch of a Gram Panchayat and Chairman and Vice-Chairman of Panchayat Samiti or Zila Parishad;”

“216 Liability of members of Panchayats.

(1) Every member of a Panchayat shall be liable for the loss, waste or misapplication of any money or property belonging to the Panchayat, if such loss, waste or misapplication is a consequence of his neglect or misconduct while such member and shall also be liable to pay interest at the prescribed rate, from the date of loss, waste or misapplication, on the amount assessed under sub-section (2) or sub-section (3) as the case may be.

(2) The Block Development and Panchayat Officer concerned may, on the application of a Gram Panchayat or otherwise, and after giving the member concerned an opportunity to explain, assess, by order, in writing the amount due from him on account of such loss, waste or misapplication:

(3) Provided that.....

From bare reading of Section 216 of the Act, extracted hereinabove, it is clearly discernible that the BDPO may on an application of Gram Panchayat or otherwise after giving opportunity to explain the member concerned, assess by order in writing of the amount due from him on account of such loss. But in the present case, learned State counsel is not able to show that before issuing the impugned recovery letter(s), any opportunity of hearing was afforded to the petitioner(s)-Smt. Kulwant Kaur & Ranjit Singh, Sarpanch(es) (in CWP No. 26153 of 2017 & CWP No. 29181 of 2017, respectively) by the quarter concerned. Thus, the impugned action in this regard also is found to be violative of Section 216 (*ibid*).

11. In view of the above discussion, the irresistible conclusion would be as under:-

(i) As per rule 17, read with Appendix 'C' of Rules of 1988, it is only the Director who would be competent to take

action for recovery from pay of a Gram Sewak (VDO), if any;
but the BDPO is having no such power.

(ii) Before passing an order of recovery against a Sarpanch in terms of Sub-section (2) of Section 216, an opportunity of hearing is obligatory on the part of BDPO.

12. Consequently, it is held that impugned letters are running *de hors* the statutory provisions contained under the Rules of 1988 as well as Section 216 of the Act. Hence, all three writ petitions are allowed and impugned letters are quashed and set aside with costs of Rs. 10,000/- each, to be deposited with the Poor Patient Welfare Fund, PGIMER, Chandigarh. Liberty is granted to the State of Punjab for recovery of costs from the erring officer(s)/official(s) concerned.

Pending application(s), if any, shall stand disposed off.

October 18, 2022

SN / dk kamra

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking/reasoned : Yes

Whether Reportable: Yes