

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

CWP-21253-2023

Date of decision: 22.09.2023

Swaran Singh

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr.Anil Chawla, Advocate, for the petitioner.

RAJESH BHARDWAJ, J.

Prayer in the present petition is for quashing the impugned order dated 14.07.2023 (Annexure P-1) passed Financial Commissioner Government of Punjab, Department of Rural Development and Panchayat dismissing the appeal filed by under Section 20(6) of Punjab Panchayati Raj Act, 1994 (for short, 'the Act') and against the order dated 06.09.2022 (Annexure P-2) passed by Director of Rural Development and Panchayat, suspending the petitioner from the post of Sarpanch and against the order/report dated 18.07.2022 (Annexure P-3) recommending for suspending the petitioner from the post of Sarpanch being illegal and arbitrary and further prayer has been made to reinstate the petitioner as Sarpanch.

It has been contended by learned counsel for the petitioner that the petitioner was an elected Sarpanch of the village in the year 2018 and he discharged his duties honestly in accordance with law. He submits that Amar Singh son of Pakher Singh filed a complaint under Sections 420, 467, 468, 471, 120-B IPC alleging therein that he was a retired pensioner and his brother Harbhajan Singh, prepared a forged Will dated 15.04.1996 in connivance with Lakhbir Singh, Joga Singh and Patwari and that it was witnessed by Swaran

Singh (petitioner), Joginder Singh and Piara Singh, but the Will did not bear the thumb impression of his father. He submits that his father never executed any will in favour of Harbhajan Singh as his father used to reside with him and Parkash Singh. He submits that the learned trial Court convicted Swaran Singh i.e. the petitioner under Sections 420, 467, 468, 471, 120-B IPC for two years rigorous imprisonment alongwith fine of Rs.4,000/- vide order dated 26.05.2022 and his sentence was suspended by the learned Duty Judge, Tarn Taran vide order dated 08.06.2022 and appeal is pending adjudication. He has submitted that on the basis of conviction, the petitioner was suspended by respondent No.3 vide impugned order dated 06.09.2022. It is submitted that the petitioner was given no opportunity of hearing and thus, impugned suspension order is unsustainable in the eyes of law. He has submitted that aggrieved by the same, the petitioner filed an appeal under Section 20(6) of the Act before the Financial Commissioner. He submits that the Financial Commissioner without appreciating the facts and circumstances of the case and the law settled declined the same vide impugned order dated 14.07.2023. He has submitted that the DDPO vide letter dated 28.09.2020 only on the basis of allegation that the petitioner has been convicted, illegally recommended for the suspension of the petitioner from the post of Sarpanch. He has submitted that the DDPO without conducting any enquiry, sent a report to the office of Director, Rural Development and Panchayat, with a recommendation to suspend the petitioner under Section 20 of the Act. He submits that as per the statutory provisions under Section 20 of the Act read with Section 208(c) of the Act, the petitioner could have been removed in case the petitioner would have been found guilty for the offence involving moral turpitude. He submits that in the present case, the petitioner is convicted for the offence as mentioned above, which do not

constitute any offence involving moral turpitude. He submits that no show cause notice under Section 20 of the Act was issued to the petitioner and thus, the impugned order suffers from patent illegality. He further submits that the sentence of the petitioner has already been suspended by the Appellate Court and thus, the impugned action taken by the respondent-authorities in suspending the petitioner is totally illegal and thus, the impugned orders deserve to be set aside.

Heard.

After hearing learned counsel for the petitioner and perusing the record, it is apparent that the petitioner was an elected Sarpanch of the village in the year 2018. After assuming the office, the petitioner who was facing trial in a criminal complaint under Sections 420, 467, 468, 471, 120-B IPC, the same was decided by the trial Court and charges against the petitioner were found to have been proved and thus, he was convicted by the trial Court on 26.05.2022 and sentenced for two years rigorous imprisonment. The petitioner filed an appeal against his conviction order, wherein, the learned Appellate Court suspended his sentence and the appeal is pending adjudication. Respondent No.4-DDPO on finding the petitioner having been convicted and sentenced for the offence under Sections 420, 467, 468, 471, 120-B IPC, sent a recommendation to the Director, Rural Development and Panchayat-respondent No.3 for the suspension of the petitioner from the post of Sarpanch vide letter dated 18.07.2022. Resultantly, the petitioner was suspended by the Director, Rural Development and Panchayat vide impugned order dated 06.09.2022. The appeal filed by the petitioner before the Financial Commissioner was also dismissed vide impugned order dated 14.07.2023. The precise argument raised by learned counsel for the petitioner is that in view of the statutory provisions

of Section 20 read with Section 208(c) of the Act, the petitioner could not have been suspended as he was not found guilty for the offence involving moral turpitude. Besides this, he submits that no notice has been given to the petitioner before passing the impugned order. For the appreciation of the issue involved, a perusal of Sections 20 and 208(c) of the Act, is relevant, which is as under:-

“20. Suspension and removal of Panch and Sarpanch (1) The Director may, after such enquiry as he may deem fit, remove any Sarpanch or Panch: -

(a) on any of the grounds mentioned In section 208 or

(b) to (f)

(2) to (6)

208. Disqualification for Membership. (1) A person shall be disqualified for being chosen as and for being a member of a Panchayat if. –

(a) (b)

(c) has been convicted of any offence involving moral turpitude or an offence implying of any defect of a Sarpanch or Panch of Gram Panchayat or member of a Panchayat Samiti or Zila Parishad, unless a period of five years has elapsed since his conviction, or”

A perusal of the statutory provisions of the above Sections, would show that a person shall be disqualified not only when he is found convicted for the offence involving moral turpitude, but also for the offence implying of a defect of a Sarpanch as well. Admittedly, the petitioner had been convicted by the trial Court vide order dated 26.05.2022 and sentenced for two years. There is no denial to this fact that appeal is pending adjudication and sentence of the petitioner has been suspended. However, the conviction order is still in operation as the same has not been set aside by the Appellate Court. Thus, this Court finds no force in the arguments raised by counsel for the petitioner.

Another argument raised by counsel for the petitioner that no notice has been given to the petitioner before passing the impugned order. Respondent-authorities have initiated action under Section 20 of the Act after the decision by the trial Court which found the petitioner guilty for the offence under Sections 420, 467, 468, 471, 120-B IPC. The petitioner also filed an appeal against the order of suspension, which was rejected by the learned Financial Commissioner. Once, conviction of the petitioner is not under dispute, the show cause notice even if not served upon the petitioner, would not vitiate the action taken by the respondent-authorities, as the petitioner was an elected Sarpanch and was serving in a capacity of a public servant. His conviction automatically invited the action to be taken for his suspension as per the mandate of the Act. Thus, this Court does not find any merit in the present petition, the same is hereby dismissed.

(RAJESH BHARDWAJ)
JUDGE

22.09.2023
sharmila

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