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

LPA-292-2024 (O&M)

Date of Decision: 15.04.2024

Suman**....Appellant**

versus

State of Haryana and others**.... Respondents**

**CORAM : HON'BLE MR.JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Present: Mr. Mayank Aggarwal, Advocate
for Mr. Kunal Dawar, Advocate for the appellant.

Ms.Tanisha Peshawaria, DAG, Haryana.

SANJEEV PRAKASH SHARMA, J. (ORAL)

1. This is an appeal preferred by the appellant-petitioner who was elected as a Sarpanch. She challenged the order dated 15.12.2023 whereby she was removed from the post of Sarpanch declaring her to be disqualified for the post. She also challenged the order dated 18.04.2023 passed in appeal whereby her appeal against the order dated 15.12.2023 was rejected. The learned Single Judge vide his judgment dated 16.01.2024 dismissed the writ petition holding the petitioner ineligible for the post of Sarpanch as she had not produced any evidence in support of her mandatory qualification required for contesting the election.

2. Learned counsel for the appellant-petitioner has submitted that the petitioner had passed 8th Class from the State of Rajasthan. The requisite qualification for the post of Lady Sarpanch is as required under Section 175 of the Haryana Panchayati Raj Act, 1994 (hereinafter referred to as 'the

1994 Act' for short). He submits that the petitioner had, while contesting the election, submitted a 10th Class Certificate issued from Jharkhand State Open School Board, Ranchi in support of her qualification. A complaint was filed alleging that the qualification of 10th Class certificate of the petitioner was fake and forged. In an investigation conducted by the District Education Officer, Sirsa the certificate was found to be forged and action was initiated against her under Section 51 of the 1994 Act holding her disqualified in view of Section 175 (v) of the said Act. The petitioner was removed from the post of Sarpanch by the Deputy Commissioner vide order dated 18.04.2023. The petitioner preferred an appeal to the Commissioner, Hisar Division, Hisar and also produced certificate showing her as 8th Class pass which is the minimum educational qualification required for the post of Sarpanch. However, it is submitted that the Commissioner failed to take into consideration the 8th Class pass certificate and proceeded to reject the appeal on the premise that the 10th Class Certificate produced was not recognised.

3. Learned counsel submits that the Single Judge of this Court has put the onus on the petitioner to prove that the 8th Class Certificate produced by her was genuine and has rejected the writ petition solely on the ground that she failed to produce any evidence in support of the mandatory qualification. Learned counsel submits that the issue was not examined by the authorities and the passing of 8th Class has not been denied by the respondents. It is further submitted that the certificate of 10th Class obtained from Jharkhand State Open School Board, Ranchi could not have been made the basis to disqualify her from the post of Sarpanch. Merely because it was not recognised by Haryana Board of School Education, it cannot be said to be forged. Learned counsel has also placed on record the copy of the

website of the Board of School Education, Haryana which mentions of list of unrecognised school boards and examinations conducted by the said boards which have not been accepted for higher studies in IGNOU. Learned counsel submits that the same cannot be a ground to declare her to be disqualified for the post of Sarpanch. The counsel also relies on judgment reported in **AIR 2020, Punjab & Haryana 150, Vikram Singh vs. Ramesh Kumar and others** to submit that the Matriculation Certificate secured by elected candidate may not be recognised by the concerned State and the concerned Deputy Commissioner was required to verify that Matriculation Certificate issued was recognised by any other board/institution elsewhere.

4. Learned counsel for the State has, per contra, submits that the action taken against the petitioner-appellant was in conformity with the provisions of the 1994 Act. She submits that the qualification as required under Section 175 (v) of the said Act for holding the post of Sarpanch was that 'he/she has not passed Matriculation examination from any recognised institution/board' and thus the candidate who participates in the election for the post of Sarpanch has to have passed Matriculation examination from recognised board of State of Haryana or any equivalent examination from any recognised institution/board. Thus, the equivalence has to be by the State of Haryana for the purpose of the Section. It is further asserted that the petitioner-appellant had not submitted the certificate of having passed Middle/8th Class at the time of participating in the election and it is only at the stage of appeal that the certificate had been produced which could not have been looked into by the Appellate Authority and thus on the day when the election was conducted, she was ineligible and had rightly been so

declared in terms of Section 51 of the 1994 Act as she was disqualified to be a member of the Gram Panchayat at the time of her election. Section 51 is reproduced hereunder for ready reference:-

“51. Suspension and removal of a Sarpanch or Panch

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(3) The Director or the Deputy Commissioner concerned may, after such enquiry as he may deem fit and after giving an opportunity of being heard to a Sarpanch or a Panch, as the case may be, ask him to show cause against the action proposed to be taken against him, and by order remove him from his office -

(a) if after his election he is convicted by a criminal court for an offence involving moral turpitude and punishable with imprisonment for a period exceeding six months;

(b) if he was disqualified to be a member of the Gram Panchayat at the time of his election;

(c) if he incurs any of the disqualifications mentioned in section 175 after his election as member of the Gram Panchayat. xxxx”

5. We have heard learned counsel for the parties and have gone through the record with their able assistance.

6. Section 175 of the 1994 Act provides that a Sarpanch would not continue to hold the said office if he has not passed Matriculation examination or its equivalent examination from any recognised institution/board provided that in case of female candidates or candidates of Scheduled Castes the minimum qualification shall be Middle pass. Thus, there are two aspects which are to be seen relating to an elected person. Firstly, that he shall not be elected as a Sarpanch if he holds any of the disqualifications as mentioned in Section 175 of 1994 Act and secondly, if

he has already been elected, he shall not continue to hold such office if he has or acquires any of the disqualifications mentioned therein.

7. Section 51 of the 1994 Act empowers the Director or the Deputy Commissioner to issue show cause and conduct an enquiry against a Sarpanch or Panch and thereafter remove him from his office if after his election he is convicted by Criminal Court or if he was disqualified to be a member of the Gram Panchayat at the time of his election or if he incurs any of the disqualifications mentioned in Section 175 after his election. Thus Section 51(3)(b) is a situation before the person is elected. For conducting such an enquiry relating to an elected person, caution and care is required to be maintained. An enquiry in this regard has to be conducted thoroughly. However, we find that in the present case the preliminary investigation was conducted holding that the Matriculation Certificate submitted by the petitioner at the time of contesting the election issued from Jharkhand State Open School Board, Ranchi was not recognised by the Board of School Education, Haryana and hence the petitioner was disqualified for the post of Sarpanch of the village. It was on the basis that on the Government of India website the certificate of Jharkhand State Open School Board, Ranchi was a fake certificate where all the fake boards are shown. The Sub Divisional Officer conducted the investigation. The District Education Officer, Sirsa also conducted an investigation and submitted a letter dated 09.12.2022 that the 10th class certificate of petitioner Smt.Suman is said to be forged. Thereafter a show cause notice was sent for personal delivery to the petitioner who submitted her reply stating that she had passed Class 10th from Jharkhand State Open School Board, Ranchi and that the Board of School Education, Haryana had invalidated the said board in the year 2022.

According to her the candidature of students passing after the year 2022 may be invalid but before the year 2022 no such notification or letter was issued by the office of Board of School Education, Haryana. The Enquiry Officer thereafter proceeded to hold that the petitioner had been unable to prove that the allegations of the certificate being fake were baseless or false and on the basis of the report of the Enquiry Officer the certificate of educational qualification of the Sarpanch was found to be forged. The Deputy Commissioner accordingly passed the order disqualifying the petitioner from the post of Sarpanch. An appeal was preferred by the petitioner wherein she has placed before the Appellate Authority her 10th Class pass certificate to submit that the minimum qualification required in terms of Section 175 (v) of the 1994 Act was only 8th class which she had passed from Sanskar Public School, Suratgarh, Rajasthan. The certificate was not enquired into and the Appellate Authority proceeded to hold that any other certificate cannot be presented regarding the educational qualification nor its enquiry can be conducted. It was observed that the certificate had not been presented with the nomination form and no reference of certificate of 8th class was given by the appellant-petitioner and if the 8th class had been passed by her, she should have presented a copy of the Detailed Mark Sheet of 8th Class issued by the competent authority and accordingly the appeal was dismissed. The learned Single Judge has accepted the version of the State and has proceeded to hold that as the petitioner did not produce any copy of the Detailed Mark Sheet in support of her passing of 8th Class examination and the certificate was produced during the pendency of the appeal and not at the time of investigation, she was found to be disqualified. The learned Single Judge,

therefore, held her to be ineligible as she failed to produce any evidence in support of her middle qualification required for contesting the election.

8. In our opinion, the learned Single Judge has proceeded to take an approach which cannot be said to be in conformity with law. There is no requirement under the relevant Sections for the concerned Sarpanch to produce evidence in support of mandatory qualification for contesting election. Statement of the petitioner in reply to the show cause notice needs to be examined and considered along with the subsequent document produced by her. It is her statement that before 2022 she had passed 10th class from Jharkhand State Open School Board, Ranchi but the State of Haryana had derecognised the same in 2022. Her 8th class certificate is prior to the same which she has produced additionally to prove that she possesses the mandatory qualification which is only 8th class pass. The certificate of 8th class has neither been investigated nor enquired into. In such circumstances to declare her ineligible for the post of Sarpanch would be travesty of justice. She having placed before the concerned authority her 8th class pass certificate and Detailed Mark Sheet which are also part of the record before the Court, which we have taken into consideration, we find that she cannot be said to be disqualified on the day when she participated in the election and her election cannot be set aside on the said aspect.

9. We also find that the enquiry conducted by the respondent-State cannot be said to be in accordance with law. The word 'enquiry' as mentioned in Section 51(3) requires to be an enquiry of *quasi judicial* nature. The candidate who has already been elected must be given a fair and proper opportunity to cross examine the witnesses and the documents produced. Merely by conducting an in-house enquiry and relying on such

enquiry report where there is no participation of the elected Panch/Sarpanch, the concerned Officer/Commissioner could not have removed the Sarpanch based on such preliminary enquiry. The law is well settled by Hon'ble the Supreme Court in **Amalendu Ghosh vs. District Traffic Superintendent, North Eastern Railway, Katihar, 1960 SCC OnLine SC 65** where it has been held that a Government servant cannot be punished on findings of Preliminary Enquiry. The relevant para reads thus:-

“3. It is obvious that the enquiry into the accident which was held by the statutory committee was not directed against the appellant as such. It was an enquiry held as is always done in cases of accident to find out who was responsible for the accident. In this enquiry the appellant gave evidence and so did other witnesses. It does appear that the committee held that the statements made by the appellant in support of the Pointsman were not true and that along with the Pointsman the appellant was also negligent in the discharge of his duties. Incidentally it may be pointed out that the first part of the finding which is signed by Mr. Basu, the president of the Enquiry Committee, seems to hold only the Pointsman responsible for the accident, though in the latter part, the appellant and the Pointsman both are held responsible. There is some substance in the grievance made by the appellant that it is not clear from the record when the latter part of the finding was added to the report. But, apart from this aspect of the matter, there can be no doubt that it is as a result of this departmental enquiry into the accident that occasion arose to take action against the appellant; and it was obviously necessary that he should have been given a chance to show his innocence by holding an enquiry in respect of the charge that he was responsible for the accident. The findings reached by the Enquiry Committee as a result of the statutory enquiry cannot be said to be findings made against the appellant in a departmental enquiry made against him for

alleged neglect of duty or violation of the statutory rules. This position is fairly conceded before us by Mr. Ganapathi Iyer, and indeed it is patent on the record that, before issuing notice calling upon the appellant to show cause why the proposed penalty should not be imposed on him, no enquiry into the alleged misconduct had really been held. It may be that the authorities concerned took the view that the departmental enquiry into the accident was enough but that clearly is not right. At the departmental enquiry nobody is accused of negligence or dereliction of duty. It is a kind of investigation made by the department under statutory rules. Therefore, we are satisfied that the appellant is justified in challenging the validity of the impugned order on the ground that a proper enquiry has not been made and he has not been given a reasonable opportunity to meet the charge against him. The said order must, therefore, be set aside.”

10. In view of the aforesaid discussion, the present appeal is allowed and the judgment dated 16.01.2024 passed by the learned Single Judge is set aside. We have been told that no new elections have taken place as yet, therefore, respondents are directed to reinstate the appellant-petitioner on the post of Sarpanch. The necessary exercise in this regard be completed within a period of one month from the date of receipt of a certified copy of this order.

11. All the pending application(s), if any, also stand disposed of.

(SANJEEV PRAKASH SHARMA)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

15.04.2024
sunita

Whether Reasoned/Speaking : Yes/No
Whether Reportable : Yes/No