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

CWP-3880-2024

Date of decision : 20.02.2024

Smt. Ram Piari**.....Petitioner**

versus

State of Haryana and others**..... Respondents****CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ**

Present :- Mr. P.K. Ganga, Advocate
for the petitioner.

RAJESH BHARDWAJ, J.

This petition has been filed praying for setting aside the impugned order dated 03.10.2017 passed by respondent No.3 (Annexure P-1), order dated 08.06.2018 passed by respondent No.2 (Annexure P-3) and impugned order dated 06.12.2023 (copy communicated on 07.02.2024 passed by respondent No.1 (Annexure P-5) which are self-contradictory and against the provisions of the Haryana Panchayati Raj Act, 1994 and are not sustainable in the eyes of law. Further prayer has been made for staying the operation and effect of the impugned order dated 03.10.2017 (Annexure P-1) passed by respondent No.3, impugned order dated 08.06.2018 (Annexure P-3) passed by respondent No.2 and impugned order dated 06.12.2023 (Annexure P-5) (copy communicated on 07.02.2024) passed by respondent No.1 during the pendency of the present writ petition. Further prayer has been made for directing the

respondents not to harass and humiliate the petitioner as the petitioner is a senior citizen.

It is submitted by counsel for the petitioner that the petitioner was elected as Sarpanch of the Village Mohammadpur Salarpur, Tehsil and District Sirsa. She remained as Sarpanch of the Village from 06.06.2010 to 21.06.2015 and during her entire tenure, she carried out various development works in the Village. It is submitted that after completion of her tenure, the respondents-authorities without issuing any notice and without providing any opportunity of hearing to the petitioner marked the inquiry dated 15.02.2017. He has submitted that respondent No.3 passed the impugned order dated 30.10.2017 and recovery of Rs.3,83,374/- was illegally imposed upon the petitioner. He has submitted that aggrieved by the same, petitioner assailed it by filing the appeal which was illegally dismissed by the Deputy Commissioner, Sirsa vide order dated 08.06.2018. He submits that still aggrieved, petitioner filed a revision petition under Section 53(3) of the Haryana Panchayati Raj Act, 1994 (for short 'the Act') but respondent No.3 without appreciating the facts and circumstances of the case and the settled law, dismissed the revision petition vide impugned order dated 06.12.2023. He has submitted that as per the statutory provisions of Section 53(5) of the Act, after completion of 02 years of the relinquishing of his charge as Sarpanch, no recovery can be effected against the Panch, Sarpanch or any elected member. He has submitted that petitioner raised this point before the competent authorities that there being a statutory bar in invoking the provisions of Section 53 of the Act, the recovery imposed upon the petitioner is null and void however, the authorities failed to appreciate the same and thus,

the impugned orders are totally unsustainable in the eyes of law. He has submitted that FIR No.131 dated 27.05.2018 was falsely registered against the petitioner and she is already on anticipatory bail granted by this Court. He has submitted that the impugned orders being in violation of Section 53(5) of the Act are illegal and arbitrary and thus, being unsustainable in the eyes of law, deserve to be *set aside*.

Heard. On hearing counsel for the petitioner and perusing the record, it is apparent that petitioner was elected Sarpanch of the Village and she remained as Sarpanch of the Village from 06.06.2010 to 21.06.2015. On the basis of the enquiry report conducted vide letter dated 22.06.2017 of the Deputy Commissioner, Sirsa as well as letter dated 24.05.2015 of the Sub Divisional Officer (Civil) Sirsa, financial loss of Rs.3,83,374/- was found to have been caused to the Gram Panchayat by the petitioner/Ex-Sarpanch in which for the loss of Rs.2,63,877/- Sarpanch Ram Piyari was said to be guilty and for loss of Rs.1,19,797/- the then Sarpanch and concerned Technical Officials were said to be guilty. In view of the same, action was proposed to be taken against the petitioner in accordance with the provisions of Section 53(2) of the Act. Vide letter dated 06.07.2017, the petitioner was given notice to file her reply within seven days but she did not file any reply to the same. Thereafter, vide letter dated 21.07.2017, the petitioner was again issued notice for causing loss of Rs.3,83,374/- to the Gram Panchayat. Petitioner filed the reply to the same on 24.07.2017. However, finding the reply to be not satisfactory, petitioner was given notice on 07.09.2017 for providing her an opportunity of personal hearing on 12.09.2017 but she did not come present before the authority concerned i.e. Block

Development and Panchayat Officer, Sirsa. Hence, the Block Development and Panchayat Officer exercising his power under Section 53(2) of the Act directed the petitioner to deposit the financial loss caused to the Panchayat of Rs.3,83,374/- vide his order dated 09.10.2017. Being aggrieved, petitioner assailed the same by way of filing the appeal under Section 53(2) of the Act before the District Collector. The District Collector heard the petitioner and the respondents and after appreciating the record of the case in the light of the statutory provisions of the Act, it was observed that the notice was issued to the petitioner for causing financial loss of Rs.3,83,374/- on the basis of the inquiry report submitted. The petitioner was provided opportunity of filing her reply and the opportunity of personal hearing had also been given to the petitioner. However, finding no infirmity in the same, the appeal filed by the petitioner was dismissed by the District Collector vide his order dated 08.06.2018. This order was further assailed by the petitioner by way of filing the revision petition under Section 53(4) of the Act. Both the sides were heard by the Revisional Authority in accordance with the statutory provisions and the law settled however, finding no merits in the same, Revisional Authority dismissed the revision petition vide order dated 06.12.2023. The precise arguments raised by counsel for the petitioner is that the recovery notice was issued to the petitioner after expiry of 2 years from her relinquishing the charge of the post of Sarpanch and as such the same being against the law and in violation of the statutory bar, is unsustainable in the eyes of law. It is apparent from the record that the term of Sarpanch expired on 24.07.2015 whereas, first recovery notice was served upon the petitioner by the BDPO on 06.07.2017. On

appreciation of the same, in the light of the statutory provisions of Section 53 of the Act, it is apparent that the first recovery notice was issued to the petitioner on 06.07.2017 i.e. within 2 years of her ceasing to be the Sarpanch of the Village. The second notice was issued to the petitioner on 09.10.2017. Once the first notice issued to the petitioner is within the permissible limit of 02 years then second notice dated 09.10.2017 being beyond period of 2 years would not render the recovery proceedings initiated under Section 53 of the Act illegal. The respondent-authorities had invoked power under Section 53(3) of the Act within the limit.

For appreciation of the provisions, the statutory provisions of Section 53(5) of the Act is relevant which is as follows:-

“(5) Notwithstanding anything contained in this Section no person shall be called upon to explain why he should not be required to make good any loss, after the expiry of six years from the occurrence of the loss, waste or misapplication or after the expiry of two years from his ceasing to be a Sarpanch or Panch, as the case may be whichever is earlier.”

Analyzing the facts and circumstances of the case on the statutory parameters of the above-mentioned Section, it is evident that the proceedings under Section 53 of the Act cannot be invoked after the expiry of 6 years from the occurrence of the loss, waste or misapplication or after the expiry of two years from his ceasing to be Sarpanch. However, it is evident that the first notice was issued to the petitioner on 06.07.2017 whereas, tenure of the Sarpanch expired on 24.07.2015. Thus, recovery proceedings were initiated within two years of her ceasing to be the Sarpanch. The loss caused to the Gram Panchayat was substantiated

from the enquiry conducted by the Inquiry Officer. Learned counsel for the petitioner has failed to controvert the same. Thus, this Court does not find any infirmity in the impugned orders passed. Hence, the petition being devoid of any merits is hereby dismissed.

20.02.2024
m. sharma

(RAJESH BHARDWAJ)
JUDGE

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