

IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH.

144

CWP-6189-2024 (O&M).
Date of Decision: 15.03.2024.

BHOLA

... Petitioner(s)

Versus

STATE OF HARYANA AND OTHERS

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. Mohit Nehra, Advocate and
Mr. Vijay Dahiya, Advocate, for the petitioner.

Mr. Vivek Saini, Addl. A.G. Haryana,
for the respondents.

VINOD S. BHARDWAJ, J. (ORAL)

Prayer in the present writ petition is for seeking setting aside of the order dated 29.11.2023 vide which the services of the petitioner as a Safai Karamchari have been discontinued by the respondent Gram Panchayat.

2 Learned counsel for the petitioner contends that two posts of Safai Karamcharis were advertised by the Gram Panchayat, village Guhna, Tehsil and District Sonipat, in the month of January, 2012. The petitioner,

being an eligible candidate, applied for the same and was eventually selected. He contends that the work and conduct of the petitioner had been good throughout his service career till December 2021/22 with no complaint of any nature. However, there was a change in the Sarpanch after the elections held in the month of November/December 2022. He alleged that the newly elected Sarpanch had malicious intentions against the petitioner as he wanted to adjust his own person. In a bid to settle his score with the petitioner for not supporting him and to induct his own person, a conspiracy was hatched. On instructions of the Sarpanch, a fellow villager filed one complaint dated 06.02.2023 regarding the work of the petitioner which was immediately forwarded to the Block Development and Panchayat Officer, Sonipat (hereinafter referred to as BDPO). A status report was thereafter called from the Sarpanch and the Gram Sachiv whereupon they furnished a negative report.

3 A notice was thereafter issued to the petitioner on 20.03.2023 alleging non-cleaning of the streets in the village, which was duly replied by the petitioner on 05.04.2023. A second notice was immediately served on 06.04.2023 without even going through the earlier reply. The same was also replied on 14.04.2023. The matter was reported to the BDPO who without even taking note of the reply, issued a notice dated 26.05.2023 on the petitioner calling for his explanation as to why the work of cleaning of streets was not being undertaken. The same was also promptly replied vide communication 06.06.2023. Another notice was again served on 23.06.2023 to which response was filed on 30.06.2023.

4 Even though the petitioner was submitting his response to all
the notices issued but no communication was sent to the petitioner
informing as to whether the reply had even been considered or not and as to
why the same was not found satisfactory. Despite not assigning any reasons,
the BDPO constituted a Committee. A meeting of the said Committee was
held on 29.11.2023 which terminated the services of the petitioner without
considering the explanation or the circumstances and the reply filed by the
petitioner thereto.

5 Aggrieved thereof, the present writ petition has been filed.

6 Learned counsel for the petitioner has argued that the
respondents failed to take into consideration the following aspects:-

- (i) That the petitioner did not have any suspicious/bad antecedents
and that there was no complaint with respect to his work and
conduct for a period of more than 10 years prior to the
complaint that was submitted only after the new Sarpanch
assumed office;
- (ii) The newly elected Sarpanch had an axe to grind and that he
wanted to settle his score with the petitioner for not supporting
the Sarpanch during the elections to be held; and
- (iii) That no reasons have been furnished as to why the order of
termination of service was essential and necessary for a
solitary default.

7 No other argument has been raised.

8 I have heard learned counsel appearing for the petitioner and have also gone through the documents appended along with the present petition with his able assistance.

9 It is evident from a perusal of the present petition that a notice dated 20.03.2023 was initially sent to the petitioner pursuant to a complaint submitted by one Deepak son of Jaipal and corroborated by a spot inspection undertaken by the Panchayat and Gram Sachiv. In response thereto, the petitioner made his submission that he was present in village and regularly cleaned the streets as well and that he does not know as to why the said wrong report had been given. The said incriminating report was, however, also signed by certain co-villagers as well.

10 In response to the communication sent to the petitioner, the BDPO noted that the reply submitted by the petitioner was not found satisfactory and that even thereafter the cleaning work was not being undertaken by the petitioner. A response was also filed by the petitioner averring that he had been regularly cleaning the area assigned to him and that the residents of the area assigned to him have no complaint against him. The said reply was not found satisfactory as it was nothing more than a self-serving statement.

11 A second show cause notice thereafter was served upon the petitioner as to why his services be not dispensed with. Reply was undisputedly sent by the petitioner even to the said notice. The same was considered and it was decided to verify the same whereupon, the matter was sent to a Committee. The said Committee which comprised of BDPO, Social Education and Panchayat Officer, Gram Sachiv, Sarpanch, two

Scheduled Castes Panches and various other representatives/Panches of the Gram Panchayat granted due opportunity of hearing to the petitioner. The said Committee was unanimous that the petitioner had not been doing cleaning work in the village for the last 7-8 months, despite being asked to do so by the Sarpanch as well as the Secretary and the Panches. Hence, a decision to terminate his services was passed. The operative part of the order dated 29.11.2023 reads thus:-

“A complaint against Mr. Bhola (Safai Karmachari), son of Sh. Om Prakash, resident of village Guhna, has been given by Mr. Deepak son of Jaipal and other residents of village Guhna on 06/02/2023 in the Block Office, Sonipat, in which it was written that Mr. Bhola (Safai Karmachari) was not doing his cleaning work properly in Gram Panchayat Guhna. The above complaint is also signed by 5-7 Panch of the concerned Gram Panchayat. After receiving the said complaint, the original complaint was sent to the Sarpanch/Village Secretary Gram Panchayat Guhna through the Block Office's letter no. 1094-95 dated 27/02/2023 and instructions were given to inspect the site so that further action is taken regarding the complaint at the earliest.

In this regard, proposal no. 1 dated 19/04/2023 was sent to the block office by Gram Panchayat Guhna, in which it is written that the streets of the village were inspected and the said streets were found filled with filth. In this regard, first notice was issued on 20/03/2023 and the second notice was issued on 06/04/2023 to Mr. Bhola (Safai Karmachari) on the complaint received against him. The answers presented by the Safai Karamchhari were not found satisfactory. It was decided by the Gram Panchayat that it is not in the public interest for

Mr. Bhola Safai Karmachari, son of Mr. Om Prakash, resident of village Guhna, to continue on the post of Safai Karmachari. Gram Panchayat has requested for the removal of Mr. Bhola Safai Karmachari Gram Panchayat Guhana through its resolution no. 1 dated 19/04/2023.

After receiving the said proposal in the Block office, first notice was issued by this block office's letter no. 3395 dated 26/05/2023 and second notice was issued by the block office's letter no. 4118 dated 23/06/23, seeking answers to the allegations made therein. After getting the reply of the concerned Safai karamchari, the Sarpanch and all the Panches of the concerned Gram Panchayat were called for personal hearing. The sarpanch and panches of Gram Panchayat Guhna were called by the Block Office, Sonipat, after fixing the number of dates. On these fixed dates, Sarpanch Manju and Ritu Panch- Ward No. 10, Shamsher Panch- Ward No. 7, Manjeet Panch Ward No. 11, Sunil Panch- Ward No. 9, Kavita Panch Ward No. 14, Aarti Panch- Ward No. 8, Amit Panch- Ward No. 3. Anita Panch- Ward No.2, Jyoti Panch Ward No. 6, Sachin Ward No. 1, Preeti Panch Ward No. 13 Gram Panchayat Guhna was present and concerned Safai Karamchari Bhola son Om Prakash was also appeared. The statements of all the panches present and sarpanch were taken down. According to the above statements, everyone said that Mr. Bhola son Shri Om Prakash does not do the cleaning work properly in the village and he should be removed and a Safai Karamchari should be appointed to do the work.

After this, an opportunity of personal hearing was given to the Safai Karamchari before the committee constituted by the Government, through the Block Office order No. 8217-23 dated 21.11.2023, the Safai Karamchari was asked to appear

on 29.11.2023 at 3.00 pm. All the committee members, Sarpanch/Village Secretary Guhna and the committee members formed by the government were asked to be present at the same time.

On the date fixed i.e 28/11/2023, the following officers / employees/committee members/ Sarpanch/Panch/ Chowkidar etc. have appeared:-

All Sh./Mrs

- 1. Shri Uttam Dhalia, Block Development and Panchayat Officer, Sonipat.*
- 2. Smt. Poonam Devi Social Education & Panchayat Officer Sonipat (Additional Charge).*
- 3. Shri Pushpandra Gram Sachiv Gram Panchayat Guhana Block Sonipat.*
- 4. Mrs. Manju Sarpanch Gram Panchayat Guhna.*
- 5. Shri Manjit Scheduled Caste Panch Ward No. 11 Gram Panchayat Guhna.*
- 6. Kavita Scheduled Caste Panch Ward No. 14 Gram Panchayat Guhna.*
- 7. Shri Bhola Safai Karmachari Gram Panchayat Guhna.*
- 8. Shri Anil Safai Karamchhari Gram Panchayat Guhana.*
- 9. Shri Jai Bhagwan Chowkidar Gram Panchayat Guhna.*
- 10. Shri Amit Panch Ward No. 3 Gram Panchayat Guhna.*
- 11. Mrs. Aarti Panch Ward No. 8 Gram Panchayat Guhna.*
- 12. Shri Budh Singh Chowkidar Gram Panchayat Guhna.*
- 13. Shri Joginder Nambardar Gram Panchayat Guhna.*
- 14. Shri Prem Nambardar Gram Panchayat Guhna*

The statements of the abovementioned members Sarpanch Manju Gram Panchayat Guhna, Village Secretary Pushpendra, Panches of the Gram Panchayat and Bhola Safai Karmachari were taken and Bhola Safai Karmachari signed his statements but he refused to sign the attendance report. According to all the above mentioned facts, it has been found that Mr. Bhola Safai Karmachari is not doing the cleaning work in the village for the last 7-8 months and he is not doing the work even after being asked by the village Sarpanch/Village Secretary and Panchos, due to which it is not in the public interest and interest of the Gram Panchayat for Mr. Bhola's son Sh. Om Prakash to continue on the post of Safai Karamchari. A request has been made to remove Mr. Bhola Safai Karmachari from the post of Safai Karmachari.

The committee constituted by the government asked the concerned Safai Karamchari to present his side. On this Shri Bhola Safai Karmachari explained that the concern complaint has been made to settle the personal scores. The present Sarpanch and his husband Rakesh asked my wife to level false allegation on the former Sarpanch's husband Kaptan and the present Sarpanch and his husband abuse me. In this regard, the statements of Mr. Jaibhagwan Chowkidar, Budh Singh Chowkidar, Mr. Prem Singh Nambardar, Mr. Joginder Singh Nambardar, Mr. Anil Safai Karmachari who came along with the Gram Panchayat were also recorded. Mr. Bhola Safai Karmachari has not been able to present any concrete evidence in his favor other than the above statement.

The committee formed by the government after perusal of the documents available on the file, the statements given by Sarpanch Mrs. Manju Gram Panchayat Guhna, Panches, Chowkidar and Numberdars and Shri Anil Kumar Safai

Karmachari working in Gram Panchayat Guhna, has reached the conclusion that Shri Bhola Safai Karmachari has not done the cleaning work and has misused his position due to which he is proved guilty and the committee formed by the government and the members present of Gram Panchayat the Sarpanch/ Panches/ Chowkidar/ Numberdars etc, unanimausly decides to removes Mr. Bhola's son Mr. Omprakash from the post of Safai Karamchhari. This order will be implemented with immediate effect.”

12 It is, hence, not in dispute that the petitioner was issued a show cause notice and a report was duly sought for from the concerned Gram Panchayat. The matter was also examined in its entirety by the Committee comprising of impartial members who had no axe to grind, even as per the case of the petitioner. The said 14 members committee deliberated on the issue and was unanimously of the decision that the petitioner was not carrying out the work assigned to him and that the streets were not being kept clean and they were strewn with filth.

13 This Court cannot be said to be well equipped to examine as to whether the petitioner was carrying out his work diligently or not. A detailed procedure was followed by the respondents after associating the residents of the village, including the Panches and the Office Bearers. The authority had come to a conclusion that the cleaning work was not being undertaken by the petitioner. The members of the said Committee are in fact the elected and nominated members of the village, who are witnessing the execution of the work by the petitioner. The said multi-member independent

and impartial committee has recorded a finding against the petitioner. The said finding recorded and a decision taken cannot be dispelled by the High Court in its powers under judicial review, by a mere self-serving statement which is not corroborated by any other evidence.

14 In so far as the allegation that the Sarpanch had proceeded against the petitioner due to malice is concerned, the said contention is liable to be rejected outrightly for the reason that the petitioner has not even impleaded the Sarpanch or the Gram Sachiv by name. An allegation of malice cannot be taken into consideration unless the said party has been impleaded before this Court. Further, it is also apparent from the perusal of the letter written by the petitioner to the BDPO as well as to the Sarpanch that no such allegation of bias by the Sarpanch has been alleged therein. In his response dated 12.04.2023 which is the first response submitted by the petitioner, it is not his suggested case that the complaint had been submitted against him due to malice and/or due to instigation by the Sarpanch or the Gram Sachiv. Similarly, even in its second response dated 06.06.2023, there is no such suggestion of false and motivated complaint being submitted against him. Hence, the above contention has been devised as a first defence at the stage of filing of the present writ petition only. Even otherwise, the issue was considered by a 14 member Committee which also included other Safai Karamchari's amongst others. It cannot be presumed, merely on the asking of the petitioner, that the said multi-member Committee, which also comprised of officers, Panches, Chowkidars, Numberdars and employees of Panchayat, all were inimical to the petitioner. None of the members of the Committee are impleaded as a

party. There is hence, no reason to disbelieve the Committee and to set aside their decision. This Court has no such material on the basis whereof the factual finding can be ignored.

15 So far as the argument of the petitioner that he has clean antecedents is concerned, the said argument cannot be gone into at this juncture since the punishment has to be seen on the basis of the evidence/material available before the competent authority and the lapse for which a decision was being taken. Thus, merely because there was no prior bad antecedents cannot be sufficient to condone a material lapse. The petitioner being the Safai Karamchari was required to keep the streets of the village well broomed and cleaned, however, a finding was recorded by the concerned Committee that the said work was not being discharged by him. There is no satisfactory explanation put forth nor any evidence has been adduced by him to establish that he was carrying out his duties diligently and keeping the patches clean. The petitioner cannot be permitted to claim a benefit on a mere self-serving contention over and above the wisdom and decision of the entire Committee, which comprised of representatives from various segments and also included the members of the Gram Panchayat as well as the Gram Sabha and unanimously came to a conclusion that there was a default on the part of the petitioner.

16 In such like case, where the Gram Panchayat is engaging services of an individual at primary level, the Gram Panchayat is the best judge of his work. Being the immediate authority, it is best suited to determine whether services are being satisfactorily discharged and to take a decision as to whether an employee is fit to be retained in service or not.

Unless such decision taken by the competent authority, is found to be without any valid basis or is not compliant of principles of natural justice or suffers from arbitrariness and discrimination, the said decision of the competent authority should not ordinarily be substituted by the High Court under Article 226 of the Constitution of India. In exercise of its powers of judicial review, High Court examines a procedural or legal violation and existence of a valid and legally tenable cause. Once the said aspects are satisfied, High Court would not sit in appeal over decisions of the competent authority and substitute its own decision. Sufficiency of reasons is to be determined by the said authority and where a Safai Karamchari is not cleaning the street for 7-8 months, he neglects his solitary obligation and defeats the very purpose of his engagement. It would also cause huge inconvenience and discomfort to the residents due to pile of filth in streets apart from leading to unhygienic conditions and fear of spreading diseases.

17 Therefore, I find that the impugned order dated 29.11.2023 is well reasoned and has been passed after following the due process and after affording opportunity of hearing to the petitioner.

18 No reasons are made out for setting aside the said order of termination.

19 The present petition is accordingly dismissed in *limine*.

March 15, 2024.
raj arora

(VINOD S. BHARDWAJ
JUDGE

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