

2024:PHHC:146747



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-30417-2024 (O&M)
Date of decision :11.11.2024

MANJEET KAUR

...Petitioner

Versus

STATE OF HARYANA AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Karan Singh, Advocate
for the petitioner.

Ms. Upasana Dhawan, A.A.G., Haryana.

HARSH BUNGER, J. [ORAL]

Petitioner (Manjeet Kaur) has filed the instant writ petition under Articles 226/227 of the Constitution of India, seeking a writ in the nature of *certiorari* for quashing the impugned notices/letters dated 13.08.2024 (Annexure P-3) and 28.10.2024 (Annexure P-9).

A further prayer has been made for issuance of a writ in nature of *mandamus* to respondents No.2 to 4 to not allow respondents No.5 to 7 to participate in the meeting, proposed to be held on 12.11.2024, for consideration of 'No Confidence Motion' against the petitioner.

An alternate prayer has been made by the petitioner for issuance of a writ in the nature of *mandamus* to respondents No.2 to 4, to decide the issue of membership of respondent Nos.5 to 7 before consideration of 'No Confidence Motion' against the petitioner.

2. Briefly, the petitioner was elected as a Member of the Panchayat Samiti, Siwan, District Kaithal, along with 15 other members of the Panchayat Samiti on 30.11.2022. The petitioner was further elected as a Chairperson of the Panchayat Samiti, in the election held on 28.12.2022 and took oath as Chairperson on 23.01.2023.

2.1 It is alleged by the petitioner that respondent Nos.5 to 7 were not participating in the meetings of the Panchayat Samiti and they did not attend four consecutive meetings of the Panchayat Samiti, held on 27.07.2023, 08.09.2023, 08.02.2024 and 22.07.2024, therefore, in terms of the provisions of Section 63(1) of the Panchayati Raj Act, 1994 (in short 'the 1994 Act'), they had ceased to be the Members of the Panchayat Samiti. It is the case of the petitioner that she had forwarded the factum of absence of respondent Nos.5 to 7 from four consecutive meetings to the official respondents, however, no action has been taken thereon.

2.2 It transpires that a 'No Confidence Motion' has been moved against the petitioner by the Members of the Panchayat Samiti and in furtherance thereto, respondent No.3 issued a notice/letter dated 13.08.2024 (Annexure P-3) for convening a meeting of the Panchayat Samiti to consider the 'No Confidence Motion' against the petitioner.

2.3 According to the petitioner, there are total 16 members of the Panchayat Samiti, Siwan and for moving a 'No Confidence Motion', there has to be at least 11 members of the Samiti, however, since respondent Nos.5 to 7 have not attended the four consecutive meetings, as noticed above, therefore, they had ceased to be the Members of the Panchayat Samiti, accordingly, a 'No Confidence Motion', was not required to be considered as not having been passed by requisite number of members of Panchayat Samiti.

2.4 It transpires that on 29.08.2024, the meeting, which was convened for considering the 'No Confidence Motion' against the petitioner was not held and an objection was raised by the petitioner by submitting a representation dated 28.08.2024 (Annexure P-6); however it appears that now respondent No.3 has issued another notice dated 28.10.2024 (Annexure P-9) for convening a meeting to consider the 'No Confidence Motion' against the petitioner and the meeting is scheduled for 12.11.2024 at 2:30 p.m. in the Meeting Hall of Panchayat Samiti, Siwan.

2.5 In the afore-mentioned circumstances, the petitioner has filed the present writ petition before this Court, for the relief/s, as noticed herein-above.

3. The petitioner has primarily raised three fold arguments namely ;

(a) that respondents No.5 to 7 had ceased to be the Members of the Panchayat Samiti on account of their absence from four consecutive meetings, as noticed above;

(b) that 'No Confidence Motion' was arbitrarily moved against the petitioner as the minimum required members (11 members, out of total 16 members) have not moved the 'No Confidence Motion' on the plea that respondents No.5 to 7 have ceased to be the members of the Panchayat Samiti;

(c) that since the earlier meeting convened by respondent No.3 for 29.08.2024 for considering the motion of No Confidence against the petitioner, was never held on 29.08.2024; therefore, in terms of the proviso to Section 62 of the 1994 Act, the second meeting, which is now scheduled vide notice/letter dated 28.10.2024 (Annexure P-9) for 12.11.2024, cannot be held.

4. I have heard learned counsel for the petitioner and perused the paper-book with his able assistance.

5. As regards the first contention of the petitioner that respondents No.5 to 7 have ceased to be the Members of the Panchayat Samiti on account of their absence from four consecutive meetings of the Panchayat Samiti is concerned, it is observed that the consequence of absence from four consecutive meetings of the Panchayat Samiti is provided under Section 63 of the 1994 Act, which reads as under :-

“63(1) Any member of a Panchayat Samiti who during his term of office absents himself from four consecutive meetings of the Panchayat Samiti without the leave of the said Panchayat Samiti, shall cease to be a member and his office shall be deemed to have become vacant and thereupon the Panchayat Samiti shall, as soon as may be, inform him, Zila Parishad, State Election Commission and Government accordingly.

(2) Any dispute as to whether a vacancy has or has not occurred under this section shall be referred to for decision to the competent authority, whose decision shall be final:

Provided that such reference shall not be entertained if it is made after the expiry of fifteen days from the date on which the Panchayat Samiti informs under sub-section (1).

(3) Whenever leave is granted under sub-section (1) to a member who is Vice-Chairman, another member shall be elected to perform all the duties and exercise all the powers of a Vice-Chairman during the period for which such leave is granted on the same terms and conditions.”

A bare perusal of the above extracted provisions would indicate that indeed, a Member of the Panchayat Samiti, who absents himself/herself from four consecutive meetings of the Panchayat Samiti without the leave of the said Panchayat Samiti, shall cease to be a member

and his office shall be deemed to have become vacant, however, in terms of sub Section 2 of Section 63, any dispute as to whether a vacancy has or has not occurred under this section, shall be referred to for decision to the competent authority, whose decision shall be final. Apparently, no such decision has been rendered in terms of sub Section 2 of Section 63 of the 1994 Act; therefore, it cannot be taken that respondents No.5 to 7 have ceased to be the Members of the Panchayat Samiti.

5.1 Consequently, the second contention of the petitioner that the 'No Confidence Motion' was not moved by the requisite number of the Members of the Panchayat Samiti, is also without merit, in view of the afore-said finding that in the absence of any decision taken by the competent authority as to whether a vacancy has arisen, in terms of sub Section 2 of Section 63 of the 1994 Act, the respondents No.5 to 7 continue to be the Members of Panchayat Samiti. Accordingly, it cannot be said that the 'No Confidence Motion' was not moved by requisite number of members of Panchayat Samiti.

5.2 As regards the third contention of the petitioner that once the earlier meeting convened for 29.08.2024 vide letter/notice dated 13.08.2024 (Annexure P-3) was not held, therefore, the second meeting convened vide notice dated 28.10.2024 (Annexure P-9) for 12.11.2024 cannot be held in terms of the first proviso to Section 62 of the 1994 Act; suffice it to say that a somewhat similar issue relating to 'No Confidence Motion' against the President of the Zila Parishad, was considered and decided by a Division Bench of this Court in case *Parmila Yadav vs State of Haryana and others, 2013(1) RCR (Civil) 148*, wherein it was held as under :-

“14. Undisputedly, in the present case, for the first time, 12 elected members of the Zila Parishad made

a requisition by way of affidavit to the Deputy Commissioner (Prescribed Authority) on 16.9.2011 expressing no confidence in the appellant and for convening the meeting of the Zila Parishad for considering no-confidence motion against him. On that requisition, the Deputy Commissioner issued the notice on 14.10.2011 for convening such meeting on 21.10.2011. Apparently, the said notice was short of the clear seven days notice period. The appellant challenged the said notice by filing CWP No.19725 of 2011. Before the meeting could be held, the stay order was passed by this Court and the meeting could not be held due to the stay order. Ultimately, during the pendency of the writ petition, the said notice was withdrawn and writ petition was dismissed. It is a fact that no meeting of the Zila Parishad was held and the requisition of no-confidence motion submitted by 12 elected members was neither put to the house nor it was considered. The contention of the learned counsel for the appellant that in between the meeting, which was to be held on 21.10.2011, and the meeting convened on 30.1.2012, there was no gap of one year, therefore, the second meeting on 30.1.2012 could not have been held and the resolution of no-confidence motion passed in the said meeting is bad in law, cannot be accepted. Proviso to sub-section (2) of Section 123 provides for two situations where no meeting for consideration of no confidence motion can be convened: (a) that no such meeting shall be convened before the expiry of one year from the date on which the election of the President or the Vice-President, as the case may be, was notified; and (b) after the expiry of one year from the date of notification of the election of President or the Vice-President, when such meeting is convened and the no-confidence motion for vacating the office fails, then no further meeting for considering the similar proposal of

no-confidence motion against the President or the Vice-President unless a period of at least one year intervenes between the last failure and the date on which such further meeting is convened. In our opinion, second part of the proviso, which deals with the second situation, does not apply in the present case, as in the present case, the first meeting which was to be held on 21.10.2011, was never held and the proposal of no-confidence motion was never put, considered or decided. In fact, the said meeting was never convened and the notice issued for convening the said meeting was withdrawn on the same requisition. After giving the clear seven days notice, the fresh meeting was called on 30.1.2012 in which no-confidence motion was carried out against the appellant by two-third majority of the elected members of the Zila Parishad. Thus, there is no substance in the second submission made by the learned counsel for the appellant.”

5.3 It is noticeable that the provisions contained in Section 62 and Section 123 of the 1994 Act; are similar in nature. Section 62 and Section 123 of the 1994 Act, are reproduced below :-

Section 62 of Haryana Panchayati Raj Act, 1994	Section 123 of Haryana Panchayati Raj Act, 1994
62. Term of office of Chairman and Vice-Chairman. - (1) The term of office of the Chairman and Vice-Chairman of a <u>Panchayat Samiti</u> shall be five years : Provided that the Chairman or Vice-Chairman shall cease to be the Chairman or Vice-Chairman if by a resolution passed by not less than two-thirds of the total number of its elected members, the Panchayat Samiti decides at a meeting convened in the manner prescribed that he shall vacate his office :	123. Term of the office of President and Vice-President and Motion of No- confidence against President and Vice-President. - (1) The term of the office of President and Vice-President of a <u>Zila Parishad</u> shall be five years unless sooner removed. (2) If by a resolution passed against the President or Vice-President, as the case may be, two-thirds of the total number of its elected members of the Zila Parishad decide at a meeting convened by the prescribed authority in the manner prescribed, that the President or Vice-President, as the case may be, shall vacate the office and in such case the Zila Parishad shall elect the new President or Vice-President as the case may be, as specified in section 121 of this Act :

<i>Provided further that no such meeting shall be convened before the expiry of one year from the date on which the election of the Chairman or Vice-Chairman as the case may be, was notified and, after the expiry of such period, whenever such a meeting is convened during his term of office and the proposal for vacating the office fails, no further meeting shall at any time thereafter be convened for considering a similar proposal against the Chairman or Vice-Chairman unless a period of at least one year intervenes between the last failure and the date on which such further meeting is convened.</i> <i>(2) An outgoing Chairman or Vice-Chairman shall be eligible for fresh election if otherwise qualified.</i>	<i>Provided that no such meeting shall be convened before the expiry of one year from the date on which the election of the President or the Vice- President, as the case may be, was notified, and after the expiry of such period, whenever such a meeting is convened during his term of office and the proposal for vacating the office fails, no further meeting shall at any time thereafter be convened for considering a similar proposal against the President or Vice-President unless a period of at least one year intervenes between the last failure and the date on which such further meeting is convened.</i>
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6. In the present case as well, it is not disputed by learned counsel for the petitioner that the earlier convened meeting vide notice (Annexure P-3) was never held, therefore, the ‘No Confidence Motion’ against the petitioner was neither put to the house nor it was considered or decided.

6.1 Learned counsel for the petitioner has failed to indicate any provision under the 1994 Act or the Rules made thereunder that in case, a meeting is convened for considering the ‘No Confidence Motion’ then the same has to be necessarily held on the date fixed.

6.2 Since the earlier convened meeting for 29.08.2024 was never held and there was no consideration or decision on ‘No Confidence Motion, therefore, the petitioner cannot agitate her claim on the basis of the first proviso to Section 62(1) of the 1994 Act and neither, it can be held that the meeting convened vide letter/notice dated 28.10.2024 (Annexure P-9) for

12.11.2024 for considering the motion of 'no confidence' against the petitioner, is illegal.

6.3 In view of the above discussion, I do not find any merit in the present writ petition and the same is, accordingly, dismissed.

7. Pending application/s, if any, shall also stand closed.

November 11, 2024
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(HARSH BUNGER)
JUDGE

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