

**122+265 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP-28543-2023 (O&M)
Decided on: 15.02.2024**

Sahnaz

..... Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr.Sanjeev Sharma, Sr. Advocate with
Mr. Vikram Sharda, Advocate and
Mr. Mazlish Khan, Advocate, for the petitioner.
Mr. Rajesh Gaur, Additional Advocate General, Haryana.
Mr. Salim Ahmed, for the applicant in
CM-2706-CWP-2024.

Rajesh Bhardwaj, J.

CM-2706-CWP-2024

Prayer in the present petition is for impleading the complainant
as respondent No.6 in the present petition.

Notice in the application.

Learned Sr. Counsel for the petitioner pleads no objection, if
the present application is allowed.

After hearing learned counsel for the parties, the application is
allowed. Complainant, namely, Anjum is ordered to be impleaded as
respondent No.6 in the present petition.

Amended memo of parties annexed with the application is
taken on record.

Main case

Prayer in the present petition is for quashing of the impugned
orders dated 24.07.2023 (Annexure P-9) & 15.11.2023 (Annexure P-12)
vide which the appeal filed by the petitioner has been dismissed by

respondent No.2 without appreciating the averments and facts of the case in an illegal and arbitrary manner.

Brief facts of the case are that the petitioner before this Court was Sarpanch of village Gram Panchayat Khor, District Nuh, who was elected on 02.11.2022. After assuming the office, a complaint was filed by respondent No.6 (Anjum) on the allegations that the petitioner submitted a forged certificate in support of her qualification for contesting the election of Sarpanch, thus, she deserves to be removed from the post of Sarpanch. In pursuance to the complaint filed, an enquiry was conducted and on finding the educational certificate produced by petitioner in support of her eligibility to be forged, she was removed from the post of Sarpanch by the Deputy Commissioner under Section 51(3)(b) of the Haryana Pachayati Raj Act, 1994 vide impugned order dated 24.07.2023 (Annexure P-9). Aggrieved by the same, the petitioner filed an appeal before the Commissioner. However, finding no merit in the appeal, learned Commissioner dismissed the same vide his impugned order dated 15.11.2023 (Annexure P-12), thus, upheld the order dated 24.07.2023 passed by the Deputy Commissioner. Hence, the petitioner has approached this Court by way of filing the present petition.

Learned Senior Counsel assisted by Mr. Vikram Sharda, Advocate and Mr. Mazlish Khan, Advocate has vehemently submitted that the petitioner was elected as Sarpanch of the village after following due process of law and she was performing her duties as Sarpanch with utmost honesty and dedication. He has submitted that complaint dated 07.11.2022 was filed by respondent No.6 with ulterior motive as his wife lost the election to the petitioner and thus, in order to falsely implicate the petitioner, he filed the complaint. It is submitted that the process for enquiry

was initiated and notice of the same was served upon the petitioner to appear and join the proceedings on 15.11.2022 and 22.11.2022. It is submitted that the petitioner joined the proceedings and submitted her relevant documents before the Enquiry Officer. He submits that the enquiry was conducted by the Sub Divisional Officer, Nuh and concluded vide enquiry report dated 01.12.2022 and thereafter, the petitioner was served with a show cause notice dated 19.04.2023 from the office of Deputy Commissioner, Nuh. He submits that the petitioner duly replied to the show cause notice dated 19.04.2023 vide her reply dated 08.05.2023, wherein all the relevant documents like 8th class certificate, school leaving certificate, admission form etc. were appended with the same. He further submits that Sub Divisional Officer conducted the enquiry and submitted his enquiry report dated 13.07.2023 stating therein that 8th class certificate submitted by the petitioner was found to be forged which was based on the irrelevant facts and without considering the averments and documents submitted by the petitioner. He has further vehemently contended that the petitioner made strenuous efforts to submit her relevant documents, but the same were not considered by the Enquiry Officer. It is submitted that most important document on the letter head of the School was also not accepted by the Enquiry Officer. He has submitted that as the enquiry was being carried in a biased manner, the petitioner submitted an application dated 14.07.2023 to the Deputy Commissioner, Nuh for issuance of direction to the SDO for conducting a free and fair enquiry, however, no action was taken on the same. It is submitted by learned Senior Counsel that without taking into consideration the documents submitted by the petitioner and the application dated 14.07.2023, the learned Deputy Commissioner passed the impugned

order dated 24.07.2023 for the removal of petitioner from the post of Sarpanch. He submits that the appeal filed against the order of the Deputy Commissioner, has also been illegally dismissed by learned Commissioner without taking into consideration that the enquiry on the basis of which the petitioner has been removed, has not been carried in a free and fair manner. Not only this, he submits that the enquiry has been carried out totally in violation of the principles of natural justice. It is submitted that the requisite qualification for a woman candidate to be appointed as Sarpanch, is 8th class pass and the petitioner had duly submitted her 8th class certificate which was countersigned by the District Elementary Education Officer, Nuh from the School which is recognized by the Haryana School Education Board, Bhiwani. He has submitted that in the nomination form the petitioner had appended her 10th class certificate. He submits that Sub Divisional Officer while conducting enquiry did not consider the certificates filed by the petitioner like school leaving certificate, school attendance sheet, admission form, withdrawal register and result sheet etc. which were countersigned by the authorities. It is submitted that the petitioner had given 10th class examination of Haryana School Education Board, Bhiwani in March-April 2022. He submits that the petitioner could have appeared in the matriculation examination only after having passed her 8th class, which she passed from Mohammadia High School, Sakras, District Nuh. He has submitted that the petitioner has attached her 10th class certificate issued by Jamia Urdu Aligarh, Uttar Pradesh, whereas, minimum educational qualification for the post of Sarpanch was 8th pass for a woman candidate. It is submitted that the petitioner passed her 8th class in the year 2012-13 from Mohammadia High School and her transfer certificate was issued by the

School on 08.04.2015. He submits that the Enquiry Officer has given a wrong finding that the petitioner got admission in 8th class in the age of 21 years, however, under the Right of Children to Free and Compulsory Education Act, 2009, a person of any age can get admission in any class. He submits that Mohammadia High School had written a letter dated 17.07.2023 that Sub Divisional Officer was not conducting the enquiry in a free and fair manner and the said officer is not accepting the documents from the Mohammadia High School. He submits that from the letter dated 17.07.2023, it is apparent that the Director, Mohammadia High School was restrained from producing the relevant record of the School in support of the qualification of the petitioner having passed 8th class. He has drawn the attention of this Court to the enquiry conducted by the Sub Divisional Officer dated 13.07.2023, wherein, it has been mentioned by the Enquiry Officer that the Headmaster of the Mohammadia High School did not submit the following documents of the petitioner before Enquiry Committee:-

1. Exam result related documents and register of Class 6 to 8 session 2012-13.
2. File No.5 (S.L.C. File), Counter File.
3. Proposal Register (Proposal Register of Mohammadia Shiksha Samiti).
4. Paste File (file of documents) of the admission No.1158-1191 recorded in the withdrawal register of the session 2012-13.

Learned Senior Counsel for the petitioner further submits that once School authorities were not allowed to present this record as evident from the letter dated 17.07.2023, the findings of the enquiry conducted are totally vitiated. It is submitted that the enquiry conducted is foundation, on

the basis of which the petitioner, who was duly elected as Sarpanch of the village, has been removed from her post in highly illegal and arbitrary manner. It is submitted by learned Senior Counsel that reply has been filed by respondent No.5 i.e. District Elementary Education Officer and it has been admitted in the reply that school leaving certificate produced by the petitioner was countersigned by the office of respondent No.5 as per school record of Mohammadia High School, Sakras, Nuh and thus, it is an admitted fact that the petitioner filed the certificate, which was duly countersigned by the respondent-authorities. He also submits that in the reply filed by respondents No.1 to 4, it has been submitted that all the parties were involved in the enquiry, but the school authority and the petitioner failed to produce any record in their support. It is further submitted in the reply that school authority did not produce the demanded record even after reminder issued by the Sub Divisional Officer, Nuh. It is further submitted that thus, it is an admitted fact that the enquiry was concluded in the absence of the record from the school. It is submitted that once there is no record produced as alleged by the respondent-authorities itself, the contentions of the petitioner that she was restrained from producing the record, is conceded by the respondent-authorities and thus, the enquiry conducted is totally vitiated and same cannot be relied upon for removing the petitioner from her elected post of Sarpanch. It is further submitted by him that as per settled law, an elected representative cannot be removed from his post in such a cavalier manner. He contends that the enquiry has been conducted totally in violation of the principles of natural justice and in a predetermined manner so as to remove the petitioner from her post, which is totally unsustainable in the eyes of law. He further submits that the enquiry report and the

impugned orders passed on the basis of the same being arbitrary and illegal, deserve to be set aside.

Per contra, learned State counsel has vehemently opposed the submissions made by learned Senior Counsel. He has submitted that on the complaint filed by respondent No.6, the same was forwarded to the Sub Divisional Officer (Civil), Nuh for report within 7 days vide letter dated 23.11.2022. He has submitted that in pursuance to the same, the enquiry was conducted by Block Development & Panchayat Officer, Indri, wherein it was found that the petitioner had submitted forged document at the time of nomination and thus, she was not eligible for contesting the election of Sarpanch. Sub Divisional Officer (Civil) was entrusted with the enquiry and he submitted his report dated 06.04.2023, wherein, it was found that the certificate produced by the petitioner was fake. He reported in the reference letter dated 13.12.2022 written by the Assistant Director (Academic), Haryana School Education Board, Bhiwani that no examination conducted by the Zamia Urdu Aligarh is recognized as equivalent to any examination conducted by the Haryana School Education Board, Bhiwani. He submits that it was also reported that Zamia Urdu Aligarh is not recognized from UP Government. He submits that on the basis of the enquiry report, notice under Section 51(3)(b) of the Haryana Panchayati Raj Act, 1994 was issued to the petitioner and thereafter, another representation was filed by respondent No.6 that the petitioner was preparing another fake certificate of 8th class in collusion with any private school and thus, the same was also enquired into. He submits that detailed enquiry report submitted by the Sub Divisional Officer (Civil), Nuh proved that false record of admission was created by the school authority in collusion with the petitioner. He submits

that as enquiry was conducted in a free and fair manner by providing due opportunity of hearing to the petitioner and the allegations made in the complaint filed by respondent No.6 were found to have been substantiated, hence, the petitioner was rightly removed from her post in due process of law. He further submits that the impugned orders have been passed on the basis of the detailed enquiry conducted and thus, the same suffer from no infirmity whatsoever. He submits that FIR No.03, dated 09.01.2024 has been registered against the petitioner and others under Sections 420, 467, 468, 471 & 120-B IPC in Police Station Rozka Meo, District Nuh and thus, the petition being devoid of any merit, deserves to be dismissed.

Heard.

Learned counsel for respondent No.6 has also opposed the submissions made by learned Senior Counsel and has submitted that the petitioner filed her nomination by producing fake and forged educational certificate, which were duly enquired into and on the detailed enquiry conducted, the allegations made by him were found to be correct as the certificates were found to be forged and the institutions from where the petitioner had obtained the certificates were not even found to be recognized by the Haryana School Education Board, Bhiwani. He submits that as the educational certificates produced were not found equivalent to the requisite qualification, thus, the petitioner being disqualified was rightly removed from her post. He further submits that in these circumstances, the present petition being devoid of any merit, deserves to be dismissed.

After hearing learned counsel for the parties and perusing the record, it is apparent that the petitioner was an elected Sarpanch of the village Gram Panchayat Khor, District Nuh. On receiving a complaint against the petitioner, the same was enquired into by the Block

Development & Panchayat Officer and thereafter, a Committee was constituted, wherein, the Sub Divisional Officer submitted his report finding the certificate produced by the petitioner was not equivalent to the requisite qualification required. However, in the enquiry conducted, it was found by the Enquiry Officer that the Headmaster of Mohammadia High School did not submit the following documents:-

1. Exam result related documents and register of Class 6 to 8 session 2012-13.
2. File No.5 (S.L.C. File), Counter File.
3. Proposal Register (Proposal Register of Mohammadia Shiksha Samiti).
4. Paste File (file of documents) of the admission No.1158-1191 recorded in the withdrawal register of the session 2012-13.

In the reply filed by respondent No.1 to 4, it is mentioned that the school authority did not produce the demanded record even after due reminders. The Headmaster/Director of the School also wrote a letter dated 17.07.2023 stating therein that he was restrained from producing the record. There is no gainsaying that the enquiry was conducted in pursuance to a complaint filed by respondent No.6, however, the manner in which the enquiry was conducted, has been seriously objected to by learned Senior Counsel for the petitioner. It is reflected from the enquiry conducted and the reply filed by the State that some of the documents were not produced by the school authority despite repeated reminders. There are allegations and counter-allegations from both sides. The stand taken by the petitioner is that the record produced by him was neither taken into consideration by the Enquiry Officer nor opportunity of hearing to explain the same was provided to him. On the other hand, respondent-State has taken a stand that

record was intentionally not produced by the petitioner. In both situation, the conclusion which can be drawn is that the enquiry has been concluded in the absence of some of the requisite documents, which were necessary for conducting the enquiry by the Enquiry Officer. Thus, it would cast a shadow on the conclusion arrived at by the Enquiry Officer. Enquiry conducted is the main plank on the basis of which fate of the petitioner survives. Once the enquiry conducted is in itself found to be not based on the complete record required which was essential for drawing the conclusion, hence, the same cannot be considered as a free and fair enquiry conducted. Thus, this Court finds the enquiry conducted is based on incomplete record and the petitioner having not been granted adequate opportunity to produce the same. Resultantly, a fresh enquiry deserves to be conducted by granting the petitioner another opportunity to produce the record as was required by the Enquiry Officer, which is already discussed above. Thus, the impugned orders dated 24.07.2023 (Annexure P-9) & 15.11.2023 (Annexure P-12) which are based on this enquiry are set aside. Respondent-State is directed to conduct a fresh enquiry after affording the petitioner and the school authority from where the petitioner passed her 8th class, adequate opportunity to produce the record. School authority would be granted one opportunity by the Enquiry Officer for producing the requisite record as asked by him. Enquiry Officer would provide a personal hearing as well to the petitioner.

Needless to say that the petitioner and the school authority concerned would not be allowed to misuse the order passed by this Court and prolong the enquiry proceedings without any justification. Enquiry Officer would specify the documents to be produced, date, time and place of

hearing. Keeping in view the facts and circumstances of the case, fresh enquiry would be conducted within a period of one month from date of receipt of copy of this order. On conducting the enquiry, the necessary action would be taken by the competent authority, as in accordance with the law.

Learned Senior Counsel prayed that the petitioner may be re-instated and allowed to work during this period. However, keeping in view the facts and circumstances of the case, the Court is not inclined to accept this prayer and the same is declined.

Registry is directed to convey this order to Deputy Commissioner concerned for its compliance.

15.02.2024
sharmila

(RAJESH BHARDWAJ)
JUDGE

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