

(2013) 04 MP CK 0030
In the Madhya Pradesh High Court
Case No : Writ Petition No. 2553 of 2013

Bihari Das

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 22-04-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 — Section 37, 95

Citation : (2013) ILR (MP) 1069 : (2013) 4 MPHT 542 : (2014) 1 MPLJ 148

Hon'ble Judges : R.C. Mishra, J

Bench : Single Bench

Advocate : Pradeep Naveriya, for the Appellant; Puneet Shroti, P.L., for the Respondent

Judgement

R.C. Mishra, J.

Arguments heard.

1. This is a petition, under Article 226 of the Constitution of India. The petitioner, who was duly elected to represent as a Member in Ward No. 9 of the Janpad Panchayat Baihar, Distt. Balaghat, is aggrieved by acceptance of his resignation (Annexure P/1) tendered on 26/12/2012. He has, therefore prayed for - (a) certiorari quashing of letter-dated 28/12/2012 (Annexure P/6) authored by the President, Janpad Panchayat, intimating recommendation for acceptance of his resignation and (b) mandamus directing respondent Nos. 2 and 3 to accept withdrawal thereof, communicated through letter dated 29/12/2012 (Annexure P/2). The prayer has been opposed primarily on the ground that the resignation submitted voluntarily has already been accepted in accordance with the provisions of Section 37 of M.P. Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 (hereinafter referred to as "Adhiniyam") and consequently, the office of the member from Ward No. 9 has been declared as vacant.

2. According to the petitioner, the resignation could not be accepted without

affording him an opportunity to reconsider the decision. For this, he has made reference to Rules 3 and 4 of M.P. Panchayat (Resignation by Office Bearers) Rules, 1995 (for short "the Rules").

3. Relevant excerpts of the provisions of Section 37 of the Adhiniyam and Rules 3 and 4 of the Rules may be reproduced as under:--

S. 37. Resignation by office bearer of Panchayat

(1) A Panch of a Gram Panchayat or a member of Janpad Panchayat or a member of Zila Panchayat may resign his office by giving notice in writing to that effect to the Sarpanch or President as the case may be.

(2)...

(3) The manner of giving notice and procedure for tendering resignation and its becoming effective shall be as may be prescribed:--

Provided that a person tendering resignation may withdraw his resignation before it becomes effective.

Rules 3 & 4

3. Manner of giving notice:--

(1) Any member who desires to resign his office shall give notice, thereof in writing in Form "A" duly signed by him to the Sarpanch or president as the case may be either in person or through his representative authorized by him in writing in this behalf, a copy of the said notice shall also be sent to the Secretary or Chief Executive Officer, as the case may be.

(2) On receiving the notice under sub-rule (1) the Secretary or Chief Executive Officer as the case may be, shall record on the notice the date on which and the time at which the notice was given to him and give a receipt thereof in Form "B".

4. Acceptance of Resignation:--

(1) On receipt of the notice under rule 3, the Secretary or Chief Executive Officer shall forward such notice immediate to the District Deputy Director, Panchayat and Social Welfare and the Collector.

(2) The notice of resignation given by the member shall be considered by the Panchayat at its next meeting. Notice of the meeting shall also be given to the member who has submitted the resignation.

(3) The Panchayat shall in its meeting may ascertain from the member concerned whether he desires to withdraw his resignation and if the member desires to withdraw the resignation, he shall give in writing to that effect in Form "C"

(4) If the member concerned furnishes the statement in Form "C" his resignation shall become infructuous. If the member does not withdraw his resignation, then

his resignation shall be accepted by the Panchayat.

(5).....

(6).....

(7).....

4. These Rules have been framed in exercise of powers conferred by sub-section (1) of Section 95 read with sub-section (3) of Section 37 of the Adhiniyam. Accordingly, the resignation could be accepted under sub-rule (4) only after a full and complete compliance with the provisions of preceding two sub-rules, contemplating consideration thereon by Panchayat at its next meeting under notice to the petitioner.

5. A bare perusal of the record would reveal that the resignation has been accepted by circumventing the procedure prescribed therefor. Apparently, non-compliance with the mandatory provisions of sub-rules (2) and (3) is sufficient to hold that the resignation was not validly accepted. The corresponding order, therefore, deserves to be quashed. The petition, therefore, stands allowed and the letter dated 28/12/2012 (Annexure P/6) is hereby set aside. The obvious consequence is that the petitioner shall be deemed to continue as the elected member representing Ward No. 9 of Janpad Panchayat Baihar, Distt. Balaghat.