

(2012) 12 P&H CK 0084
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 4658 of 2012

Charanjeet Singh Sarpanch	Vs	APPELLANT
State of Punjab and Others		RESPONDENT

Date of Decision : 13-12-2012

Acts Referred:

Citation : (2012) 12 P&H CK 0084

Hon'ble Judges : Ranjit Singh, J

Bench : Single Bench

Advocate : NPS Mann, for the Appellant; Sukhdip Singh Brar, Addl. AG, Punjab for State and Ms. Naiya Gill, Advocate for Respondent Nos. 5 and 6, for the Respondent

Final Decision : Allowed

Judgement

Ranjit Singh, J.—After the General elections held to elect the Gram Panchayat in the year 2008, the petitioner was elected as Sarpanch on 26.05.2008. On 25.10.2010, a complaint was made to Block Development and Panchayat Officer alleging that the petitioner being Sarpanch had never called 3 panches namely Baljeet Singh, Varinder Verma, Kulwinder Kaur and Tribhuvan Parshad and had never issued any notice to them in this regard. It is alleged that this was being done due to party faction in village and, thus, all the development works of the village had come to stand still. Director (respondent No. 2) acting on the report issued notice on 01.11.2010 to the petitioner seeking clarification. The petitioner produced the record before the Director and filed detailed reply. As per the petitioner, without considering his response, respondent No. 2 placed the petitioner under suspension on 27.12.2010. The regular inquiry, however, was entrusted to District Development and Panchayat Officer. As per the inquiry report, the allegation against the petitioner were proved on 18.01.2011. Acting on the finding of this report, the petitioner was removed from the office of Sarpanch on 14.03.2011. Aggrieved against his removal, the petitioner filed an appeal before the Secretary, who quashed the order of his removal and

reinstated the petitioner vide his order dated 09.05.2011. The complainant aggrieved against the same filed CWP No. 10052 of 2011 to challenge this order, which was pending when the present petition was filed before this Court.

2. The petitioner would allege that during the pendency of this writ petition, the petitioner has again been served noticed by District Development and Panchayat Officer sending another report making a mention about the regular inquiry concerning the same allegation of not sending agenda notices. Based on this report, the petitioner has again been issued show cause notice on 20.09.2011. Without considering the response filed by the petitioner, he has again been removed from the post of Sarpanch on 01.12.2011. The petitioner, accordingly, has directly challenged this order before the Court on the ground that he could not have been proceeded against and removed from the post of Sarpanch for the same allegation for which he was earlier exonerated.

3. The State counsel has not been able to justify this action of the respondent with the support of any provision of law the action taken by the respondent to proceed against the petitioner for the same very allegation of which he was earlier exonerated. The counsel appearing for the private respondents, however, has made an attempt to justify this action. She has made reference to the earlier order passed by the Secretary, whereby it was observed that the District Development and Panchayat Officer had not looked into the allegation in proper manner. It may be so but there was no liberty given by the Secretary to re-look into the allegation while allowing the appeal filed by the petitioner. The petitioner is justified in pleading that he has been put to serious prejudice by issuance of this show cause notice and consequent removal from the post of Sarpanch, which would be without jurisdiction and beyond powers of Director. Obviously, the Director is not justified in proceeding against the petitioner for the same very allegation for which his superior authority had already accepted his appeal. In a way the Director has acted in violation of the hierarchy of jurisdiction and so his conduct in this regard cannot be appreciated.

4. The objection by the counsel appearing for the private respondent that the petitioner has directly approached this Court through this writ petition without availing alternative remedy would be meaningless ritual when the impugned order, apparently, is found without the support of any legal provisions. The petitioner in this case, cannot be relegated his alternative remedy of appeal etc. as the action is without jurisdiction. Availability of alternative remedy is not always a bar to entertain writ petition and is a self-imposed restriction by the courts. It would not be a deterrence to interfere in this case where totally illegal order is passed by an authority which has no jurisdiction to act and has done so in an arbitrary manner. The impugned order removing the petitioner from the post of Sarpanch is quashed. The writ petition is allowed. The petitioner is held entitled to his costs, which is assessed as Rs. 10,000/-.