

(2018) 12 RAJ CK 0176
In the Rajasthan High Court
Case No : Civil Writ No. 7714 Of 2015

Gori Shanker Saran

APPELLANT

Vs

State Of Rajasthan And Ors

RESPONDENT

Date of Decision : 12-12-2018

Acts Referred:

Citation : (2018) 12 RAJ CK 0176

Hon'ble Judges : Inderjeet Singh, J

Bench : Single Bench

Advocate : C.R. Choudhary, Manish Patel

Final Decision : Allowed

Judgement

The instant writ petition is directed against the notice Annex.2 dated 13.07.2015 issued by the Development Officer, Panchayat Samiti Sardarshahar initiating proceedings against the petitioner being the elected Sarpanch of Gram Panchyat Bandhanau, Panchayat Samiti Sardarshahar, District Churu regarding his disqualification to hold the post of Sarpanch for want of educational qualification.

Learned counsel appearing for the parties have drawn the attention of this Court to the judgment dated 11.02.2016 passed by a Coordinate Bench of this Court at Jaipur Bench in a bunch of writ petitions led by S.B.Civil Writ Petition No.16070/2015 "Bhupendra Singh Hada Vs. State of Rajasthan and Ors." wherein, while relying upon a Full Bench decision of this Court in Smt. Sameera Bano Vs. State of Rajasthan (2007 (2) RLW 1674), the petitions were allowed in the following terms:-

"The petitions are accordingly allowed. The enquiry under Section 39 of the Act of 1994 read with Rule 23 of the Rules of 1996 and suspension of elected members for allegations of pre-election disqualification under Section 38 (4) of the Act of 1994 except where charges have been framed for offences of moral turpitude are quashed.

It is however, clarified that the State Government however, would be free, if warranted in specific cases, to conduct only a fact finding enquiry for taking other proceedings in accordance with law including that of lodging a FIR. It is also made clear that for post election misconduct, the State Government will be entitled to take proceedings for removal of the delinquents and suspend the Chairpersons/ Members of the Panchayati Raj Institutions by resort to Sections 39 and 38 (4) of the Act of 1994. Finally in the event of elected Chairpersons/ Members being charged for an offence involving moral turpitude even in respect of the period prior to the elections, the State Government would be free to suspend such Chairpersons/ Members of Panchayati Raj Institutions under Section 38 (4) of the Act of 1994."

A statement is made at bar that the controversy involved in the case at hand is exactly similar.

In view of this admitted factual and legal position, the impugned notice Annex.2 dated 13.07.2015 issued by the Development Officer, Panchayat Samiti Sardarshahar cannot be sustained and is hereby quashed and set aside. The instant writ petition is allowed in light of the judgment passed in Bhupendra Singh Hada (supra).