
(2020) 07 RAJ CK 0005

In the Rajasthan High Court

Case No : Civil Writ Petition No. 16837 Of 2019

Gram Panchayat Khandewla

APPELLANT

Vs

State Of Rajasthan and Ors

RESPONDENT

Date of Decision : 07-07-2020

Acts Referred:

Citation : (2020) 07 RAJ CK 0005

Hon'ble Judges : Sanjeev Prakash Sharma, J

Bench : Single Bench

Advocate : Hanuman Chouhdary, Tarun Jain, Chiranji Lal Saini, Pradeep Kalwaniya

Final Decision : Dismissed

Judgement

Sanjeev Prakash Sharma, J

1. The petitioner - Gram Panchayat Khandewla has preferred this writ petition through its Sarpanch challenging the order passed by the respondent

No. 5 - Chief Executive Officer, Zila Parishad, Sawaimadhopur and its authorities-respondent no. 4 & 6 whereby they have set aside the order passed

by the Sarpanch dated 20.6.2019 whereby the respondent no. 8 was removed from the post of Gram Panchayat Sahayak and have further directed

the respondent No. 8 to be reinstated as Gram Panchayat Sahayak.

2. Learned counsel for the petitioner submits that the Gram Panchayat Sahayak is appointed by the orders issued by Secretary Gram Panchayat

Khandewla and the petitioner is the appointing authority for the respondent no.

8. Learned counsel further submits that the respondent no. 8 was

issued show cause notice and enquiry was conducted about his conduct whereafter his services were dispensed with and he was removed from the

post of Gram Panchayat Sahayak. There was no authority available to the respondent to reinstate the respondent no. 8 and the order dated 20th June,

2019 passed by the Chief Executive Officer, Zila Parishad, District Swaimadhopur and consequential order dated 3rd July, 2019 passed by the

Principal Elementary Education Officer are bad in law and deserve to be set aside and the Gram Panchayat cannot allow reinstatement of the

respondent no. 8 on the post of Gram Panchayat Sahayak in their Panchayat.

3. Reply to the writ petition has been filed on behalf of the respondent no. 1 to 7 and learned Additional Advocate General submits that the petitioner

does not have any locus to challenge the orders passed by the controlling authorities who control administrative actions of the said Gram Panchayat.

The Chief Executive Officer has received representation from the aggrieved respondent no. 8 who challenged the order passed by the petitioner and

enquiry was conducted in the matter at the level of the District Education Officer by appointing a panel of the three officers vide order dated 14th

March, 2019. The Enquiry Committee reached to the conclusion that the order of removal of respondent no. 8 was illegal and the concerned

respondent no. 8 was not given fair and proper opportunity. It was also noticed that inspite of the notices being given to the Gram Panchayat for

putting up their case before the enquiry Committee, there was no cooperation at their level. Relying upon the enquiry Committee's report, the order of

reinstatement was passed as is an appellate body.

4. Learned Additional Advocate General further submits that the present petition is an abuse of process of law and such writ petitions ought not be

entertained, if the original authority starts challenging the order of the appellate authority by filing of the writ petition before this court, it would invite

complete administrative chaos. The appellate forum ought to be made available for an aggrieved and it has an absolute right to set aside the order

passed by the Original authority while exercising its appellate power. The writ petition, therefore, deserves to be dismissed.

5. Learned counsel for the petitioner submits that the Panchayat has an absolute right to have its own employees as they pay them salary from their

own pocket and therefore they have right to challenge the order passed by the respondent even though they may be the Superior Authority and may

have the appellate forum.

6. I have considered the submissions as above and perused the material available on record.

7. The post of Gram Panchayat is one of the posts provided under the Rajasthan Panchayat Act and Rules framed therein. The appointment is made

at their district level by the advertisement issued by the Chief Executive Officer, Zila Parishad and selection is on the basis of recommendation made

by the District Level Committee. Thus the appointment of the respondent cannot be said to have been made by the Panchayat Samiti or Gram

Panchayat. However, his services are provided to each Gram Panchayat and at that stage, the salary is paid from the budget of the concerned Gram

Panchayat. On account of the same, he does not become an employee of the Sarpanch of Gram Panchayat. The District Establishment Committee

and the Chief Executive Officer, Zila Parishad would have therefore right to hear grievance raised by him against the action of Sarpanch or Gram

Panchayat for removing him.

8. This court finds that it is by way of representation/appeal to higher authority that the case was re-examined and a special enquiry committee was

formed consisting of three officers to find out whether the concerned Gram Panchayat Sahayak was removed legally. Reaching to the conclusion that

the order passed of removal was illegal. The concerned respondent no. 8 has been directed to be reinstated. The manner and method by which the

Gram Panchayat has challenged the order, amounts to challenging the authorities of the superior officer. An appellate forum or higher forum where

representation is received will have power and authority to re-examine the orders passed by subordinate authorities and it can decide, remand or quash

the order passed by the subordinate authorities. Such power is an inherent power with the appellate authority/higher authority. The Subordinate

Authority cannot be allowed to question the said authority by filing of the writ petition before this court. This court agrees that the such method

adopted by the petitioner amounts to misuse of legal remedies and if the same is allowed to be entertained, it would amount to creating the

administrative chaos.

9. I have also examined the order passed by the respondent no. 5 as well as the report submitted by the enquiry committee and find that the order

does not warrant any interference on merits. It is also noticed that there is no

allegation of malafide raised by the petitioner Gram Panchayat.

10. In view thereof, this writ petition deserves to be dismissed and the same is accordingly dismissed. Taking into consideration the manner in which

the Gram Panchayat has challenged the order of Chief Executive Officer, Zila Parishad which smacks insubordination, I am inclined to impose a cost

of Rs. 25,000/- on the Gram Panchayat to be deposited with the Chief Executive Officer of the Zila Parishad.