

(2014) 12 PAT CK 0055

In the Patna High Court

Case No : LPA No. 434 of 2014 in CWJC No. 25150 of 2013

Jitu Jha

APPELLANT

Vs

The State Election Commission (Panchayat) and Others

RESPONDENT

Date of Decision : 05-12-2014

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 16, 162, 177
Punjab Panchayati Raj Act, 1994 — Section 208(1)(g)

Citation : (2015) 1 PLJR 903

Hon'ble Judges : S.P. Singh, J;I.A. Ansari, J

Bench : Division Bench

Judgement

S.P. Singh, J.—The instant Letters Patent Appeal is directed against the order, dated 13.2.2014, passed in C.W.J.C. No. 25150 of 2013, whereby a learned Single Judge of this Court dismissed the writ petition of the appellant made against the order, dated 14.11.2013, of the State Election Commissioner, respondent No. 2, in Case No. 111 of 2011, whereby the State Election Commissioner had held that respondent No. 4, namely, Farida Khatoon @ Praveen, did not suffer any disqualification from contesting the election of Mukhiya under Section 136(1)(f) of Bihar Panchayat Raj Act, 2006. Before we consider the case of the parties, it would be necessary to notice the facts of the case in brief. The respondent No. 4, Farida Khatoon @ Praveen, contested the election of Mukhiya from Basistha Gram Panchayat, under Benipatti Block, in the district of Madhubani, in the year 2011. She contested the election as Farida Khatoon @ Praveen. In her affidavit attached with nomination paper, she mentioned her name as Farida Khatoon @ Nusrat Praveen, wife of Md. Jilani. She was declared elected having received highest number of votes. The appellant herein, Jitu Jha, who was one of the candidates in the election, made a complaint, on 23.9.2011, before the State Election Commission (hereinafter referred to as "the Commission") against respondent No. 4 seeking her removal from the Office of Mukhiya contending that respondent No. 4 stood disqualified under Section 136(1)(f) read with Section 136(2) of Bihar Panchayat Raj Act,

2006 (hereinafter referred to as "the 2006 Act").

2. The appellant herein, Jitu Jha, alleged that respondent No. 4 was earlier selected as Aanganbari Sevika, at Aanganbari Centre No. 16, in the name of Nusrat Praveen, wife of Md. Jilani, but, on 29.10.2009, her engagement, as Aanganbari Sevika, was terminated on the ground of misconduct by order of the District Programme Officer, Madhubani. The appellant herein, Jitu Jha, submitted to the Commission that respondent No. 4 made incorrect statement in her nomination paper and, as such, she should also be punished under Section 125(a) (iii) of the 2006 Act. The complaint of the appellant was registered as Case No. 111 of 2011.

3. The respondent No. 4 appeared before the Commission and filed her written statement. She denied the allegations that she made incorrect statement in her nomination paper. However, she did not dispute that earlier, she served as Aanganbari Sevika in the name of Nusrat Praveen, wife of Md. Jilani, and was removed on ground of misconduct. She stated that Nusrat Praveen and Farida Khatoon @ Praveen are one and the same person, being wife of Md. Jilani. In proof of her submissions, she produced photo identity card issued by the Commission.

4. The respondent No. 4 controverted the claim of the appellant that she stood disqualified, under Section 136(1)(f) of the 2006 Act, from contesting election to the Office of Mukhiya. She submitted that disqualification, under Section 136(1) (f) of the 2006 Act, would apply to dismissal of a person holding civil post under Central Government or State Government or local authority, on the ground of misconduct. She (respondent No. 4) asserted that service of State Government or Central Government or any local authority and, hence, her removal from the post of Aanganbari Sevika would not constitute a disability under Section 136(1) (f) of the 2006 Act to contest election of Mukhiya. She submitted that Section 136(1)(f) of the 2006 Act states that dismissal order should further contain a stipulation that the employee concerned is debarred from contesting public office.

5. The Commission, upon hearing the parties, concluded as follows:--

(i) Respondent No. 4 was disengaged from the post of Aanganbari Sevika on the charge of misconduct, which cannot be equated with dismissal rendering her disqualified in terms of Section 136(1)(f) of the 2006 Act;

(ii) Respondent No. 4 did not disclose that she served on the post of Aanganbari Sevika in the name of Nusrat Praveen, whereas she contested the election in the name of Farida Khatoon @ Praveen and, as such, she would be liable to action under Section 125(a)(i) and (iii) of the 2006 Act;

(iii) Respondent No. 4 be removed and unseated from the Office of Mukhiya and fresh election process should be initiated for filling up the Office of Mukhiya of the Gram Panchayat concerned.

6. Both the appellant herein and respondent No. 4 herein being aggrieved by

order of the State Election Commission (Respondent No. 2) filed writ applications. The appellant herein was aggrieved by that part of the order of Respondent No. 2, whereby the Commission did not declaring respondent No. 4 (Farida Khatoon) disqualified under Section 136(1)(f) of the 2006 Act. On the other hand, respondent No. 4 was aggrieved by that part of the order of the Commission whereby the Commission held that respondent No. 4 herein deliberately and fraudulently concealed her full name, while contesting the election in the name of Farida Khatoon @ Praveen, whereas she served, as Aanganbari Sevika, in the name of Nusrat Praveen.

7. The writ petition, filed by the appellant herein, was numbered as C.W.J.C. No. 25150 of 2013, whereas the writ petition, filed by the respondent No. 4 herein, was numbered as C.W.J.C. No. 24166 of 2013. Both the writ petitions were heard analogously. The learned Single Judge while allowed the writ petition of respondent No. 4, namely, Farida Khatoon @ Praveen, not only set aside of the order of the State Election Commission, by which respondent No. 4 was removed from the Office of Mukhiya, but also negated the contention of appellant Jitu Jha that respondent No. 4 herein had committed fraud or tried to conceal her identity. The writ petition filed by the appellant herein, namely, Jitu Jha, was consequently dismissed.

8. Curiously enough, the appellant herein had not per se challenged the order, dated 13.2.2014, of the learned Single Judge allowing the writ petition, namely, C.W.J.C. No. 24166 of 2013 of respondent No. 4, whereby respondent No. 4 had sought for quashing of the order of removal from the Office of Mukhiya on the ground of fraudulently contesting the Office of Mukhiya in another name. The respondent No. 2 had allowed the complaint of the appellant herein under Section 136(2) of the 2006 Act only on the ground that she had served as Aanganbari Sevika, in the name of Farida Khatoon @ Nusrat Praveen, whereas she had contested the election of the Office of Mukhiya in the name of Farida Khatoon @ Praveen.

9. The learned Single Judge, on consideration of materials available on record, held that respondent No. 4 neither concealed her name nor had played any fraud. The learned Single Judge noticed that the photo identity card of respondent No. 4 described her full name as Nusrat Praveen @ Farida Khatoon @ Praveen. Besides this, at all the places, she had mentioned her husband's name as Md. Jilani.

10. The position that emerges is that the only ground on which the Commission allowed the complaint was set aside, in C.W.J.C. No. 24166 of 2013, against which no appeal has been filed by the appellant herein, Jitu Jha. Thus, the order of the learned Single Judge, passed in C.W.J.C. No. 24166 of 2013, became final with respect to the finding that respondent No. 4, Farida Khatoon, did not conceal her identity nor was any fraud committed by her while contesting the election, in question, in the name of Farida Khatoon @ Praveen.

11. Faced with the situation, wherein the appellant herein found himself placed, Mr. S.B.K. Mangalam, learned counsel appearing for the appellant herein, had to confined his relief only with respect to the issue whether respondent No. 4 stood disqualified, under Section 136(1)(f) of the 2006 Act, was the main relief sought for in the writ application bearing C.W.J.C. No. 24166 of 2013. In this writ application, the petitioner had sought for a declaration that respondent No. 2 had erred in not holding that respondent No. 4 stood disqualified under Section 136(1)(f) of the 2006 Act.

12. The issue before us is: whether respondent No. 4 was disqualified, under Section 136(1)(f) of the 2006 Act, to contest election of the Office of Mukhiya on the ground that she had been, in the past, removed from service of Aanganbari Sevika.

13. Before we examine the issue, it would be relevant to notice, in brief, the provisions of law.

14. Section 136 of the 2006 Act deals with disqualification for membership and it begins with a non obstante clause. Section 136(1) of the 2006 Act states that a person shall be disqualified for holding the post as Mukhiya, Member of Gram Panchayat, Sarpanch, Panch of Gram Katchahri and Member of the Panchayat Samiti, if he falls within any of the several circumstances mentioned in sub-clause (a) to (j) of Section 136(1) of the 2006 Act. Under sub-section (2) of Section 136 of the 2006 Act, the matter of disqualification can be brought to the notice of the State Election Commissioner in the form of complaint, application or information by any person or authority. The right of Commission to entertain the complaint or to take suo moto cognizance is subject to the conditions mentioned in the proviso to sub-section (2) itself. Section 136(1)(f) of the 2006 Act, on which the appellant has relied upon, while seeking disqualification of respondent No. 4, is quoted hereinbelow:--

"136. Disqualification for Membership.--(1) Notwithstanding anything contained in this Act, a person shall be disqualified for election or after election for holding the post as Mukhiya, member of the Gram Panchayat, Sarpanch, Panch of the Gram Katchahri, member of the Panchayat Samiti and member of Zila Parishad, if such person-

(a) xx xx xx

(b) xx xx xx

(c) xx xx xx

(d) xx xx xx

(e) xx xx xx

(f) has been dismissed from the service of Central or State Government or any local authority for misconduct and has been declared to be disqualified for employment in public service."

15. It is submitted on behalf of the appellant herein that an Aanganbari Sevika is recruited under Integrated Child Development Services Scheme to serve the cause of the State and, as such, it cannot be said that she was not in service of the State Government. He next submits that as respondent No. 4, Farida Khatoon @ Praveen, was removed from service of Aanganbari Sevika, she incurred disqualification under Section 136(1)(f) of the 2006 Act. It is next submitted, on behalf of the appellant herein, that even if an order of removal contains a further direction disqualifying one for future employment in public service, the same has to be preserved.

16. The case of respondent No. 4 is that the said provisions would not apply to her case for the following reasons:--

(a) Section 136(1)(f) of the 2006 Act applies to dismissal, whereas she (respondent No. 4) was disengaged and not dismissed from service.

(b) Even assuming that dismissal and disengagement would constitute the same meaning, the provisions, embodied in Section 136(1)(f) of the 2006 Act, would apply to Civil Post under Central Government or State Government or local authority, whereas she (respondent No. 4) was not holding any civil post at the relevant point of time. Reliance is placed, in this regard, on the decisions in State of Karnataka and Others Vs. Ameerbi and Others, ; Anokh Singh Vs. Punjab State Election Commission, . Reliance is also placed on a decision of the Division Bench of this Court, in Smt. Sajjan Devi and Others Vs. State of Bihar and Others, .

(c) Even assuming that respondent No. 4 was in the service of Central/State Government or local authority and had been dismissed, she would still not incur any disqualification inasmuch as the order of removal does not mention that she would be disqualified from future employment in public service, which stipulation in the order was a condition precedent for attracting disqualification under Section 136(1) of the 2006 Act.

17. We have heard the submissions of the parties and also noticed the substantive provisions of Section 136(1)(f) of the 2006 Act. It would appear from a bare perusal of the provisions, contained in Section 136(1)(f) of the 2006 Act, that the disqualification against a person can be invoked if two conditions are satisfied, namely, (a) a person must have been dismissed from service of the Central/State Government or any local authority for misconduct, and (b) has been declared to be disqualified for employment in public service.

18. The first issue would be whether respondent No. 4 was dismissed from service of the Central/State Government or any local authority or whether the post of Aanganbari Sevika could be said to be a post under the Central/State Government or any local authority.

19. The issue, whether Aanganbari Sevika would be considered to be a Civil Post under the State Government, fell for consideration in the case of Ameerbi

(supra), wherein the Supreme Court observed that the post of Aanganbari Sevika is not a statutory post. Such posts are neither created by the Central/State Government in exercise of power under Article 177 or 162 of the Constitution of India nor the rules framed under Article 309 of the Constitution of India are attracted in the case. The Aanganbari Sevika is free to contest election, whereas the holder of civil post is not so entitled. The Aanganbari Sevika is not engaged in any civil post as specified in Minimum Wages Act, 1948 inasmuch as an Aanganbari Sevika is paid honorarium and there is no straitjacket formula that all employees, who fall under the purview of Article 12 of the Constitution of India, would be Government employee. Merely because the State controls the Integrated Child Development Services Scheme, the employees, under the Scheme, cannot take shelter under Article 311 of the Constitution of India. Paragraph 20 of the decision in Ameerbi (supra), being relevant is extracted hereinbelow:--

"20. Aanganwadi workers, however, do not carry on any function of the State. They do not hold post under a statute. Their posts are not created. Recruitment rules ordinarily applicable to the employees of the State are not applicable in their case. The State is not inquired to comply with the constitutional scheme of equality as adumbrated under Articles 14 and 16 of the Constitution of India. No process of selection for the purpose of their appointment within the constitutional scheme exists. We do not think that the said decision has any application in the instant case."

20. The view, taken in Ameerbi (supra) was reiterated in the case of Anokh Singh (supra). In the case of Anokh Singh (supra), the issue, before the Supreme Court was, whether the office of Lambardar and Aanganbari Sevika, employed in various social welfare schemes, in the State of Punjab, would be held to be an office of profit and, consequently, the holder of the Office of Lambardar stands disqualified from seeking election to Gram Panchayat, and whether State Election Commission was justified in issuing memorandum debarring Lambardar and Aanganbari Sevika from contesting elections to Panchayat Samity and Zila Parishad.

21. The Punjab and Haryana High Court held, in Anokh Singh (supra), that an Aanganbari worker did not hold any civil post under the Government and, as such, did not hold an office of profit and, hence, entitled to contest election under the Punjab Panchayat Raj Act.

22. It is relevant to state herein that disqualification, under Section 208(1)(g) of Punjab Panchayati Raj Act, 1994, is *pari materia* with Section 136(1)(f) of the 2006 Act. However, the Court held that office of Lambardar is an office of profit and, thus, ineligible to contest election. Being aggrieved, Anokh Singh, who was a Lambardar carried the matter to the Supreme Court. In Anokh Singh (supra), the Supreme Court held that though a Lambardar may be governed by the provisions of Punjab Land Revenue Act and rules framed thereunder, the holder of the said post is not a Government servant and he does not hold a civil post

within the meaning of Article 309 of the Constitution. Furthermore, as no salary is payable to him and no pay scale is attached to the office of Lambardar, it cannot be said that he is in receipt of remuneration. A Lambardar merely receives honorarium to meet the expenses incurred in carrying out certain duties.

23. The circular of the Deputy Commissioner-cum-District Electoral Officer, declaring Aanganbari Sevika, ineligible to contest election, under Panchayati Raj, was struck down by the Punjab and Haryana High Court. The direction, declaring Lambardar ineligible to contest election, was set aside by the Supreme Court in appeal.

24. Whether the post of Aanganbari Sevika is a post in any Government service fell for consideration before a Division Bench of this Court in the case of Smt. Sajjan Devi (*supra*). The Division Bench observed that Aanganbari Sevika is engaged on the basis of a contract of a service under a scheme, the engagement is made only by holding of an interview and no payment of salary is made nor appointment is made against any post, the honorarium paid to him/her for performing the duties for a particular period and in case, his/her service is not found satisfactory, he/she can be removed without initiating a departmental proceeding. Paragraphs 12 and 13 of the judgment, which would be relevant in this context, is reproduced hereinbelow:--

"12. The Scheme has been made to provide help to the poor and downtrodden persons covered by the Scheme as stated above. Engagement is made only by holding an interview and no payment of salary is being made nor the appointment is being made against any post in the Government service. Honorarium is paid for performing the duties for a particular period. In case, their services are not found satisfactory, they can be removed from the post of Aanganbari Sevika. Term of appointment clearly shows that they are not engaged in Government service nor are they holding any post in the Government Service, having umbrella of protection under Article 311 of the Constitution of India. In case, it is found that they are not performing duties, for which they were engaged, then in terms of the engagement letter they can be removed. They cannot claim initiation of a regular departmental enquiry prior to their disengagement.

13. Thus, the post of Aanganbari Sevika is not a post in the Government service and as such the private respondents cannot claim protection under Article 311 of the Constitution of India."

25. In view of the law laid down in cases noticed above, we have no hesitation in coming to the conclusion that the post of Aanganbari Sevika is not a post in the Government service and an Aanganbari Sevika cannot claim protection under Article 311 of the Constitution of India. We do not find any reason to take a contrary view than the one taken by a Division Bench of this Court. We, accordingly, agree with the conclusion of the State Election Commission as well as the learned Single Judge that the case of respondent No. 4, Farida Khatoon @

Praveen, does not fall within the ambit of disqualification under Section 136(1)(f) of the 2006 Act.

26. The first condition that one has to be in the service of State or Central Government or local authority, necessary for disqualifying a person from contesting election to public office, under Section 136(1)(f) of the 2006 Act, is not satisfied, we need not consider the other limb of the argument of respondent No. 4 that the case of appellant herein suffered from the infirmity that the dismissal order did not contain any stipulation that the same would disqualify respondent No. 4 from contesting public office.

27. Similarly, as respondent No. 4 has succeeded in establishing that as an Aanganbari Sevika, she was not in service of State/Central Government or local authority, we need not examine her other contention that the word "dismissal" referred to in Section 136(1)(f) of the 2006 Act would not include "disengagement" and leave the issue open for appropriate occasion.

28. For the reasons stated hereinabove, we find no merit in this appeal. The appeal is, accordingly, dismissed.

I.A. Ansari, J.

29. While fully agreeing with the findings arrived at, and conclusions reached, by my esteemed brother, Samarendra Pratap Singh, J., I need to point out that under Section 136(1)(f) of the 2006 Act, a dismissal simpliciter of an employee from service of Central/State Government or any other local authority, as the case may be, for misconduct, does not constitute disqualification for the purpose of contesting election for the Office of Mukhiya. In order to attract disqualification barring a candidate from contesting election for the Office of Mukhiya, one has to be not only dismissed from service for misconduct, but the employer must also make a declaration disqualifying the dismissed employee from future employment in public service.

30. Thus, in order to apply the provisions of disqualifications contained in Section 136(1)(f) of the 2006 Act, it has to be borne in mind that one would not be disqualified from contesting the election to the Office of Mukhiya if he/she is a dismissed employee of the Central/State Government or any local authority unless, while dismissing the employee concerned, the employer declares the employee to be disqualified from future employment in public service.

31. In the case at hand, while there is dispute as to whether respondent No. 4 was dismissed from service and her engagement was merely terminated and she was consequently merely disengaged, what is undisputed is that respondent No. 4 has not been declared disqualified for employment in public service and, hence, she could not have been held to have incurred disqualification under Section 136(1)(f) of the 2006 Act.

32. The appeal, accordingly, as already indicated hereinbefore, stands dismissed. No order as to costs.