
(2014) 04 SHI CK 0048
In the High Court Of Himachal Pradesh
Case No : CWP No. 1188 of 2014-I

Ritu Sethi

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 30-04-2014

Acts Referred:

Citation : (2014) 04 SHI CK 0048

Hon'ble Judges : Mansoor Ahmad Mir, Acting C.J.; Tarlok Singh Chauhan, J

Bench : Division Bench

Advocate : Anshul Bansal, Advocates for the Appellant; Shrawan Dogra, Advocate General, Romesh Verma, V.S. Chauhan, Additional Advocate Generals, J.K. Verma and Kush Sharma, Deputy Advocate Generals, Advocates for the Respondent

Judgement

Tarlok Singh Chauhan, J.—The petitioner was appointed as General Secretary, Himachal Pradesh State Council for Child Welfare for a period of three years by the General House vide its proceedings dated 25.08.2008. She submitted her joining report to the authorities on 02.09.2008. In the General House of the Council held on 23.09.2011, the tenure of the petitioner as General Secretary of the Council was extended for a further period of three years i.e. till September, 2014.

2. The petitioner vide memorandum dated 13.12.2013 was issued a show cause notice, which according to her, was based on false facts i.e. qua failure in discharging her duties as General Secretary. She filed detailed reply dated 05.01.2014. However, vide order dated 21.02.2014, the respondent-authorities relying upon some inquiry ordered her removal from the post of General Secretary.

3. The respondent has filed reply wherein by way of preliminary submissions, it has been stated that the Himachal Pradesh State Council for Child Welfare is a volunteer organization which was constituted vide duly formed Constitution, Rules and Regulations and Memorandum of Association. As per this her

Excellency the Governor of Himachal Pradesh is the President of the State Council as an Ex-officio Member, while Hon"ble the Chief Minister as Chairman/Chairperson of the State Council and Minister of Social Justice and Empowerment is the Ex-officio Vice President of the State Council. It is not denied that the petitioner was, initially, appointed as General Secretary for a period of three years on 02.09.2008 by the General House and that her tenure was further extended in 2011 for a further period of three years till September, 2014. It was further averred that on receiving a complaint regarding the petitioner's improper functioning, the respondent decided to conduct preliminary inquiry into the matter. The matter was got enquired by the Special Secretary (SJ & E), who in his report dated 04.12.2013 recorded the following allegations against the petitioner.

"3 a. The General Secretary (HPCCW) do not attend office daily as revealed from the office people as well as from the log book of official vehicle given to her.

3. b. Being the Chief Executive Officer of the State Child Welfare Council, no serious efforts have been made by her to mobilize resources.

3. c. She failed to make necessary arrangement to convene meeting of Governing Body and General House periodically which is violation of rule-10 of Constitution/Rules and Regulations & Memorandum of Association of HP State Council for Child Welfare.

3. d. The General Secretary has gone ahead with the adoption of the child on out of turn basis despite written directions from Director (Women and Child Development) and thereafter submitted in writing that she has done this mistake inadvertently."

4. It was averred that on the basis of the fact finding inquiry report submitted by the Inquiry Officer, a show cause notice was issued to the petitioner on 13.12.2013 wherein the petitioner was given an opportunity of explaining her position with regard to the allegations levelled against her in the show cause notice within seven days. It is averred that instead of submitting proper reply to the notice, firstly, the petitioner refused to give reply to the notice till receipt of information sought by her under the Right to Information Act (for short "RTI") and thereafter sought one week time for filing reply, which according to the respondent, reflected her malafide intention and non-cooperative behavior. On 06.01.2014 final reply was submitted by the petitioner which was not found satisfactory and could not be accepted and, therefore, the Secretary of the Council felt it proper to bring the matter to the notice of the President/Vice President of the Council. The Competent Authority i.e. President of the Council "approved to remove the petitioner from the post of General Secretary and to ratify the decision later on by the General House in its next meeting within a period of six months" and in the meantime the charge of the post of General Secretary of the Council was given to the Joint Director, Women and Child Development, as an interim arrangement. In pursuance to the approval of the

President of the Council, a notification dated 21.02.2014 regarding removal of the petitioner was issued which was further placed before the Annual General Meeting of the Council held on 22.02.2014 which ratified the decision of the President and thereafter appointed Smt. Raj Kumari Soni as General Secretary of the H.P. State Council of Child Welfare.

5. We have heard Shri Anshul Bansal, Advocate, for the petitioner and Shri Shrawan Dogra, learned Advocate General, assisted by Shri Romesh Verma and Shri V.S. Chauhan, learned Additional Advocate Generals, Shri J.K. Verma and Shri Kush Sharma, learned Deputy Advocate Generals, for the respondent.

6. The petitioner has challenged the order of removal dated 21.02.2014 as being arbitrary, illegal and against the provisions of the Rules. It is submitted that in terms of the Rules of the Council, the General Secretary of the Council, is elected for a period of three years and the said tenure can be extended as had been done in her case. The further contention of the petitioner is that her appointment was made by the General House, therefore, it was General House alone, which could remove her from the post of General Secretary. Apart from that, it is argued that the entire exercise adopted by the respondent in ordering her removal was against the basic canons of natural justice and fair play.

7. The learned Advocate General, on the other hand, has contended that the decision to remove the petitioner from the post of General Secretary was taken because the petitioner was neglecting her duties and such decision was taken with the prior approval of the competent authority i.e. the President of the H.P. State Council and the same, infect, was ratified by the General House in its meeting held on 22.02.2014. He has further argued that the petitioner was removed after following the due process of law and, therefore, there is no violation of any provision of law or contravention of the principles of natural justice.

8. The present petition has been filed in this Court on 25.02.2014. It has come in the reply of the respondent that on 21.02.2014 a notification was issued by the President of the Council ordering removal of the petitioner from the post of General Secretary. The same was then placed before the Annual General Meeting of the Council on 22.02.2014 which in turn ratified the action of the President and thereafter Smt. Raj Kumari Soni was appointed as the General Secretary in place of the petitioner. Para-4 of the reply reads as thus:-

"4. That on the basis of fact finding inquiry report submitted by Special Secretary (SJ & E) at Annexure R-II, the Respondent, being the Secretary of the Welfare State, served a Show Cause notice to Smt. Ritu Sethi on dated 13.12.2013 copy of which is enclosed as Annexure R-III, wherein she was given an opportunity for explaining the position with regard to allegations levied against her in the Show Cause notice within seven days. But, in spite of submitting proper reply to the notice, firstly she refused to give reply to the notice till receipt of information sought by her under RTI Act and thereafter sought one week's time to file reply,

which reflects her malafide intention and non cooperative behaviors in the escape of Constitution/Rules and Regulations & Memorandum of Association of HP State Council for Child Welfare. Finally, she submitted the reply on dated 6.1.2014 which is placed at Annexure R-IV, which was not found satisfactory and could not be accepted. In view of the above, the Respondent felt it better to bring the entire matter into kind notice of the President/Vice President of H.P. Council for Child Welfare. The competent authority i.e. the Governor (President of Council) approved to remove Smt. Ritu Sethi from the post of General Secretary and to rectify the decision later on by the General House in its next meeting within a period of six months. It was also approved that in the meantime, the charge of General Secretary, HP Council for Child Welfare may be given to Joint Director, Women and Child Development as an interim arrangement. Hence, in pursuant of the approval of the President of Council, the notification dated 21.2.2014 regarding removal of Smt. Ritu Sethi were issued on 21.2.2014 by the respondent which were further placed before Annual General Meeting of H.P. Council held on dated 22.2.2014, which endorsed the decision and Smt. Raj Kumari Soni was appointed as General Secretary of H.P. State Council for Child Welfare."

9. To this averment, the petitioner has simply made the following averment in the rejoinder:-

"The averments made regarding putting up the matter regarding appointment of Smt. Raj Kumari Soni as General Secretary in the annual general meeting of the council, are denied. The respondent has not placed on record any documents or minutes/proceedings of the general house as such no reliance can be based on bald averments of the respondent."

10. Now, surprisingly despite the specific stand of the respondent regarding the appointment of Smt. Raj Kumari Soni as the General Secretary in place of the petitioner, the petitioner has not sought to challenge the appointment of Smt. Raj Kumari Soni or array her as a party-respondent in the present case.

11. It is well settled proposition of law that necessary party is one without whom no order can be made effectively while a property party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding.

12. The Hon''ble Supreme Court in Ramesh Hirachand Kundanmal Vs. Municipal Corporation of Greater Bombay and Others, has held as under:-

"6... ..A necessary party is one without whom no order can be made effectively. A proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding... .."

"8. The case really turns on the true construction of the rule in particular the meaning of the words "whose presence before the Court may be necessary in

order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit". The Court is empowered to join a person whose presence is necessary for the prescribed purpose and cannot under the rule direct the addition of a person whose presence is not necessary for that purpose. If the intervener has a cause of action against the plaintiff relating to the subject matter of the existing action, the Court has power to join the intervener so as to give effect to the primary object of the order which is to avoid multiplicity of actions."

13. It cannot be disputed that incase the present petition is allowed, then it would be Smt. Raj Kumari Soni, who would be ultimately and adversely affected.

Thus, in view of the clear exposition of law in Ramesh Hirachand's case (supra) Smt. Raj Kumari Soni will have to be considered not only a proper but a necessary party to the lis and, therefore, in her absence no effective orders can be passed in this petition.

14. The learned counsel for the petitioner has then contended that the petitioner could not have been removed by any authority, save and except, the General House because it was General House which had elected the petitioner as General Secretary. We are afraid that such contention does not appeal to us. Even if, it is assumed that there was any shortcoming in the procedure or lapses in issuing of the notification dated 21.02.2014 whereby the petitioner had been ordered to be removed from the post of General Secretary, even then, the said action had been duly ratified by the General House in its meeting held on 22.02.2014 which was done prior to the filing of the writ petition and this action of the respondent unfortunately has not been challenged by the petitioner. Undisputably, the order passed by the President of the Council has merged with the order of the General House. Therefore, in this background, once the decision of the General House dated 22.02.2014 is not challenged, no relief can be granted to the petitioner.

15. That apart, it is seen from the terms of the Memorandum of Association of the Council that the President enjoys all such powers to take such steps from time to time, as may be necessary, for furthering the aims and objects of the Council. Incase, the President was of the opinion that the removal of the petitioner was a necessary step for furthering the aims and objects of the Council, then the President of the Council was well within its competence to order the removal of the petitioner.

16. Lastly, insofar as the contention of the petitioner regarding violation of principles of natural justice is concerned, the petitioner was issued a show cause notice and made aware of the allegations levelled against her.

It is well settled that the principles of natural justice are not embodied principles and it has to be seen whether non-observance of any of the said principles in a given case has resulted in the denial of justice. If there is a substantial compliance of the procedure, the Courts are reluctant to interfere. Personal hearing in every situation is not necessary and there can be compliance of the

requirements of natural justice of hearing when a right to represent is given and the decision is made on a consideration thereof.

17. Keeping in view the nature of power invoked in this case and the fact that the petitioner had an opportunity to represent her case in writing and further the President of the Council had taken into consideration the reply submitted by the petitioner, we do not think that in the peculiar facts of the case, it can be held that the petitioner was entitled as a matter of right of being personally heard. The principles of natural justice, thus, stood complied with.

18. Unfortunately, as already observed, the petitioner has not at all chosen to question and challenge the action of the General House dated 22.02.2014 wherein and whereby it ratified the action of the President ordering the removal of the petitioner from the post of General Secretary of the Council. Similarly, the petitioner has not even cared to assail the appointment of Smt. Raj Kumari Soni, who was appointed as General Secretary of the Council that too in place of the petitioner prior to the filing of the writ petition.

19. In view of the aforesaid discussion, we find no merit in the petition and the same is accordingly dismissed, so also the pending application, if any, with no orders as to costs.