

(2022) 07 SHI CK 0047

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 4970 Of 2022

Sharmila Devi Alias Ramila Devi

APPELLANT

Vs

State Of Himachal Pradesh And Others

RESPONDENT

Date of Decision : 25-07-2022

Acts Referred:

Himachal Pradesh Panchayati Raj (General) Rules, 1997 — Rule 136(2)
Himachal Pradesh Panchayati Raj Act, 1994 — Section 181

Citation : (2022) 07 SHI CK 0047

Hon'ble Judges : A.A. Sayed, CJ; Jyotsna Rewal Dua, J

Bench : Division Bench

Advocate : Dr. Lalit K. Sharma, Adarsh Sharma

Final Decision : Disposed Of

Judgement

A.A. Sayed, CJ

1. Notice. Mr. Adarsh Sharma, learned Additional Advocate General, appears and waives service of notice on behalf of respondent Nos. 1 to 3.

2. Considering the nature of the order, we propose to pass, it is not necessary to issue notices to the private respondents.

3. The petitioner has filed the instant writ petition seeking following substantive relief:-

"That the impugned order dated 21.06.2022, Annexure P3, 18.07.2022 Annexure P5 and impugned letter dated 18.07.2022 Annexure P6 may kindly be set aside and quash and by way of writ of mandamus the respondent No.2 may be directed to permit the petitioner to discharge the duty of Pradhan Gram Panchayat Pekha Development Block Chhuhara District Shimla."

4. The petitioner was elected as Pradhan, Gram Pachayat Pekha, Tehsil Chirgaon, District Shimla, H.P. on 21.01.2021. Respondent No.4, who also contested the election was unsuccessful and filed an election petition against the petitioner for

setting aside her election as Pradhan on the ground that her father-in-law Sh. Kewal Ram has encroached upon the Government land.

5. On 21.06.2022, the election petition came to be allowed and the election of the petitioner was held to be null and void. The petitioner has preferred statutory appeal under Section 181 of the HP Panchayati Raj Act 1994 against the said order. Alongwith this appeal, the petitioner also filed an application for stay of the execution and implementation of the order dated 21.06.2022.

6. The appellate authority, however, vide order dated 18.07.2022 declined to grant relief of stay of the order dated 21.06.2022 on the ground that the stay could not be granted without hearing the respondents and the prayer for stay would be considered on 29.07.2022. It is, however, noticed that on the same day i.e. on 18.07.2022, the appellate authority i.e. Deputy Commissioner, Shimla issued directions (Annexure P-6) that since the order dated 21.06.2022 has been passed declaring the election of petitioner as null and void as per Rule 136(2) of the HP Panchayati Raj (General) Rules, 1997, the office work of Pradhan Gram Panchayat Pekha would be performed by the Vice-President Pekha.

7. In our view, the appellate authority ought not to have passed the order dated 18.07.2022, without considering the application for the grant of stay made by the petitioner and more so, when the matter was to come up on 29.07.2022.

8. In these circumstances, having heard the learned counsel for the petitioner and the learned Additional Advocate General, we pass the following order:-

(a) The appellate authority i.e. Deputy Commissioner, Shimla shall hear the application of the petitioner on 29.07.2022 on which date, the said application is scheduled to come up for hearing. The appellate authority may either pass an ad-interim/interim order or dispose of the application finally.

(b). Until such order is passed on the application of the petitioner, the order dated 18.07.2022 (Annexure P-5) of the Deputy Commissioner, Shimla shall stand stayed.

9. In view of above, the writ petition to stand disposed of. Pending miscellaneous application(s), if any, also to stand disposed of.