

PUNJAB AND HARYANA HIGH COURT

Before: Justice Satish Kumar Mittal, Justice Jaswant Singh

GURMIT KAUR

Versus

STATE OF PUNJAB and others

26.08.2008

Election - Reserved seat - a woman, who has been elected to the office of Panch against the reserved category of Scheduled Caste (Woman), is fully eligible to contest the election of the office of Sarpanch, which is reserved for women, being a woman, and neither under the Punjab Panchayati Raj Act, 1994 nor under the rules made thereunder, there is any bar that such a woman, who has been elected to the reserved seat, would not be eligible to contest the election for the office of Sarpanch, reserved for women. [Para 4, 5]

Mr. G.S.Bhatia, for the petitioner.

Satish Kumar Mittal, J. (Oral) - The petitioner has filed this petition under Article 226 of the Constitution of India, for quashing the impugned letter dated 27.5.2008 (Annexure P-6) vide which the respondent authorities have clarified that in case the post of Sarpanch is reserved for the woman belonging to a Scheduled Caste category, then even a woman belonging to Scheduled Caste but elected from General Category, can contest for the office of Sarpanch reserved for Scheduled Caste (Woman) provided she produces a Scheduled Caste certificate to the Presiding Officer. It has also been prayed that as a consequence thereof, all the proceedings made in compliance with the impugned letter be declared as null and void. It has been further prayed that a direction be issued to the respondents to fill up the post of Sarpanch from amongst Panches elected against seats reserved for Scheduled Caste (Woman) only and declare the petitioner as Sarpanch of Village Gram Panchayat Maulie, being the only candidate elected as Panch from the said category.

2. It is the case of the petitioner that the post of Sarpanch of the Gram Panchayat of the village was reserved for Scheduled Caste (Woman) and the petitioner is the only Scheduled Caste Panch, who can be elected against the aforesaid reserved seat of Sarpanch as she has been elected from the reserved category of Scheduled Caste (Woman). Respondent No.6, though a woman belonging to Scheduled Caste, was not eligible to contest the election of Sarpanch of the village as she was elected as Panch from General Category. However, she has been illegally elected as Sarpanch of Village Gram Panchayat Maulie. Undisputedly, the petitioner had also contested the election of Sarpanch, but respondent No.6 secured more votes, therefore, she was declared elected as Sarpanch.

3. Now the question arises for consideration is whether respondent No.6, who is a woman belonging to Scheduled Caste, can contest the election for the post of Sarpanch, which is reserved for Scheduled Caste (Woman), irrespective of the fact that she was elected as Panch of the Gram Panchayat against the reserved seat of General Category. The similar question has been answered by the Supreme Court in **Kasambhai F.Ghanchi v. Chandubhai D.Rajput and others**, (1998-2)119 PLR 611 (SC), wherein it was held that a candidate belonging to a Backward Class, who has been elected from an unreserved seat, is eligible to contest the election for the post of President of the Municipality which was reserved for a Backward Class candidate, while making the following observations:-

“The Act and the Rules provide for reservation for Scheduled Castes, Scheduled Tribes, Backward Classes and women. No reservation or classification is made ward-wise. To put it differently all members of the Scheduled Castes, for example, will be regarded as belonging to one class irrespective of the fact whether they had been elected to a reserved seat or to a general seat. Similar is the position with regard to the Backward Classes, Scheduled Tribes and women. The law does not contemplate or provide for any further sub-classification of the type which has been suggested by the respondents. Just as all members of the municipality, irrespective of the fact whether they had been elected to a reserved seat or not, are eligible for election to the post of the President when it falls in the general category, similarly when as per the roster the President is to be one who, say, belongs to the category of Scheduled Caste then all members of the municipality who are Scheduled Caste, irrespective of the seat to which they had been elected, would be eligible to stand for election. Neither the Act nor the rules stipulate that it is only such a member who has been elected to the reserved seat who would be eligible to stand for election to the post of President when it is the turn of that category of candidate to become the President of the municipality.”

4. In a similar case, this court in s **“Sukhjot Kaur v. State of Punjab and others”**, (2008-4)152 PLR 100, decided on August 05, 2008 has held that a woman, who has been elected to the office of Panch against the reserved category of Scheduled Caste (Woman), is fully eligible to contest the election of the office of Sarpanch, which is reserved for women, being a woman, and neither under the Punjab Panchayati Raj Act, 1994 nor under the rules made thereunder, there is any bar that such a woman, who has been elected to the reserved seat, would not be eligible to contest the election for the office of Sarpanch, reserved for women.

5. In view of the aforesaid discussion, we hold that respondent No.6 was fully eligible to contest the election of Sarpanch and the action of the respondent authorities in issuing the impugned letter dated 27.5.2008 (Annexure P-6) suffers from no legal infirmity.

6. In view of the aforesaid legal position, we do not find any merit in this petition and the same is hereby dismissed.