

CIVIL MISCELLANEOUS

*Before Prem Chand Pandit, J.*VIDYA DEVI,—*Petitioner**versus*THE DEPUTY COMMISSIONER, HOSHIARPUR AND OTHERS,—
Respondents

Civil Writ No. 406 of 1965.

Punjab Gram Panchayat Act, 1952 (IV of 1953)—Ss. 6, 8 and 10—A woman co-opted as panch of Sabha—Election of other panches and Sarpanch set aside on an election petition—Co-opted woman—Whether continues to be a panch—Punjab Panchayat Samitis and Zila Parishads Act (III of 1961)—S. 5—Such co-opted woman panch of Gram Sabha securing highest number of votes from amongst the women candidates seeking election to Panchayat Samiti—Whether entitled to be co-opted as a woman member thereof.

1965

 May, 13th.

Held, that the petitioner was co-opted as a panch under section 6 of the Punjab Gram Panchayat Act, 1952 and no election petition was filed against her nor was she made a party to the election petitions against the other panches or sarpanch. She, therefore, continued to be a panch of the Gram Panchayat as the Panchayat as such did not cease to exist. Other panches and sarpanch were to be elected, in accordance with the provisions of section 10 of the said Act, in place of those removed as a result of the election petition and were to hold office for the remaining term of the Panchayat. She was, therefore, entitled to seek election to the Panchayat Samiti and in that election, although she did not succeed, she secured the highest number of votes from amongst the women candidates. She was, therefore, entitled to be co-opted as a member of the Panchayat Samiti.

Petition under Articles 226/227 of the Constitution of India, praying that an appropriate writ, order or direction be issued quashing the order of respondent No. 2, dated the 3rd February, 1965, and further praying that the election of Chairman, Vice-Chairman of the Panchayat Samiti, scheduled to be held on 16th February, 1965, be stayed till the final decision of the petition.

B. S. DHILLON, ADVOCATE, for the Petitioner.
 NEMO, for the Respondents.

ORDER

PANDIT, J.—This is a petition under Articles 226 and 227 of the Constitution filed by Shrimati Vidya Devi,

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challenging the order, dated 3rd February, 1965, passed by the Sub-Divisional Magistrate, Una (Reforming Officer of the Panchayat Samiti Election, Gagret, district Hoshiarpur), respondent No. 2.

According to the allegations of the petitioner, she was co-opted as a Panch of the Panchayat of village Nagnauli, tehsil Una, district Hoshiarpur, and her name was duly notified in the *Government Gazette*. She was entered at Serial No. 186 of the voters' list for the election to the Primary Members of the Panchayat Samiti, Gagret, Khushi Ram, Kartar Chand, Maru and Rabhal were elected the Panches and Lambardar Dal Singh, as the Sarpanch of this Panchayat. One Kanshi Ram filed two election petitions against the four Panches and the Sarpanch. These election petitions were tried by the Illaqa Magistrate, Una, who set aside the election of all the Panches and the Sarpanch on 1st February, 1965. The election of the petitioner had not been challenged and she was not even impleaded as a party in the above-mentioned election petitions. In the meantime, the petitioner contested the election to the Primary Members of the Panchayat Samiti, Gagret. The result of this election was announced on 22nd January, 1965. The petitioner secured six votes, but she had not been elected. Similarly, Shrimati Rattan Devi and Shrimati Savitri Devi, respondents 3 and 4, also contested this election and they got 3 and 2 votes, respectively, but none of them also was elected. Since the petitioner had secured the highest number of votes from amongst the women, candidates, she was automatically to be co-opted as a Member of the Panchayat Samiti in accordance with the provisions of the Punjab Panchayat Samitis and Zila Parishads (Amendment) Act, 1964 (Act 14 of 1964). The meeting for co-opting the women and Harijan Panches had been called by respondent No. 2 for 3rd February, 1965. On that day, by the impugned order, respondent No. 2, held that since the election of the four Panches and the Sarpanch of the Panchayat Nagnauli had been set aside, therefore, the petitioner was no more Member of this Panchayat as the same did not exist. Consequently, she could not be co-opted as Member of the Panchayat Samiti, Gagret. Respondents 3 and 4 were, therefore, co-opted as Members. This has led to the filing of the present writ petition.

Learned counsel for the petitioner has contended that respondent No. 2 had erred in law in holding that the Panchayat Nagnauli did not exist and, therefore, the petitioner automatically ceased to be a Panch of the same. Her election had not been challenged by any election petition and consequently, she remained a co-opted Panch of this Panchayat and since she had secured the highest number of votes amongst the women candidates, so far as the election of the Panchayat Samiti was concerned, she was under the law entitled to be so co-opted. It was also argued that respondent No. 2, as the Presiding Officer of the co-option meeting, had no jurisdiction to say that she was no longer the Panch of the Nagnauli Panchayat.

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The elected Members of this Panchayat consisted of four Panches and one Sarpanch. Under section 6 of the Punjab Gram Panchayat Act, 1952 (hereinafter referred to as the Act), if no woman was elected as a Panch of any Sabha, the woman candidate securing the highest number of votes amongst the women candidates in that election shall be co-opted by the Panchayat as a Panch of that Sabha and where no such woman candidate was available, the Prescribed Authority shall co-opt as such Panch a woman member of the Sabha who was qualified to be elected as a Panch. It was under this provision that the petitioner was co-opted a Panch of this Gram Panchayat. It may be mentioned that in the writ petition it has not been stated as to whether the petitioner was co-opted by the Panchayat or by the Prescribed Authority. Under section 8 of the Act, any Member of the Sabha could present to the Prescribed Authority an election petition against the *election of any person* as a Sarpanch or Panch and if that Authority finds, after such enquiry as it may deem necessary, that a failure of justice has occurred, it can set aside *the said election* and a fresh election shall thereupon be held. It is also undisputed that Kanshi Ram had filed two election petitions, one against the Sarpanch and the other against all the four Panches. The election of the petitioner, however, was not challenged in any way. The Prescribed Authority set aside the election of all the four Panches and the Sarpanch, that is to say, the co-option of the petitioner remained unchallenged and it cannot, therefore, be said that the Panchayat as such ceased to exist. Under the provisions

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of section 10 of the Act, whenever a vacancy occurs by the death, resignation or removal of a Panch or Sarpanch, a new Panch or Sarpanch, as the case may be, shall be elected in such manner as may be prescribed and the person so elected shall hold office for the unexpired portion of the term for which the person in whose place he was elected would have otherwise continued in office. The bye-election that will take place under the provisions of section 10, pursuant to the order of the Prescribed Authority, will be for electing four Panches and one Sarpanch, whose election had been set aside and the elected person shall hold office for the unexpired portion of the term, the usual being three years, under section 9(2). Since the election of the petitioner has not been set aside, therefore, she would continue to remain as the co-opted Member of the Panchayat. That being so, she having secured the highest number of votes amongst the women candidates, was eligible to be co-opted as a Primary Member of the Panchayat Samiti, Gagret. It is also significant to mention that the nomination paper of the petitioner for the election as the Primary Member of the Panchayat Samiti was not rejected on the ground that she was no longer a Panch of the Panchayat Nagnauli. She was allowed to contest this election, in which she secured the maximum number of votes amongst the women candidates. When the meeting for co-opting the women candidates was held, respondent No. 2 *suo motu* raised the objection that the Panchayat Nagnauli had ceased to exist, because of the setting aside of the election of its Panches and Sarpanch by the Prescribed Authority and, as a result, the Petitioner was no more a Panch and could not be co-opted. This, respondent No. 2 could not do. He had merely to see as to who amongst the women candidates had secure the highest number of votes and after having found that he was to co-opt them in accordance with law. The impugned order passed by him is, therefore, liable to be set aside.

In view of what I have said above, this petition succeeds and the impugned order is quashed. Since there is no appearance on behalf of the respondents, there will be no order as to costs.

B.R.T.