

year 1984, 1985 and 1990. This precise objection was taken in C.W.P. No. 1148 of 1986 (*Raj Karni v. Government of Punjab and Others*) and has been repelled by R. S. Mongia, J.,—*vide* judgment dated 12th January, 1993 wherein it has been held that such derecognition would not effect those persons who had obtained such qualification prior to the date of derecognition.

(6) The other objection raised by the State is also without any merit. *Vide* letter addressed to the Deputy Commissioner, Sangrur, dated 13th October, 1992 issued by the Department of Relief and Resettlement Branch, Punjab. Upper age for teachers is fixed at 36 years which, however, can be relaxed for another five years in cases covered for employment under priority category I in terms of the policy instructions of the Department of Personnel and Administrative Reforms. There is no denying the fact that the petitioner's case is squarely covered by the aforesaid instructions noted above (Annexure P.5).

(7) Since the petitioner has successfully met the two objections raised by the respondents while denying him the job of Art and Craft Teacher, we accept this writ petition and direct the respondents to appoint the petitioner as Art and Craft Teacher being son of deceased Madan Lal as per policy decision within three months from the receipt of this order. No order as to costs.

R.N.R.

Before Hon'ble N. C. Jain & Amarjeet Chaudhary, JJ.

SUKHDEV SINGH,—*Petitioner.*

versus

EXECUTIVE MAGISTRATE AND ANOTHER,—*Respondents.*

Civil Writ Petition No. 7613 of 1993

January 12, 1994.

Constitution of India, 1950—Arts. 226/227—Punjab Gram Panchayat Act, 1952—Ss. 13 & 13 I—Whether Election Tribunal has any authority to pass an interim order restraining a successful candidate from participating in proceedings of Gram Panchayat—Held, that Election Tribunal has no inherent jurisdiction to pass stay order—Provisions of Order 39 rule 1 C.P.C. have not been made applicable.

Held, that the Election Tribunal under the provisions of the Punjab Gram Panchayat Act has got limited jurisdiction to deal with election petition and has got no authority whatsoever in passing any interim order restraining a successful candidate from participating in the proceedings of the Gram Panchayat. There is absolutely no provision in the Act authorising the Tribunal to pass restraint orders. The provisions of Civil Procedure Code do apply in general for the purpose of trying an election petition as if it is a suit because evidence has to be produced by the parties. However, the provisions of Order 39 Rules 1 and 2 of the Code of Civil Procedure as such have not been made applicable authorising the Tribunal to grant injunction against the successful candidate. If the Legislature intended to vest any such power in the Tribunal, the intention could be demonstrated by enacting a specific provision. In our view, such provision has not been made in the Gram Panchayat Act for obvious reasons.

(Para 4)

Sarjit Singh, Senior Advocate with Jagdev Singh, Advocate,
for the Petitioner.

Ranbir Singh, A.A.G. Punjab for Respondent No. 1.

R. S. Bhangu, Advocate, for Respondent No. 2.

JUDGMENT

(1) Since the point involved herein is a short one, we have thought it appropriate to dispose of the Writ Petition at the motion hearing.

(2) In an election petition under Section 13(c) of the Punjab Gram Panchayat Act, 1952 read with Rule 42 of the Punjab Gram Panchayat Election Rules, the election of the petitioner as Panch of the Gram Panchayat has been challenged by respondent No. 2 before the Executive Magistrate Samana, District Patiala. During the pendency of the election petition, the petitioner has been restrained from participating in the proceedings of the Gram Panchayat,—*vide* order Annexure P.1 and it is the legality and validity of this order which is the subject matter of challenge in this writ petition before us.

(3) Mr. Surjit Singh, Senior, Advocate, learned counsel for the petitioner has argued that the petitioner could not be restrained from participating in the proceedings of the Gram Panchayat during the pendency of the election petition in which it has yet to be seen whether a good ground for setting aside his election is made out.

The impugned order has been defended by the counsel for respondent No. 2 Mr. R. S. Bhangu on the ground that the provisions of the Civil Procedure Code are applicable to the election petition and, therefore, the prescribed authority had the power to pass restraint order during the pendency of the writ petition.

(4) We have given our thoughtful consideration to the entire matter and are of the view that the petition deserves to be allowed. In our considered view the prescribed authority has acted in excess of its jurisdiction in passing the impugned order. The Election Tribunal under the provisions of the Punjab Gram Panchayat Act has got limited jurisdiction to deal with election petition and has got no authority whatsoever in passing any interim order restraining a successful candidate from participating in the proceedings of the Gram Panchayat. There is absolutely no provision in the Act authorising the Tribunal to pass restraint orders. The provisions of Civil procedure Code do apply in general for the purpose of trying an election petition as if it is a suit because evidence has to be produced by the parties. However, the provisions of Order 39 Rules 1 and 2 of the Code of Civil Procedure as such have not been made applicable authorising the Tribunal to grant injunction against the successful candidate. If the Legislature intended to vest any such power in the Tribunal, the intention could be demonstrated by enacting a specific provision. In our view, such provision has not been made in the Gram Panchayat Act for obvious reasons. Supposing a successful Panch is restrained during the pendency of the election petition from participating in the proceedings of the Gram Panchayat and ultimately the election petition is found to be meritless, the successful candidate in such an eventuality would suffer irreparable loss which cannot be compensated even on payment of costs. In any case, we would not read something more in the Gram Panchayat Act which is not there authorising the Tribunal to pass restraint orders of the type which has been passed in the instant case. The precise point involved in this petition is not *res-integra*. In two judicial pronouncements a similar view which we have taken in the present case has already been taken. In *Kundan Singh v. Executive Magistrate 1st Class Barnala and others* (1). R. S. Narula, J. while quashing the restraint order passed under Order 39 Rules 1 and 2 of the Code of Civil Procedure had held as under :—

“The Code of Civil Procedure contains several types of provisions including those relating to the procedure for the trial of Civil suits and those governing ancillary matters

**Capt. Chanan Singh v. The Election Commissioner of India 201
and others (M. R. Agnihotri, J.)**

such as grant of temporary injunction etc. The operation of sub-section (1) of section 13-G is confined to the procedure applicable for the trial of a suit and not to any ancillary matter which does not directly relate to such procedure. Moreover, while defining the powers of the prescribed authority, section 13-I of the Act has scrupulously avoided to refer to order 39 of the Code of Civil Procedure. An Election Tribunal is a specially constituted Court of limited jurisdiction and has no authority to pass any order outside those limits. In the absence of any specific provision to the contrary, an Election Tribunal has no inherent jurisdiction like that vested in an ordinary Civil Court."

In *Kartar Singh v. Sub-Divisional Magistrate, Rampura Phul and another* (2), a Single Bench of this Court held that there was no inherent jurisdiction vested in the Election Tribunal to pass stay order.

(5) We are in respectful agreement with the view taken in the aforesaid cases and, therefore, the writ petition is allowed, the impugned order Annexure P.1 is quashed and the prescribed authority is directed to decide the Election petition expeditiously and preferably within a period of six months from today. No costs.

R.N.R.

Before Hon'ble M. R. Agnihotri & N. K. Sodhi, JJ.

CAPT. CHANAN SINGH,—Petitioner.

versus

THE ELECTION COMMISSIONER OF INDIA AND
OTHERS,—Respondents.

Civil Writ Petition No. 5968 of 1991.

February 9, 1992.

Constitution of India, 1950—Arts. 226/227—Representation of People Act, 1951—Ss. 10-A, 11-A and 77—Failure of a candidate at election to file return of expenses—Return not filed in spite of a notice—Candidate declared to be disqualified—Such result automatic—Opportunity of hearing not granted—Declaration not vitiated on that ground.

(2) 1981 P.L.J. 202.