

Courts below or in the arguments in this Court. Not a word has been suggested that the petitioner's residence or domicile in the State of Nevada and U.S.A., was otherwise than *bona fide*. That being so the only possible attack on the validity of the decree of divorce has not even been suggested and the competency of the Court to deliver the said judgment and decree has not been assailed on this ground. In view of the provisions above-said there is no other option but to hold in face of the decree of divorce that the marriage of the petitioner to the respondent stands dissolved and consequently he would not be liable under the provisions of section 488, Criminal Procedure Code, to maintain the respondents. The matter may also be viewed from another angle. The jurisdiction under section 488, Criminal Procedure Code, is in the nature of a summary jurisdiction for the grant of maintenance and the Criminal Court cannot possibly go behind a valid judgment and decree granted by a competent civil Court. Consequently the order of the trial Court granting maintenance to the respondent-wife cannot be sustained and is hereby set aside.

(16) Mr. Bhagirath Das the learned counsel for the petitioner very fairly conceded that as regards the liability to maintain the children of the marriage the same would not be affected and he did not challenge that part of the order. In the result the grant of maintenance to the two minor children of the respondent is sustained but the order of maintenance in her favour is set aside.

K.S.K.

CIVIL MISCELLANEOUS

Before P. C. Jain, J.

SHEO RAM SARPANCH,—Petitioner.

Versus

THE STATE OF HARYANA AND OTHERS,—Respondents.

Civil Writ No. 1845 of 1969

November 14, 1969.

Punjab Gram Panchayat Act (IV of 1953)—Sections 17 and 113—Punjab Gram Panchayat Rules (1965)—Rule 9(1)(b)—Whether applicable to temporary labourers of the Panchayat—Sarpanch employing his relation as temporary labourer—Whether violates Rule 9(1)(b)—Section 113—Whether applicable to the ordinary meetings of the Gram Sabha.

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Held, that from the plain reading of section 17 of Punjab Gram Panchayat Act, 1953, and rule 9 of Punjab Gram Panchayat Rules, 1965, the only conclusion that can be arrived at is that rule 9(b) relates to the employees of the Gram Panchayat who have been employed in the manner provided therein and not to the persons who may have been employed on daily basis as labourers. Section 17 gives power to a Gram Panchayat to employ such servants as are considered necessary for carrying out the duties imposed on it by the Act but before the employment, the previous approval of the Panchayat Samiti is necessary. It is only to such employees who are employed under this section that the bar of relationship as prescribed in clause (b) of sub-rule (1) of rule 9, applies. Hence where a Sarpanch employs his relation as a temporary labourer, he does not violate any provisions of clause (b) of sub-rule (1) of Rule 9 of the Rules. (Para 9)

Held, that section 113 of the Act has no application to an ordinary meeting of the Gram Sabha. It relates only to a meeting of the Sabha in which the budget of the Gram Panchayat and annual report of the working of the Gram Panchayat have to be presented. (Para 12)

Petition under Articles 226 and 227 of the Constitution of India praying that a writ in the nature of Certiorari or any other writ, order or direction be issued quashing the order of respondent No. 2 dated 25th June, 1969.

I. S. SAINI, ADVOCATE, for the petitioner.

D. S. TEWATIA, ADVOCATE-GENERAL, HARYANA, for respondents Nos. 1 to 3.

MALOOK SINGH, ADVOCATE, FOR CH. DALIP SINGH, ADVOCATE, for respondent No. 4.

JUDGMENT

P. C. JAIN, J.—Sheo Ram has filed this petition under Articles 226 and 227 of the Constitution of India for the issuance of an appropriate writ, order or direction, quashing the order of the Deputy Commissioner, Gurgaon, respondent No. 2, dated 25th June, 1969 (copy Annexure 'A-4' to the petition).

(2) Briefly the facts as given in the petition are that the petitioner was elected as Sarpanch, Gram Panchayat, Budhera, in 1964. Respondent No. 4 Om Parkash, before the petitioner's election as Sarpanch, was the Sarpanch of Gram Panchayat, Budhera, and is a personal and close friend of respondent No. 5, Shri K. L. Poswal. He (respondent No. 4) again contested the election against the petitioner but did not succeed. Certain allegations of *mala fides* have

been made in the petition but it is not necessary to state those allegations.

(3) It is stated that certain enquiry was started against the petitioner and he was called by the Assistant Director of Panchayats. The petitioner attended the enquiry and according to the averment made in the petition, the Assistant Director was satisfied that no illegality had been committed by the petitioner. However, the petitioner received a show-cause notice dated 23rd April, 1969, levelling certain charges against him and stating as to why action under section 102(2) of the Gram Panchayat Act, 1952 (hereinafter referred to as the Act) should not be taken against him, (copy Annexure 'A-2' to the petition). A reply was sent by the petitioner, a copy of which is Annexure 'A-3' to the petition. Thereafter the impugned order was passed by respondent No. 2, the legality of which has been challenged by way of this petition.

(4) Separate written statements have been filed by respondents 2, 4 and 5, in which material allegations made in the petition have been controverted.

(5) After hearing the learned counsel for the parties, I am of the view that this petition deserves to be allowed. The grounds on the basis of which the petitioner has been removed, read as under:—

- “1. That by getting his brother Dhig Ram employed as a labourer upon the construction works of the Panchayat, he has violated Rule 9(b) of the Gram Panchayat Rules, 1965.
2. That the land upon which the Panchayat has got the Community Centre constructed, there is a case relating to that pending in the Court. If the Court decides against the Panchayat, then the Panchayat will have to face a great loss because the Community Centre, which has been built at the cost of Rs. 3,000 will have to be demolished. Being the head of the Panchayat, he did not correctly study the land before the construction and he is seriously guilty of this lapse.
3. That after becoming the Sarpanch, he has not called the ordinary meeting of the Gram Sabha and violated section 113 of the Gram Panchayat Act, 1952.”

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(6) In the show-cause notice, (Annexure A-2) to which reply was filed by the petitioner, the charges levelled against the petitioner, are in the following terms:—

- “1. That there is an item of Rs. 418.48 paise against your name in the Panchayat records and you have not deposited the same in the accounts of Panchayat so far. Thus you have misappropriated this amount. In addition, you secured an amount of Rs. 323 on the occasion of Durga festival in the year 1965-66 but you have not deposited this amount as well in the Panchayat funds.
2. That you got your brother Shri Dhig Ram employed as labourer in the construction of school and well works. He did not work on these construction works. So you fraudulently showed these expenses relating to his wages and got the same misappropriated.
3. That in the construction of school, the bricks used were of II Class whereas you showed them to be of 1st Class.
4. That you in the Panchayat accounts have shown the construction of new well for Harijans but in fact you have only got the old Harijan well repaired. In this way, you, after showing false expenditure, have misappropriated the same.
5. That you spent Rs. 3,000 on the construction of the Community Centre. The land on which it has been constructed, a case relating to that is pending in the Court of the Senior Sub-Judge, Gurgaon. Therefore, by getting the Bhawan constructed on such a land, you have done highly objectionable work.”

(7) Charges 1 and 3, appearing in the show-cause notice, do not form grounds for removal. The first ground for removal is that the provisions of rule 9(b) of the Gram Panchayat Rules, 1965 (hereinafter referred to as the Rules) have been violated by the petitioner by employing his brother Dhig Ram as a labourer upon the construction work of the Panchayat. From the show-cause notice it transpires that the charge was that Dhig Ram was employed as labourer for the construction of school and well works, that he did not work on those construction works and that the expenses relating to his wages were fraudulently shown and misappropriated. From this it

is clear that the charge in the show-cause notice was entirely different while the ground which has now been made the basis for removal is entirely different. On this short ground the first ground in the impugned order is liable to be ignored. However, even on merits, there is no substance in this ground. There is no dispute on fact that Dhig Ram who is brother of the petitioner, was employed as a labourer upon the construction works of the Panchayat. The question that requires determination is whether by employing Dhig Ram, the petitioner has violated rule 9(b) of the Rules. In order to appreciate the contention, it would be proper at this stage to reproduce rule 9 in its entirety, which is in the following terms:—

“9. Employment of other employee.

- (1) (a) Subject to the approval of the Panchayat Samiti, and to the availability of funds in the budget, a Gram Panchayat may, by a resolution, prepare a list of employees required by it and shall also decide the salary and allowances to be paid to them and the duties to be assigned to each one of them.
 - (b) No person shall be employed by a Gram Panchayat if he is a near relative (brother, father, grand-father, wife's brother and wife's father, son, son-in-law) of any of its members or if he has been convicted of any criminal offence involving moral turpitude. No employee of the Panchayat shall be retained in service after he has attained the age of 58 years.
- (2) A Panchayat may for good and sufficient reasons impose the following penalties on its employees:—
 - (i) Censure.
 - (ii) Recovery of whole or part of any pecuniary loss caused to the Panchayat by negligence or breach of orders of the Panchayat.
 - (iii) Removal or dismissal from service.

Provided that before imposing any penalty the employee shall be informed of specific charges against him and shall be given a reasonable opportunity to explain his position or produce any evidence.

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- (3) An employee who has been punished under sub-clause (2), may prefer an appeal within 30 days of communication of the order of punishment to the employee to the Executive Officer of the Panchayat Samiti.
- (4) The services of an employee of a Gram Panchayat can be terminated by giving him one month's notice or in lieu thereof one month's pay or pay for the period by which the notice falls short of one month.
- (5) The employees of the Gram Panchayat will be entitled to the same leave to which they would have been entitled if they were members of the Panchayat Samitis and Zila Parishads Service:

Provided that a Gram Panchayat will be competent to sanction as much leave as a Panchayat Samiti is competent to sanction to its employees. For sanctioning more leave, the case will be submitted to the Executive Officer of the Panchayat Samiti.

- (6) The Government Servants Conduct Rules, 1955, as amended from time to time, shall apply to the servants of a Gram Panchayat in so far as they are not inconsistent with the provisions of the Act and these rules:

Provided that for the word 'Government' and the words 'Government Servants' wherever they occur in the aforesaid rules, the words 'Gram Panchayat' and the words 'employees of Gram Panchayat' shall be deemed to have been substituted, respectively."

(8) This rule has been framed in order to carry out the purpose of section 17 of the Punjab Gram Panchayat Act, 1952 (hereinafter referred to as the Act), which reads as under:—

"17. *Employment of other servants.*

- (1) Subject to such rules as may be made in this behalf and with the previous approval of the Panchayat Samiti, a Panchayat may employ such other servants as are considered necessary for carrying out the duties imposed on it by this Act and may suspend, dismiss or otherwise punish such servants.

(2) A Gram Panchayat shall pay the remuneration to such servants out of the Sabha Fund.”

(9) From the plain reading of section 17 and rule 9, the only possible conclusion that can be arrived at is that rule 9(b) relates to the employees of the Gram Panchayat who have been employed in the manner provided therein and not to the persons who may have been employed on daily basis as labourers. Section 17 gives power to a Gram Panchayat to employ such other servants as are considered necessary for carrying out the duties imposed on it by the Act; but before the employment, the previous approval of the Panchayat Samiti is necessary. Under rule 9, a procedure is provided for the employment of the employees; so also the penalties which may be imposed on the employees. Under this rule, it is further provided as to how much leave and in what manner an employee would be entitled. Under sub-rule (6), it is stated that the Government Servants Rules, 1955, shall apply to the servants of a Gram Panchayat in so far as they are not inconsistent with the provisions of the Act. It is only to such employees who are employed under section 17 that the bar of relationship as prescribed in clause (b) of sub-rule (1) of rule 9, applies. Admittedly Dhig Ram was never employed in the manner provided under section 17, read with rule 9 of the Act, nor was he entitled to claim benefit of sub-rule (4) of rule 9 to the effect that it was necessary to serve one month's notice before terminating his services. He was employed as a temporary labourer and his services could be dispensed with at any time and without assigning any reason. Thus I am of the view that clause (b) of sub-rule (1) of rule 9 does not apply to the persons who are employed as temporary labourers and that the petitioner has not violated any provision of clause (b) of sub-rule (1) of rule 9 by employing his brother Dhig Ram as a labourer on the construction works.

(10) The second ground on which the removal order is passed, is that the Community Centre has been got constructed on a piece of land regarding which a case is pending in the Court. From the reading of this ground, it is apparent that on purely conjectures and suppositions, the petitioner has been held guilty on ground No. 2. The case is still pending in the Civil Court and it has not been decided so far by the competent Court that the land on which the Community Centre has been constructed, does not belong to the Panchayat. The Deputy Commissioner should have waited for the result of this suit

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and in case the decision in the suit had gone against the Panchayat, then there may have been some justification for the Deputy Commissioner to take action against the petitioner. As at present, the ground is imaginary and cannot be made basis for the removal of the petitioner.

(11) Ground No. 3 states that the petitioner has violated section 113 of the Act by not calling the ordinary meeting of the Gram Sabha. As is apparent from the show-cause notice, this ground admittedly did not figure in the show-cause notice and has been made a ground for the first time at the time of the passing of the impugned order. The petitioner was never given a chance to furnish his explanation to this ground and as such cannot be penalised without affording him an opportunity of explanation. However, even on merits, there is no substance in this ground. Section 113 reads as under:—

“113. *Budget and Annual Reports by Gram Panchayats.*

Every Gram Panchayat shall prepare and lay before the Sawani meeting of the Sabha a budget estimate of its income and expenditure for the year commencing on the first day of Baisakha next following and an annual report of the working of the Gram Panchayat stating therein the future development programme and the plans for the next year:

Provided that if a Gram Panchayat fails to present its budget or annual report in the Sawani meeting, the Panchayat shall prepare the budget and the annual report of such Gram Panchayat and present the same before an extraordinary general meeting of the Sabha specially called for this purpose, and the Sabha shall consider the budget and the annual report so prepared and presented and draw out development plans for the Sabha area.”

(12) From the plain roading of this section, it is clear that it has no application to an ordinary meeting of the Gram Sabha. It relates only to a meeting of the Sabha in which the budget of the Gram Panchayat and the annual report of the working of the Gram Panchayat have to be presented. In reality, it is section 12 of the Act which talks of the general meetings and quorum of the Gram Sabha. There could have been an argument that section 113 was wrongly mentioned in the ground but from the return filed by the Deputy

Commissioner, it is clear that the stand still taken is that section 113 of the Act applies. However, as earlier observed, the ground as mentioned in the impugned order, does not satisfy the test as laid down in section 113 of the Act. Thus viewed from any angle, no ground for removal has been made out and the grounds referred to in the impugned order are not covered by section 102 (2) of the Act wherein the grounds on which the order of removal could be passed, are provided :

(13) In the view I have taken on the first contention of the learned counsel, I do not propose to deal with the second contention of the learned counsel that no enquiry was conducted against the petitioner on the basis of which he could be removed.

(14) For the reasons recorded above, I allow this petition and quash the impugned order of the Deputy Commissioner, dated 25th June, 1969 (copy Annexure 'A-4' to the petition), but make no order as to costs.

K.S.K.

CIVIL MISCELLANEOUS

Before D. K. Mahajan and A. D. Koshal, JJ.

B. D. GUPTA,—Petitioner.

Versus

THE STATE OF HARYANA AND OTHERS,—Respondents.

Civil Writ No. 340 of 1969

November 19, 1969.

The Punjab Re-organisation Act (XXXI of 1966)—Section 80—State employee working in the construction relating to Beas Project before the constitution of Beas Construction Board—Whether becomes employee of the Board—State Government—Whether has any control over the employee before his recall under section 80(2).

Held, that section 80 of the Punjab Re-organisation Act, 1966, itself makes the construction of the Beas Project a function of the Central Government. The first proviso to sub-section (2) of section 80 of the Act makes