

The covering letter to this seniority list furnishes in our view, a complete answer to the contention raised by Mr. Awasthy. It states in the following terms :—

“Government have taken into consideration all the representations of the doctors on the matter of fixation of their seniority on integration of the cadre of P.C.M.S. I (Men, women and Public Health Class I Officers) with effect from 15th July, 1964 and have finally approved the integrated seniority list, a copy of which is enclosed for your information.

The names of the officers who retired before 1st November, 1966 and of those allocated to Haryana and Himachal Pradesh have been deleted from the list.

2. However, the list in question will be subject to any change ordered by any Court of law or otherwise considered necessary at any time.”

It is the admitted case of the appellants that they had made representation in connection with the fixation of the seniority. The above letter clearly shows that all these have been duly taken into consideration for the purpose of the fixation of the seniority. It is thus patent that the appellants have been given ample and reasonable opportunity of showing cause against any supposed grievance which they might have had regarding the matter of seniority. If on a consideration of all these the Government have arrived at a decision, the appellants can now have no grouse whatsoever on that score.

(21) In the result, therefore, this appeal fails and is dismissed, however, we make no order as to costs.

HARBANS SINGH, C.J.—I agree.

R.N.M.

CIVIL MISCELLANEOUS

Before Bal Raj Tuli, J.

BISHAN KAUR,—Petitioner.

versus

THE STATE OF PUNJAB AND OTHERS,—Respondents.

Civil Writ No. 1123 of 1964

August 19, 1969.

*Punjab Gram Panchayat Act (IV of 1953)—Sections 6 and 13-A(e)—Co-option of a woman Panch—Whether amounts to election—Such co-option—Whether to be set aside by an election petition—Order removing a co-opted*

Bishan Kaur v. The State of Punjab etc. (Tuli, J.)

*woman Panch without affording her an opportunity of being heard—Whether vitiated as offending the principles of natural justice.*

*Held*, that the co-option of a woman Panch does not amount to election which requires to be set aside by an election petition. A woman Panch is co-opted when no woman has been elected and becomes an addition to the number of Panches of the Gram Panchayat because in case a woman Panch is elected, no woman has to be co-opted as a Panch. Sub-section (3) of section 6 of the Punjab Gram Panchayat Act gives her the right to vote as a Panch which means that she is not a regular Panch but has only the right to vote. It cannot, therefore, be said that she has been elected to fill the office of the Panch within the meaning of 'election' as defined in section 13-A(e). Co-option may be a form of election by a smaller body but in the case of this Act, a co-option of a woman Panch under section 6 of the Act does not amount to 'election' which can be set aside by an election petition. (Paras 5 and 7)

*Held*, that it is the requirement of the principles of natural justice that a person in office should have been heard before he is ordered to vacate the seat in favour of some other person. Where the District Development and Panchayat Officer disapproves the co-option of a woman Panch and directs the Sarpanch of the Panchayat to co-opt another woman Panch, without giving an opportunity of being heard to the co-opted Panch, such an order of the District Development and Panchayat Officer offends against the principles of natural justice and is vitiated. (Para 4)

*Petition under articles 226 and 227 of the Constitution of India, praying that a writ, in the nature of Mandamus, prohibition or any other appropriate writ, order or direction be issued quashing the orders of Respondent No. 2 and 3, dated 1st May, 1964 and 12th May, 1964 respectively.*

M. M. PUNCHHI, ADVOCATE, for the Petitioner.

R. N. NARULA, ADVOCATE, for Respondent No. 4.

JUDGMENT.

B. R. TULI, J.—The election to the Gram Panchayat of village Dabwali Rahoorianwali, tehsil Muktsar, district Ferozepore, took place on January 2, 1964. The seats to be filled were five, one of which was reserved for a Harijan. For the Harijan seat, two nominations were filed, one by Shrimati Nikko and the other by Kartar Singh. For the other 4 seats, there were six contestants out of which four were elected, namely, (i) Surjit Singh, (ii) Gehla Ram, (iii) Sajjan Singh, and (iv) Kaur Singh. Balwant Singh and Shrimati Bishan Kaur (petitioner) secured 47 and 2 votes respectively and thus forfeited their security. For the Harijan seat, both Kartar Singh and Shrimati Nikko obtained four votes each and their

result was to be decided by drawing lots. Instead of doing that, Shrimati Nikko agreed that Kartar Singh might be declared elected and that she withdrew from the contest. On the basis of that statement Kartar Singh was declared elected.

(2) Since no woman was elected as a Panch under section 6 of the Punjab Gram Panchayat Act, one woman Panch had to be co-opted in the manner prescribed therein, that is, out of the women candidates for the election, the woman getting highest number of votes was to be co-opted. If no woman was a candidate, then some woman voter was to be co-opted. In this case, Bishan Kaur (petitioner) and Nikko contested the election and they obtained two and four votes respectively. At a meeting of the Panchayat held on February 13, 1964, the Panchayat co-opted the petitioner as the woman Panch on the ground that Shrimati Nikko had withdrawn from the contest and, therefore, was considered as not having contested the election and not being a candidate at the election. The Block Development and Panchayat Officer, Lambi, however, wrote a letter to the Sarpanch of the Panchayat intimating that the District Development and Panchayat Officer, Ferozepore, had ordered,—*vide* letter No. 1230/DPE, dated 1st May, 1964, that the Panchayat could only co-opt Shrimati Nikko and not Shrimati Bishan Kaur. The Sarpanch was directed to co-opt Shrimati Nikko and pass a resolution of the Panchayat to that effect within four days and send a copy thereof to his office. This letter is dated May 12, 1964. The Panchayat did not co-opt Shrimati Nikko in place of Shrimati Bishan Kaur, as directed by the District Development and Panchayat Officer, due to some procedural and technical hitches. Shrimati Bishan Kaur filed the present writ petition in this Court on June 12, 1964, which came up before the learned Vacation Judge on June 17, 1964 and an injunction was issued against the respondents restraining them from putting into effect the impugned order of the District Development and Panchayat Officer till July 21, 1964, and the writ petition was ordered to be placed before the Motion Bench for hearing on that date. The writ petition came up for motion hearing before the Bench on July 21, 1964, when it was admitted and the injunction order already issued was continued.

(3) The written statement has been filed by the Deputy Commissioner, Ferozepore and by respondent 4, the Gram Panchayat, but at the hearing only Gram Panchayat is represented by a counsel. No one has appeared for the other respondents.

(4) The learned counsel for the petitioner has submitted that the petitioner should have been given an opportunity of being heard before an order was passed by the District Development and Panchayat Officer disapproving her co-option and directing the Sarpanch of the Panchayat to co-opt. Shrimati Nikko. I find force in the submission of the learned counsel. The Gram Panchayat had the right to co-opt a woman Panch in case no woman Panch was elected. It may be that the Panchayat took a wrong view of the withdrawal of candidature of Shrimati Nikko, but it was the requirement of the principles of natural justice that the person in office (the petitioner in this case) should have been heard before she was ordered to vacate the seat in favour of Shrimati Nikko. This order certainly affected the right of the petitioner as Panch and the order of the District Development and Panchayat Officer is, therefore, vitiated as he passed the order without affording an opportunity of being heard to the petitioner.

(5) The learned Counsel for the petitioner submitted that the District Development and Panchayat Officer had no right to set aside her co-option when no elector or Shrimati Nikko had filed any election petition for setting aside her co-option. I am of the opinion that the co-option of a woman Panch does not amount to election which requires to be set aside by an election petition. A woman Panch is co-opted when no woman has been elected and becomes an addition to the number of Panches of the Gram Panchayat because in case a woman Panch is elected, no woman has to be co-opted as a Panch. Sub-section (3) of section 6 of the Act gives her the right to vote as a Panch which means that she is not a regular Panch but has only the right to vote. It cannot, therefore, be said that she has been elected to fill the office of the Panch within the meaning of 'election' as defined in section 13-A(e). No rules for co-option have been prescribed and the manner of co-option is only given in section 6 of the Act. The Gram Panchayat Election Rules, 1960, do not contain any rule with regard to co-option of a Panch under section 6 of the Act. A learned Single Judge of the Madras High Court in *Mannammal v. Sessa Mudaliar and others* (1), held as under:—

“In the matter of co-opting a woman member, no process of election is contemplated under the Act. It may no doubt be that the manner by which co-option could be effected by the Panchayat is that some member of the Panchayat proposes the name and the proposal is put to

vote, but that is not an election as contemplated by the Act."

(6) I am in respectful agreement with the view expressed by the learned Judge. My attention has been invited to the judgment of Pandit, J., in *Vidya Devi v. The Deputy Commissioner and others* (2), in which the learned Judge held that a co-opted woman Panch continued to hold that office even when the election of all the Panches and the Sarpanch, who had co-opted her, had been set aside. The learned Judge did not decide whether the co-option was equivalent to 'election' and should be set aside by an election petition as this matter was not before the learned Judge for decision. The mere use of the words 'election' and 'co-option' interchangeably does not lead to the conclusion that in the opinion of the learned Judge, co-option was an election which could be set aside by an election petition.

(7) The dictionary meaning of co-opt is "to elect into anybody by the votes of its members". Co-option may be a form of election by a smaller body but in the case of this Act, a co-option of a woman Panch under section 6 of the Act does not amount to 'election' which can be set aside by an election petition. I, therefore, do not find any force in the submission of the learned counsel that no election petition having been filed, the co-option of the petitioner could not be objected to by the District Development and Panchayat Officer.

(8) In view of my decision on the first point, this petition is accepted but without any order as to costs as the Gram Panchayat, respondent No. 4, has supported the petition and nobody has appeared to oppose it.

R.N.M.

APPELLATE CIVIL

Before Shamsheer Bahadur, J.

SAT PAUL BHANDARI,—Appellant.

versus

MEHAR SINGH AND ANOTHER,—Respondents.

Regular Second Appeal No. 173 of 1968

August 21, 1969.

*Punjab Pre-emption Act (I of 1913)—Section 7—Suit for pre-emption of property in a town—Custom of pre-emption in such town or the sub-*

(2) I.L.R. 1965(2) Pb. 781=1965 Cur. L.J. Pb. 629.

*division of the town in which the property is situate—Whether must be*