

Office of the Election Authority

Under J&K Panchayati Raj Act, 1989

(Chief Electoral Officer, J&K)

"Greater Participation for a Stronger Democracy"

Subject: OWP No. 134/2019, IA No.01/2018 titled Chamail Singh Vs State of J&K & Others.

ORDER No. CEO/Pyt/2019/ 431

DATED: 30-05-2019

Petitioner namely Sh. Chamail Singh had preferred to file the afore titled writ petition before the Hon'ble High Court seeking following relief:

"Writ of Mandamus, Commanding upon the respondents to quash the appointment of private respondent No. 06 as Panch of Panchayat Halqa Allaya Ward No. 07, District Reasi in view of his disqualification as he being appointed in Government Service and also direct the official respondents to issue fresh notification for the post of Panch of Panchayat Halqa Allaya Ward No. 07 District Reasi.

The Hon'ble High Court has been pleased to dispose of the instant writ petition by way of an order dated 29-01-2019, the operative part of which is reproduced below:

"In view of the statement made by the learned counsel for the petitioner, this petition is disposed of, with a direction to respondent No. 03 to consider the claim of the petitioner by treating this writ petition as representation and take a decision thereon, strictly under rules, on the basis of averments made in the petition and pass a consideration order within a period of four weeks from the date a certified copy of the order passed today along with complete set of writ petition is made available to respondent No. 03.

Disposed of as above along with connected IA."

Accordingly, a report seeking various factual details of the case was sought in the matter from District Panchayat Election Officer (Deputy Commissioner) Reasi, which was duly reciprocated by way of their report dated 14-04-2019. Furthermore, hearing in the matter was conducted wherein both the parties were heard; as such principle of *audi alterum partem* was duly followed.

It has been stated in the report that respondent No. 06, Sh. Ramesh Chander was working as Mine Munshi in J&K Minerals Limited and was retired from J&K Minerals limited on 30-06-2013, against which the said respondent filed Writ petition bearing SWP No. 1652/2013, which was decided on 23-05-2017. J&K Minerals Department filed an appeal LPA against the said order dated 23-05-2017. However Court upheld the decision of single bench passed in SWP No. 1652/2013, vide judgment dated 26-11-2018 and Sh. Romesh Chander joined his duties as Mine Munshi on 02-01-2019. In this way he remained active employee from 02-01-2019 to 31-01-

2019. For the period 01-07-2013 to 01-01-2019 Sh. Ramesh Chander remained in litigation with his department for change of date of birth from 01-07-1955 to 07-01-1959 which was allowed vide judgment dated 23-05-2017 in SWP No. 1652/2013 which was challenged by way of LPA No. 175/2018 by J&K Minerals department and came to be decided on 26-11-2018 by upholding the judgment of Single Judge. It has been further stated that he (respondent No. 06) was not actively serving in J&K Minerals at the time of filing nomination in November 2018. Further, signature of Sh. Ramesh Chander, Mine Munshi, J&K Minerals and Panch of ward No. 07 of Panchayat Halqa, District Reasi have also been authenticated and to this effect, it has been stated that joining report dated 02-01-2019 is his (respondent No. 06) and he has not even denied the same.

By virtue of Notification No. 5311/CEO/Pyt/Notification/2018/3444-3468 dated 12-11-2018, the last date for making nominations for Panchayat Halqa Allaya of Block Pouni of District Reasi was 19-11-2018 and date of scrutiny to decide the qualification/disqualification of a candidate was 20-11-2018.

Under section 6 of the J&K Panchayati Raj Act, 1989 (hereinafter referred to as Act) disqualifications for membership of Haqa panchayat have been provided, reproduced as under:

Section 6:- Disqualifications for membership.- (1) A person shall be disqualified to be a member of Halqa Panchayat, if he –

- (a) *Is not a permanent resident of the State; or*
- (b) *Is in the employment of the Government or any local body; or*
- (c) *Is under twenty-one years of age; or*
- (d) *Is of unsound mind and stands so declared by a competent court; or*
- (e) *Has been adjudged insolvent by a competent court; or*
- (f) *Is a salaried servant of a Halqa Panchayat;*
- (g) *Is a Lamberdar or Village Chowkidar ; or*
- (h) *Has been dismissed from the service of the Government, a local body or Halqa Panchayat;*
- (i) *Has been convicted of and sentenced for an offence (other than an offence of a political nature) punishable with imprisonment for not less than two years, unless a period of three years, or such less period as the Government may allow in any particular case, has elapsed since his release;*

Provided that this clause shall not apply to an offender who has been released under the provisions of section 562 of the Code of Criminal Procedure, Samvat 1989 or under the Jammu and Kashmir Probation of Offenders Act, 1966.

(2) Subject to the provisions of sub-section (1), no person shall be qualified to be chosen as a member of Halqa Panchayat unless his name is included in the electoral roll of such Halqa Panchayat;

Provided that any person aggrieved by an order under this section shall have a right of appeal to such authority (Election Authority i.e, Chief Electoral Officer, as per rules) as may be prescribed.

(3) A person who becomes a member of a Halqa Panchayat on the basis of a false Scheduled Caste or Scheduled tribe certificate, shall be disqualified from the date on which it is found that he had become such member or office bearer on the basis of such false caste certificate and shall continue to be disqualified for further period of six years.; and

Further, in terms of Rule 10 and 11 of J&K Panchayati Raj Rules, 1996 (reproduced below), during scrutiny, the decision as to acceptance/rejection of nomination paper of a candidate, while, *inter alia*, taking into consideration section 6 of the Act, is the prerogative of Returning Officer. Such decision is taken by the Returning Officer only during the scrutiny of nomination papers.

10. Scrutiny of Nomination Papers.—At the time and on the date fixed for scrutiny of nomination papers the Returning Officer shall allow the candidates reasonable facilities for examining the nomination papers in presence of the candidates or their duly authorised agent present at the time.

11. Rejection of nomination papers.—(1) The Returning Officer may reject any nomination paper on any one or more of the following grounds:--

- (i) that the candidate has not correctly filled in the particulars required in Form 1; or*
- (ii) that the candidate is not eligible for being a member of a Panchayat Halqa under any provision of the Act; or*
- (iii) that the candidate has not deposited the security deposit as presented under Rule 9A:*

Provided that the Returning Officer may permit any misnomer or inaccurate description or clerical or technical or printing error to be corrected and anywhere necessary direct that any such misnomer or inaccurate description or clerical or technical or printing error in the electoral roll or in the nomination paper shall be overlooked.

- (2) If any nomination paper is rejected under sub-rule (1) after hearing any objections made by a person or persons the Returning shall record reasons for rejecting the nomination papers.;and*

It is noted that after declaration of results, in case of a grievance with regard to election of a candidate as Sarpanch or Panch, provision for appeal has been provided in terms of section 43 of the Act read with rule 43 of J&K Panchayati Raj Rules, 1996 (reproduced below). The said appeal lies before concerned Additional Deputy Commissioner (notified as appellate authority in terms of SRO 525 dated 22-11-2018), within a period of 30 days from the date of declaration of the result.

- i) **Section 43:- Disputes regarding elections-** (1) *The election of a person as Sarpanch, Panch of Halqa Panchayat or as a Chairperson of the Block Development Council shall not be called in question except by an application presented to such authority within such time and in such manner as may be prescribed on the grounds that:-*
- (a) *The election has not been a free election by reason that the corrupt practice of bribery or undue influence has extensively prevailed at the election; or*
- (b) *That the result of the election has been materially affected.*
- (i) *By the improper acceptance or rejection of any nomination;*
- (ii) *By gross failure to comply with the provisions of the Act or the rules framed thereunder.*
- ii) **Rule 43:- Appellate Authority -** (1) *An appeal against the election of a candidate as Sarpanch or Panch shall lie to the authority as may be notified by the Government within a period of 30 days from the date of declaration of result.*
- (2) *On receipt of the appeal under sub-rule (1), the appellate authority shall fix the time, place and date of hearing of the appeal, such date not being more than seven days after the date of receipt of the appeal.*
- (3) *At the fixed date and place the Appellate Authority shall hear the appeal and pass such orders as it may deem fit.*
- (4) *The orders passed under sub-rule (3) shall be final.*

As observed, based on records, at the time of filing of nomination and also during the scrutiny of nomination papers for Panch seat of Panchayat Halqa Allaya ward No. 07, Block Pouni, District Reasi, held on 19-11-2018 and 20-11-2018 respectively, the service matter pertaining to date of birth of the respondent No. 06-Sh. Romesh Chander was pending disposal in the form of Appeal (LPA) before the division bench of Hon'ble High Court at Jammu, as such the respondent No. 06 was out of Government service (not in the employment of the Government). However, the respondent No. 06-Sh. Romesh Chander had joined the services on 02-01-2019 i.e., after the declaration of the result which was on 08-12-2019. In such a situation, the remedy available in case of a grievance with regard to election of a candidate as Sarpanch or Panch is by way of filing of an appeal before appellate authority i.e, concerned Additional Deputy Commissioner within 30 days from the date of declaration of results, in terms of Rule 43 of J&K Panchayati Raj Rules, 1996.

It is also noted that the instant writ petition had been filed on 28-01-2019, beyond the period of 30 days from the date of declaration of result (which was on 08-12-2018) of Panch for ward No. 07 of Panchayat Halqa Allaya, Block Pouni, District Reasi.

The Panchayat elections in the State have already been concluded in a free and fair manner, under J&K Panchayati Raj Act, 1989 and the Rules made thereunder. After the declaration of results, there is no any such provision where under Election Authority/Chief

Electoral Officer has been vested with the power/authority to decide such matter/issue, as has been projected by the petitioner, in the instant petition.

Now, therefore, in due deference to the court direction, and on the strength of the grounds stated above, the instant matter is duly considered with the conclusion that Election Authority (Chief Electoral Officer) has no jurisdiction/authority to decide the matter/issue projected by the petitioner in the instant writ petition, however it is also clarified that on the date of filing of nomination papers and during scrutiny of the nomination paper in Panchayat elections, 2018, respondent No. 06-Shri Romesh Chander was not in service in the Public Sector Undertaking namely J&K Minerals Limited.

Sd/-

**Election Authority
Under J&K Panchayati Raj Act, 1989
(Chief Electoral Officer, J&K)**

No. 6463/CEO/Pyu/2019/8069-73
Copy to:

Dated: 30-05-2019

1. Secretary to Government, Department of Rural Development Department, Civil Secretariat, Jammu for information.
2. Deputy Commissioner, Reasi for information.
3. Director General, Rural Development Department, Jammu for information.
4. Sh. Chamail Singh S/o Sh. Mohan Singh R/o Village Tehari, Tehsil Pouni, District Reasi for information.
5. Sh. Romesh Chander S/o Munshi Ram R/o Village Tehari, Tehsil Pouni, District Reasi for information.


**Deputy Chief Electoral Officer,
Jammu and Kashmir**