Bhagat Singh v. Punjab State

Pandit, J.

In cases of permanent partial disablement, what the Commissioner has to find for the purpose or assessing compensation is the fact as to whether the earning capacity of the injured workman has been reduced in every employment, which he was capable of undertaking at the time of the accident and not merely the particular job in which he was employed at that time. In the present case, all that has been established on the record is that the appellant was discharged from service and he was declared to be unfit for duty and his permanent disability was recorded as 20 per cent by the Doctor. On these facts, the loss of earning capacity permanently caused by the injury cannot be settled. The view that I have taken is supported by a Division Bench consisting of Derbyshire, C. J. and D. K. Mukherjee, J., in *Agent, East India Railway* v. *Mauris Cecil Ryan*, (1), where it was held thus :—

> "In awarding compensation under section 4(1) (c) (ii), Workmen's Compensation Act, what has to be estimated is the loss of the Workman's earning capacity caused by the injury and not the loss of his physical capacity. A surgeon might well estimate the loss of his physical capacity for work, but the loss of his earning capacity must be estimated by some other person and the best estimate can be given by the employer himself who has the opportunity of seeing the workmen's work before and after the accident."

In view of what I have said above, the appeal is accepted and the case is remitted to the learned Commissioner for deciding the same afresh in the light of the observations made above. There will, however, be no order as to costs.

B. R. T.

LETTERS PATENT APPEAL

Before D. Falshow, C.J. and Harbans Singh, J.

BUDAN,—*Appellant*

versus

STATE OF PUNJAB AND OTHERS,—*Respondents*

Letters Patent Appeal No. 401 of 1964.

1965

April, 20th.

Punjab Gram Panchayat Act, 1952 (*IV of* 1953)—*Proviso to S.* 6(1)—*Woman contesting election to office of Sarpanch securing more votes than the woman contesting election to the office of panch—Whether entitled to be co-opted.*

(1) A.I.R. 1937 Cal. 526.

Held, that there is only one election for the Panchayat and a woman candidate for the office of Sarpanch is a candidate for election to the office of Panch, within the meaning of the proviso to section 6(1) of the Punjab Gram Panchayat Act, and if such a candidate polls a higher number of votes than another woman candidate, none being successful, she is the one who must be co-opted under the proviso.

Letters Patent Appeal under claue X of the Letters Patent against the judgment, dated 9th of November, 1964, *passed by the Hon'ble Mr. Justice D. K. Mahajan, in Civil Writ No.* 982 *of* 1964, *dismissing* the same but making no order as to costs.

C. L. LAKHANPAL AND ISHAR SINGH VIMAL, ADVOCATES, for the Appellants.

JOGINDER SINGH SHAHPURI, MAHARAJ BAKSH SINGH, ADVOCATES AND M. R. AGNIHOTRI, ADVOCATE, FOR THE ADVOCATE-GENERAL, for the Respondents.

JUDGMENT

Falshaw, C.J.

FALSHAW, *C.J.*—This is an appeal filed under clause 10 of the Letters Patent by Shrimati Budhan against the order of a Single Judge dismissing her petition filed under Article 226 of the Constitution.

The facts are that in December, 1963 the election of the Gram Panchayat took place in the village of Tungbala and the appellant was one of eleven candidates who stood for the office of Panch. There were two candidates for the office of Sarpanch, a man named Swarnjit Singh and a woman, the contesting respondent, Shrimati Swinder Kaur. In the contest for the Sarpanchship Swarnjit Singh obtained 601 votes as against 211 given in favour of Swinder Kaur and Swarnjit Singh was accordingly elected. In the voting for Panchships the appellant only obtained either 14 or 15 votes (the figures are given differently in the written statements of the official respondents and Shrimati Swinder Kaur) and she was not elected. She was, however, co-opted by the Panchayat under the provisions of the proviso to section 6(1) of the Punjab Gram Panchayat Act. Section 6(1) reads:—

"Every Sabha shall, in the prescribed manner, elect from amongst its members a Chairman of the Sabha and an executive committee consisting of

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such number of persons not being less than five or more than nine including the Sarpanch of the Executive Committee as the Government may determine taking into account the population of the Sabha area;

Provided that if no woman is 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 is available, the prescribed authority shall co-opt as such Panch a woman member of the Sabha who is qualified to be elected as a Panch."

The Government Department concerned, however, took the view that in accordance with the law Shrimati Swinder Kaur ought to have been the woman selected for co-option as a Panch and ordered accordingly, with the result that Shrimati Budhan filed the writ petition in this Court in order to prevent these instructions from being carried out.

The main basis of the petition was the contention that in reality the election of the Panchayat comprised not one, but two separate elections, one for the office of Sarpanch and one for the offices of Panches, and that, therefore, since Shrimati Swinder Kaur had only stood as a candidate for the office of Sarpanch, she was not within the meaning of the words of the proviso 'the woman candidate securing the highest number of votes amongst the women candidates in that election', this distinction being held by Shrimati Budhan, who was the only woman candidate for the office of Panch and who, therefore, with her 14 or 15 votes, secured the highest number of votes in the election.

The learned Single Judge rejected this contention and dismissed the writ petition on the strength of the decision of Dua, J. and himself in Civil Writ No. 1103 of 1964, *Shrimati Hargobind Kaur* v. *The State of Punjab and others,* decided on the 21st of September, 1964. In that case the petitioner had stood as a candidate for the office of Sarpanch in her village, but was defeated by a male candidate by a comparatively narrow margin, 499 against 442.

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There was apparently no other woman candidate in the election even for the office of Panch, and the Panchayat, *mala fide* according to the petitioner, had proceeded to co-opt a woman who had not stood for election at all. The argument was raised in that case that the election for the office of Sarpanch was separate from that of the election of the general body of Panches and that, therefore, in spite of the considerable number of votes secured by the petitioner, she was not auotmatically entitled to be co-opted under the proviso to section 6(1). The learned Judges after examining the relevant provisions of the law and particularly taking into account the definition of 'Panch' in rule 3 (h) (i) of the Gram Panchayat Election Rules to the effect that 'Panch' means a member of Gram Panchayat, or an Adalti Panchayat, elected or appointed under this Act and includes a Sarpanch, rejected the contention and held that there was only one election for Gram Panchayat and that the words 'the woman candidate securing the highest number of votes amongst the women candidates in that election' would apply to a woman who had stood as a candidate for the office of Sarpanch. They also held that the petitioner's exclusion by the Panchayat was manifestly *mala fide* and quashed the co-option of the contesting individual respondent.

This view appears to me to be correct. The object of the proviso to section 6(1) is evidently to ensure that there shall be at least one woman member of every Gram Panchayat, and in order to achieve this object it is provided that in the event of no woman successfully standing as a candidate, the woman who achieved the best result as a candidate shall be co-opted, or, if no woman stands at all, some suitably qualified woman of the village is to be co-opted. It seems to me to be impossible to make out any case based on reason to support the theory that a woman who is bold enough to stand for the office of Sarpanch is not putting herself forward to be elected as a member of the Panchayat, which by definition includes a Sarpanch. If the argument of the learned counsel for the appellant is correct, it might lead to a result obviously not contemplated by the Act at all. It is quite conceivable that a woman may some day successfully compete for the office of Sarpanch, as Shrimati Hargovind Kaur so nearly did in the previous case. In such a case, according to the argument of the learned counsel for the appellant, it would still be

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necessary under the terms of the proviso to co-opt another woman as Panch although the clear intention of the Act is merely to provide for the presence of one representative of the female sex in the Panchayat even if none succeeds in getting elected.

In the present case it has been pointed out that under any system of calculation Shrimati Swinder Kaur did far better in the election than Shrimati Budhan. There were two candidates for the office of Sarpanch and with 812 votes cast it would have been necessary for Shrimati Swinder Kaur to obtain 407 votes in order to be elected, and with 211 votes she obtained more than 50 per cent. In the contest for Panchship there were 11 candidates and 810 votes were cast. One-eleventh share of 810 votes comes to approximately 74 votes and with 14 or 15 votes Shrimati Budhan obtained about 20 per cent of that number. I do not, however, consider that it is necessary to fall back on such calculations, and I consider that the State and other official respondents are correct in maintaining the view that in the event of no woman candidate proving successful the one securing the highest number of votes, whether for the office of Sarpanch or Panchship, is entitled to be co-opted under the proviso as it stands. It may be that with the contest for the office of Sarpanch generally confined to two or possibly three candidates the woman candidate is likely to poll more votes than a woman competing amongst 10 or more others for the office of Panch when the electors are only entitled to one vote for each of the offices, but it is to be presumed that only a woman of some standing in the village community would even think of competing for the office of Sarpanch.

We should obviously only be justified in questioning the correctness of the decision in *Hargobind Kaur's case* and referring the matter to a large Bench if a strong case were made out. The learned counsel for the appellant argued that in previous elections there was only one election under the rules at which Panches were elected and thereafter the Panches themselves selected their Sarpanch from out of their number, but now the rules provide for separate candidatures for the offices of Sarpanch and Panches. Nevertheless I am still of the view that there is only one election for the Panchayat and that a woman candidate for the office of Sarpanch is a candidate for

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election to the office of Panch within the meaning of the proviso, and that, therefore, if such a candidate polls a higher number of votes than another woman candidate, none being successful, she is the one who must be co-opted under the proviso. I would accordingly dismiss the appeal, but leave the parties to bear their own costs.

Harbans Singh, J.

HARBANS SINGH, J.—I agree.

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CIVIL MISCELLANEOUS

Before H. R. Khanna, J.

THE NEW ASIATIC INSURANCE CO. LTD.,—*Petitioner*

Company Petition No. 2-D of 1965

1965

April, 21st.

Companies Act (I of 1956)—S. 17—Addition of new objects—Whether can be allowed.

Held, that an application made by a company for the confirmation of a special resolution adding new clauses to the objects clause of its memorandum of association with the object of starting additional businesses is not to be disallowed merely because the new business is wholly different from and bears no relation to the existing business of the Company. All that is essential is that it should be capable of being conveniently and advantageously combined with the existing business and is not destructive of or inconsistent with the existing business and this must be so under the existing circumstances and not under hypothetical circumstances.

In the instant case it was found that the assets of the company exceeded its liabilities by over 39 lacs, satisfactory arrangements had been made with regard to the settlement of all its pending liabilities and thus the company was in good financial position and had sufficient working capital and the special resolution had been passed unanimously by the shareholders, who were the persons directly concerned and who were of the view that better returns were likely to be given to the share-holders if some industrial or commercial activity was undertaken by the company.

Held, that in these circumstances the petitioner company should be permitted to alter its memorandum so that it may extend its business activity.