

**Court No. - 21**

**Case :-** WRIT - C No. - 20091 of 2022

**Petitioner :-** Neha Yadav

**Respondent :-** State Of U.P. And 4 Others

**Counsel for Petitioner :-** Kartikeya Saran

**Counsel for Respondent :-** CSC

**Hon'ble Manoj Kumar Gupta,J.**

**Hon'ble Dr. Yogendra Kumar Srivastava,J.**

1. The petitioner is Pramukh of Kshetra Panchayat, Gulavathi, Bulandshahr. She has preferred the instant petition calling in question a notification issued from the office of respondent no.2, Assistant Development Officer showing two vacancies of members on account of respondents no. 4 and 5 having tendered their resignations. The date of vacancy as per the said chart is 5.04.2022 in case of respondent no. 5 and 26.04.2022 in case of respondent no. 4.

2. It is not disputed before us that the resignation letter of the members namely respondents no.4 and 5 have been received in the office of Kshetra Panchayat on respective dates from which the vacancies have been made effective.

3. Learned counsel for the petitioner submitted that mere submission of resignation by respondents no.4 and 5 will not result in vacancy unless the resignations are approved in the meeting of the Kshetra Panchayat. He submitted that D.P.R.O. had sent communications to the Additional Chief Officer, Zila Panchayat on 5.5.2022 and 7.4.2022 for requisitioning a meeting of Zila Panchayat members for the purposes of accepting their resignations. It is submitted that since the resignations have yet not been accepted, therefore, the notification of the vacancy is illegal.

4. In order to consider as to when the resignation of an elected member of a Kshetra Panchayat would be effective, the provision contained under Section 11 of the Uttar Pradesh Kshetra Samitis and

Zila Parishads Adhiniyam, 1961 [U.P. Act No. 33 of 1961], would be required to be adverted to.

5. Section 11 of the Act, 1961 as it originally stood, reads as follows:

**"11. Resignation of Pramukh, Up-Pramukh or member. - (1)** A Pramukh, Up-Pramukh or any member mentioned in clause (iii) of section (1) of section 6, or in sub-section (2) of that section may resign his office by giving notice of writing to the Kshetra Samiti.

(2) The resignation of the Pramukh shall take effect on the from the date on which the sanction thereto of the Adhyaksh is received in the office of the Kshetra Samiti and the resignation of the Up-Pramukh or member shall take effect on and from the date on which the notice is received in the office of the Kshetra Samiti."

6. Consequent to the Constitution (73<sup>rd</sup> Amendment) Act, 1992, the State Legislature considered it expedient to amend the United Provinces Panchayat Raj Act, 1947 and the Uttar Pradesh Kshetra Samitis and Zila Panchayat Adhiniyam, 1961 in keeping with the objectives and the guidelines incorporated in the Constitution amendment. The amendments were brought forth by the Uttar Pradesh Panchayat Laws (Amendment) Act, 1994 [U.P. Act No. 9 of 1994].

7. Section 66 of the amending Act of 1994, relates to amendment of Section 11 of the U.P. Act No. 33 of 1961 and the same was in the following terms:

**"66. Amendment of Section 11 - In Section 11 of the principal Act, -**

(a) for sub-section (1), the following sub-section shall be substituted, namely, -

**"(1)** A Pramukh, Up-Pramukh or any elected member of the Kshetra Panchayat may resign his office by writing under his hand addressed, in the case of the Pramukh, to the Adhyaksha of the Zila Panchayat concerned, and in other cases to the Pramukh of the Kshetra Panchayat;"

(b) in sub-section (2), after the words "notice is received in the office of the Kshetra Samiti", the words "and such Pramukh, Up-Pramukh or the member shall be deemed to have vacated his office" shall be inserted."

8. Section 11 of the Act of 1961, as it stood consequent to the amending Act of 1994, was as follows:

**"11. Resignation of Pramukh, Up-Pramukh or member. - (1)** A Pramukh, Up-Pramukh or any elected member of the Kshetra Panchayat may resign his office by writing under his hand addressed, in the case of Pramukh, to the Adhyaksha of the Zila Panchayat concerned, and in other cases to the Pramukh of the Kshetra Panchayat.

(2) The resignation of the Pramukh shall take effect on the from the date on which the sanction thereto of the Adhyaksh is received in the office of the Kshetra Samiti and the resignation of the Up-Pramukh or member shall take effect on and from the date on which the notice is received in the office of the Kshetra Samiti **and such Pramukh, Up-Pramukh or the member shall be deemed to have vacated his office."**

9. The Uttar Pradesh Panchayat Laws (Amendment) Act, 2007 [U.P. Act No. 44 of 2007] inter alia, brought about a general amendment in U.P. Act No. 33 of 1961 by providing for omission of the word "Up-Pramukh" wherever occurring in the Act, including the marginal headings and the Schedules. Section 9 of the Amending Act of 2007 which brought about the aforestated general amendment, reads as follows:-

**"9. General Amendment of U.P. Act No. 33 of 1961. - In the Uttar Pradesh Kshetra Panchayats and Zila Panchayats Adhiniyam, 1961, hereinafter in this chapter referred to as the principal Act, the words "Up-Pramukh", "Senior Up-Pramukh", "Junior Up-Pramukh" and "Upadhyaksha" wherever occurring including marginal headings and Schedules, shall be omitted."**

10. Section 11 of the U.P. Act No. 33 of 1961, after the amendments brought into effect in terms of the amending Act of 2007, presently stands as under:-

**"11. Resignation of Pramukh or member. - (1)** A Pramukh, or any elected member of the Kshetra Panchayat may resign his office by writing under his hand addressed, in the case of Pramukh, to the Adhyaksha of the Zila Panchayat concerned, and in other cases to the Pramukh of the Kshetra Panchayat.

(2) The resignation of the Pramukh shall take effect on the from the date on which the sanction thereto of the Adhyaksh is received in the office of the Kshetra Samiti and the resignation of member shall take effect on and from the date on which the notice is received in the office of the Kshetra

*Samiti and such Pramukh or the member shall be deemed to have vacated his office."*

11. Thus, Section 11(2) of the U.P. Kshetra Panchayats and Zila Panchayats Adhiniyam, 1961 stipulates that a member shall be deemed to have vacated his office from the date on which notice of his resignation is received in the office of Kshetra Panchayat. The vacancy becomes effective from a date envisaged under the deeming provision engrafted in the statute. It thus becomes operative by operation of law from the date notice is received in the office of the Kshetra Panchayat. Unlike in case of Pramukh, the resignation to become effective, in case of a member, does not require any approval.

12. Indisputably, the notices of resignation were received in the office of Kshetra Panchayat on 5.04.2022 and 26.4.2022, respectively. Consequently, there is no illegality in the impugned notification.

13. The petition lacks merit and is accordingly dismissed.

**(Dr. Y.K. Srivastava, J.) (Manoj Kumar Gupta, J.)**

**Order Date :- 20.7.2022**

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