

SOM LAL

v.

VIJAY LAXMI & ORS.
(Civil Appeal No. 5104 of 2006)

MARCH 14, 2008

(A.K. MATHUR AND ALTAMAS KABIR, JJ.)

Punjab State Election Commission Act, 1994 (Act 19 of 1994):

ss. 11(f) and (g) – Panchayat Election – Election of Sarpanch – Disqualifications – Office of profit – Returned candidate stated to be holding office of profit under Agricultural Marketing Board – HELD: Act 19 of 1994 being later in point of time than Act 9 of 1994, disqualifications enumerated in s.11 would prevail and not those mentioned in s.208 of Act 9 of 1994 which are inconsistent to s.11 of Act 19 of 1994 – Since returned candidate did not incur disqualification as per sub-sections (f) and (g) of s.11, Election Tribunal and High Court wrongly held him to be disqualified – Orders of Election Tribunal and High Court set aside - Punjab Panchayati Raj Act, 1994 (Act 9 of 1994) – s. 208.

ss. 142 and 143 – Over-riding effect, repeal and saving – Office of profit – Disqualification for membership of Panchayat enumerated in sub-sections (f) and (g) of s.11 of Act 19 of 1994 and s.208 of Act 9 of 1994 – HELD: Act 19 of 1994 being subsequent in point of time, in view of over-riding effect given to provisions thereof and the provisions of repeal and saving, disqualifications mentioned in s.208 of Act 9 of 1994 which are consistent with sub-sections (f) and (g) of s.11 of 1994 can only survive and not other disqualifications – Interpretation of statutes – Repeal by implication – Intention of Legislature.

The appellant was declared elected as Sarpanch of

A the Gram Panchayat concerned on 24.6.2003. His election
was challenged by the respondent, who had secured the
second highest number of votes. It was stated that in view
of the disqualifications prescribed in s.208(1)(g) of the
Punjab Panchayati Raj Act, 1994 (the Punjab Act 9 of 1994)
B laying down that a person being a whole-time salaried
employee of any local authority, statutory Corporation or
Board or a Co-operative Society, or of the State
Government or the Central Government would be
disqualified to become member of a Panchayat, the
C appellant being an employee in the Agricultural Marketing
Board, was disqualified. The stand of the appellant was
that as per ss. 11(f) and (g) of the Punjab State Election
Commission Act, 1994 (the Punjab Act 19 of 1994) which
came into force subsequent to the Punjab Act 9 of 1994, a
D person would be disqualified only if he "holds an office
of profit" under a Panchayat or a Municipality or under
the Government of India or any State Government, and
not for holding such office under any other local authority
or Corporation or Board much less the State Agricultural
Marketing Board. Both the Election Tribunal and the High
E Court held the appellant as disqualified. The election of
the appellant was set aside and the respondent was
declared as elected to the office of Sarpanch.

F In the instant appeal, it was contended for the
appellant that in view of the provisions of ss.142 and 143
of the Punjab Act 19 of 1994, which was later in point of
time and the repeal being specific, the provisions of s.11
thereof would have overriding effect vis-a-vis the
provisions of s.208 of the Punjab Act 9 of 1994. For the
G respondent it was submitted that there was no express
repeal of the provisions of s.208 of the Punjab Act 9 of
1994 and, therefore, both the Acts should be construed
harmoniously giving full effect to the provisions of s.208
of the Punjab Act 9 of 1994 as well.

H Allowing the appeal, the Court

HELD: 1.1 It is a fact that the Punjab Act 19 of 1994 came into effect on 19.9.1994 and definitely is later in point of time than the Punjab Act 9 of 1994 which had been made effective from 21.4.1994. Under Section 11 (f) and (g) of Act 19 of 1994 the disqualifications have been prescribed. Though similar disqualifications existed under Section 208 of the Act of 9 of 1994 but subsequently the legislature in its wisdom has reduced the disqualifications and confined the same only as to a person holding office of profit under a Panchayat or a Municipality or under the Government of India or any State Government. Thus, the legislature in its wisdom has not considered it proper to continue with the disqualification of being an employee of a Statutory Corporation or Board or a Co-operative Society or any local authority other than a Panchayat or a Municipality. Therefore, the disqualifications mentioned in Section 11 of the Act 19 of 1994 will prevail and not the disqualifications mentioned in Section 208 of Act 9 of 1994. The disqualifications mentioned in Section 208 which are consistent with Section 11 of Act 19 of 1994 can only survive and not the other disqualifications. [para 6 and 12] [62-B, C, D, E; 69-G; 70-A]

1.2 The provisions of Sections 142 and 143 of the Punjab Act 19 of 1994 clearly contemplate that the Act shall have the complete over-riding effect. Section 142 makes it clear that the legislature were aware of the earlier disqualifications and prescribed subsequently the disqualifications under sub-sections (f) and (g) of Section 11 so far as the office of profit is concerned. It further provided that the provisions of the Act shall have over-riding effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force relating to the conduct of elections to the Panchayats or Municipalities or any incidental matter thereto. [para 6] [63-A, B]

1.3 The mandate of the legislature appears on the

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A face of it very clear. By virtue of Section 143 of the Punjab
Act 19 of 1994, provision of any other law which is
inconsistent with the provisions of the Act shall stand
repealed and only such action taken under the
corresponding provisions of any statute in force at that
B time which is not inconsistent with the provisions of Act
19 of 1994 shall be saved and not otherwise. In this view
of the matter, both the provisions i.e. Section 208 of Act 9
of 1994 and Section 11 of Act 19 of 1994 can be read
harmoniously to the extent that the disqualifications
C because of holding office of profit are that an incumbent
should not be an employee or a salaried person under a
Panchayat, or a Municipality, or under a State Government;
or the Central Government. To this extent there is identity
D between the two provisions and no other disqualifications
have been saved. If one holds office of profit under any
other organization like Statutory Corporation or Board or
a Co-operative Society, or a local authority other than a
Panchayat or a Municipality, that will not disqualify him to
be chosen as and for being a member of a Panchayat.
E The intention of the legislature is more than apparent from
Sections 142 and 143 of the Act 19 of 1994. Thus, the
subsequent Act 19 of 1994 which has come at later point
of time will have over-riding effect on all other laws in the
State; and likewise repeals the provision of the Act 9 of
F 1994 so far as it is inconsistent with the Act 19 of 1994.
Therefore, there is no question of ambiguity as regards
the intention of the legislature since it is very clear and
there is no reason why the same be not given effect to.
[para 6, 7, 9 and 10] [63-C, D; 64-E, F; 68-A, D, E]

G *Kishorebhai Khamanchand Goyal v. State of Gujarat &*
Anr. (2003) 12 SCC 274; Hyderabad Chemical and
Pharmaceutical Works Ltd. etc. v. State of Andhra Pradesh &
Ors. [1964] 7 S.C.R. 376; and Ratan Lal Adukia v. Union of
India (1989) 3 SCC 537 – relied on.

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Municipal Corporation of Delhi v. Shiv Shankar [1971] 1 SCC 442 – referred to. A

Principles of Statutory Interpretation 11th Edn. 2008; Justice G.P. Singh (Chapter 7, Synopsis 4 page 637-639 – referred to.

1.4 The courts should be very slow to interfere with the mandates of the legislature unless there are compelling reasons for doing so. In the instant case, the clear mandate of the legislature was that anything which is inconsistent with the Act 19 of 1994 shall be deemed to have been repealed and it leaves no room to take a contrary view of the matter. [para 6] [63-E, F] B C

2. The view taken by the Single Judge of the High Court cannot be sustained and is set aside. The appellant while serving in the Marketing Committee cannot be said to have incurred the disqualification under sub-sections (f) and (g) of s.11 of the Punjab Act 19 of 1994. [para 13] [70-B, C] D

Kishorebhai Khamanchand Goyal v State of Gujarat & Anr. (2003) 12 SCC 274; Jugal Kishore v. State of Maharashtra & Ors. 1989 Supp.(1) SCC 589; Mary Roy & Ors. V. State of Kerala & Ors. (1986) 2 SCC 209; M/s. Jain Ink Manufacturing Company v. Life Insurance Corporation of India & Anr. (1980) 4 SCC 435 – cited. E

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5104 of 2006. F

From the final Judgment and Order dated 20.1.2006 and 26.10.2006 of the High Court of Punjab and Haryana at Chandigarh in F.A.O. No. 397 of 2005. G

K.V. Vishwanathan, Gagan Gupta, Jatinder Singla and Parmanand Gaur for the Appellant.

Paramjit Singh Patwalia, Vikas Mahajan, Amanpreet Singh Rahi, Devesh Tripathi and Bhaskar Y. Kulkarni for the H

A Respondents.

The Judgment of the Court was delivered by

B **A.K. MATHUR, J.** 1. This appeal is directed against the
C order dated 26.10.2006 passed by learned Single Judge of
D the Punjab & Haryana High Court whereby the learned Single
Judge held that the appellant- Som Lal was holding the whole-
time salaried office of a statutory body as he was on the rolls of
the Market Committee, Sirsa as Fireman on 29.6.2003 and he
was disqualified from contesting the election as Sarpanch, Gram
Panchayat, Village Dhobra on 29.6.2003. Therefore, he has
been rightly held to be disqualified by the Election Tribunal.
Accordingly, the learned Single Judge upheld the order of the
Election Tribunal whereby the election of the appellant was set
aside. Aggrieved against this order dated 26.10.2006 passed
by the learned Single Judge of the High Court of Punjab &
Haryana the present appeal was filed.

2. Brief facts which are necessary for disposal of this
appeal are that the appellant contested the election of Sarpanch
on 29.6.2003 of Village Dhobara, Tehsil Pathankot, and the
E appellant was elected and the opponent- Vijay Laxmi lost. Total
votes polled -800; 411 votes were polled in favour of the
appellant- Som Lal; 376 votes were polled in favour of Vijay
Laxmi and 13 votes were cancelled. Hence, the appellant was
declared elected. The election of the appellant was challenged
F by the respondent- Vijay Laxmi by filing an election petition. The
main ground taken by the respondent was that the appellant
was working as a Fireman in the Haryana State Agricultural
Marketing Board and he was posted at Sirsa. Therefore, he
was disqualified from contesting the election as he was holding
G the office of profit. The plea of the appellant was that he was an
employee of the Haryana State Agricultural Marketing Board
but he had left the job about 7-8 years prior to the conduct of the
election. Therefore, he did not suffer from any disqualification.
The respondent contended before the Election Tribunal that as
per Section 208 (1)(g) of the Punjab Panchayati Raj Act, 1994
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(Punjab Act 9 of 1994) [hereinafter to be referred to as "the Punjab Act 9 of 1994"], a person who is a whole-time salaried employee of any local authority, Statutory Corporation or Board or a Co-operative Society registered under the Punjab Co-operative Societies Act, 1961 or of the State Government or the Central Government, is disqualified for being chosen as and for being a member of a Panchayat and since the appellant was an employee of the Market Committee, therefore, he was disqualified. As against this, it was contended by the appellant that Section 11 of the Punjab State Election Commission Act, 1994 (Punjab Act 19 of 1994) [hereinafter to be referred to as "the Punjab Act No. 19 of 1994"] which came into force with effect from 19th September, 1994 after the Punjab Act 9 of 1994 which came into force with effect from 21.4.1994, which deals with disqualification, says that a person shall be disqualified for being chosen as and for being a member of a Panchayat or a Municipality if he holds an office of profit under a Panchayat or a Municipality; or he holds an office of profit under the Government of India or any State Government and not for holding office of profit under local authority and being a member of the Marketing Board. Therefore, as per Section 11 of the Act of 19 of 1994 an incumbent is not disqualified to contest the election. The Election Tribunal after recording necessary evidence found that the appellant was an employee of the Haryana State Agricultural Marketing Board, Sirsa and therefore, he was disqualified from contesting the election for Sarpanch, Gram Panchayat of village Dhobra. Hence, the Election Tribunal by order dated 13.12.2004 set aside the election of the appellant before us and allowed the election petition of the respondent-Vijay Laxmi and declared her as elected to the Office of Sarpanch. Aggrieved against this order the appellant filed an appeal before the High Court of Punjab & Haryana. Since there was a conflict between the two provisions, learned Single Judge referred the matter to the Division Bench for adjudicating the following question of law:

" Whether election of Sarpanch/ Member of a Gram

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A Panchayat can be set aside on the basis of disqualifications contemplated under section 208 of the Punjab Panchayati Raj Act, 1994 or it can be set aside only on the basis of disqualifications enumerated in Section 11 of the Punjab State Election Commission Act, 1994?"

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Learned Division Bench answered the question by order dated 22.1.2006 in this very case which reads as follows:

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"In view of what has been discussed above, we hold that a person shall be disqualified for being chosen and for being a member of a Panchayat if, he incurs any of the disqualifications enlisted in Section 208 of the Punjab Panchayati Raj Act, 1994 and/or section 11 of the Punjab State Election Commission Act, 1994."

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3. Now, the question before us is whether the disqualifications enumerated in Section 208 of the Act 9 of 1994 shall prevail or the disqualifications mentioned in Section 11 of the Act 19 of 1994. Both the provisions are quoted below for the sake of convenience.

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" **208. Disqualification for Membership.** (1) A person shall be disqualified for being chosen as and for being a member of a Panchayat if,-

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(a) he is so disqualified by or under any law for the time being in force for the purposes of elections to the Legislature of the State :

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Provided that no person shall be disqualified on the ground that he is less than twenty-five years of age, if he has attained the age of twenty-one years;

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(b) has been found guilty of any corrupt practice in any election of a Gram Panchayat, Panchayat Samiti or Zilla Parishad;

(c) has been convicted of any offence involving moral turpitude or an offence implying of any defect of a

Sarpanch or Panch or Gram Panchayat or member of a Panchayat Samiti or Zila Parishad, unless a period of five years has elapsed since his conviction; or

- (d) has been convicted of an election offence; or
- (e) has been ordered to give security for good behaviour under section 110 of the Code of Criminal Procedure, 1973; or
- (f) has been notified as disqualified for appointment as public servant except on medical grounds; or
- (g) is a whole-time salaried employee of any local authority, Statutory Corporation or Board or a Co-operative Society registered under the Punjab Co-operative Societies Act, 1961, or of the State Government or the Central Government; or
- (h) is registered as a habitual offender

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11. Disqualifications for membership of a Panchayat or a Municipality.- A person shall be disqualified for being chosen as, and for being a member of a Panchayat or a Municipality,-

- (a) if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgement of allegiance or adherence to a foreign State; or
- (b) if he is of unsound mind and stands so declared by a competent court; or
- © if he is an undischarged insolvent; or
- (d) if he has, in proceedings for questioning the validity or regularity of an election, been found guilty of any corrupt practice; or

- A (e) if he has been found guilty of any offence punishable under Section 153A or Section 171E or section 171F or section 376 of section 376A of section 376B or section 376C or section 376D or section 498A or section 505 of the Indian Penal Code, 1960 or any
- B offence punishable under Chapter XIII of this Act unless a period of six years has elapsed since the date of such conviction; or
- (f) if he holds an office of profit under a Panchayat or a Municipality; or
- C (g) if he holds an office of profit under the Government of India or any State Government; or
- (h) xx xx xx"

D Both the provisions bearing on the subject have been quoted and the disqualifications given in both the provisions make it clear that so far as Act 9 of 1994 is concerned, there any person holding office of profit under the local authority, statutory corporation or Board or a Co-operative society or under the State Government or the Central Government has been

E disqualified whereas under Section 11 (f) & (g) of Act 19 of 1994, a person shall be disqualified for being chosen as and for being a member of a Panchayat or a Municipality if he holds an office of profit under a Panchayat or a Municipality; or under the Government of India or any State Government. Therefore, it is

F to be seen whether this disqualification which has come into force under the Act 19 of 1994 i.e. on 19.9.1994 will prevail or the earlier disqualifications as prescribed in Section 208 of Act 9 of 1994 will prevail. In this connection, the important provisions which have substantial bearing on the subject are Sections 142 and 143 of the Act 19 of 1994 are relevant which read as under:

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H " 142. Over-riding effect.- The provisions of this Act shall have over-riding effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force relating to the conduct of elections to

the Panchayats or Municipalities or any incidental matter thereto. A

143.Repeal and savings.- The provisions of any State Law corresponding to the provisions of this Act are hereby repealed:

Provided that such repeal shall not affect-

(a) the previous operation of the corresponding provisions of any State Law so repealed or anything duly done or suffered thereunder; or B

(b) any right, privilege, obligation or liability occurred, accrued or incurred under the corresponding provisions of any State Law so repealed; or C

(c) any penalty, forfeiture or punishment incurred in respect of any offence committed against the corresponding provisions of any State Law so repealed; or D

(d) any legal proceedings, investigation or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, and any such legal proceedings, investigation or remedy may be instituted or continued or enforced and any such penalty, forfeiture or punishment may be imposed as if this Act had not been passed. E

(2) Notwithstanding such repeal, anything done or any action taken under the corresponding provisions of any State Law so repealed (including any notification, order, notice issued, application made or permission granted, if any) which is not inconsistent with the provisions of this Act, shall be deemed to have been done or taken under the corresponding provisions of this Act, as if this Act was in force at the time, such thing was so done or action so taken and shall continue to be in force unless and until F
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A superseded by anything done or any action taken under this Act."

B 4. Learned counsel for the appellant submitted before us that when disqualifications have been prescribed in both the Acts i.e. Act 9 of 1994 and Act 19 of 1994 and the Act 19 of 1994 being subsequent in point of time would prevail specially when there is section 142 which has laid down the over-riding effect notwithstanding anything contained in any other law which is inconsistent with this Act shall prevail and similarly, in Section 143 it clearly contemplates that all other provisions of State law corresponding to the provisions of this Act shall stand repealed, save to the extent that the provisions which are not inconsistent with this Act. Therefore, in view of Sections 142 and 143 of the Act 19 of 1994, the over-riding effect of the subsequent legislation is that the legislature in its wisdom while enacted the Act 19 of 1994 which has come into force with effect from 19.9.1994 much after the Act 9 of 1994, intended that this provision shall prevail especially when it has the over-riding effect and the repeal is specific. Therefore, the clear intention of the legislature should be given effect to. In support of his contention, learned counsel for the appellant invited our attention to the decision of this Court in *Hyderabad Chemical and Pharmaceutical Works Ltd. etc. v. State of Andhra Pradesh & Ors.* ([1964] 7 S.C.R. 376) and in *Ratan Lal Adukia v. Union of India* [(1989) 3 SCC 537].

F 5. As against this, Mr. P.S. Patwalia, learned senior counsel for the respondents submitted that there is no express repeal but it is only by implication and submitted that both the Acts can be read harmoniously and in support of his contention, invited our attention to the following decisions of this Court.

- G i. (2003) 12 SCC 274
 Kishorebhai Khamanchand Goyal v
 State of Gujarat & Anr.
- ii. 1989 Supp.(1) SCC 589
 Jugal Kishore v.
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- State of Maharashtra & Ors. A
- iii. (1986) 2 SCC 209
Mary Roy & Ors. V.
State of Kerala & Ors.
- iv. (1980) 4 SCC 435 B
M/s. Jain Ink Manufacturing Company v. Life Insurance
Corporation of India & Anr.
- v. (1969) 3 SCC 801
- vi. Principles of Statutory Interpretation [11th Edn. 2008] C
By Justice G.P.Singh (Chapter 7, Synopsis 4 at page
637-639)

6. Both the Acts i.e. Act 9 of 1994 and Act 19 of 1994 came into being in view of seventy-third amendment and seventy-fourth amendment of the Constitution of India to provide more teeth to local self government. By this amendment under Part IX of the Constitution, Article 243 was amended. Likewise by inserting Part IXA, Municipalities were also strengthened. Self-governance were given to the local bodies. As a result of these seventy-third and seventy-fourth amendments, The Punjab Panchayati Raj Act, 1994(Punjab Act 9 of 1994) and the Punjab State Election Commission Act, 1994 (Punjab Act No. 19 of 1994) were enacted. The preamble of The Punjab Panchayati Raj Act,1994 (Punjab Act 9 of 1994) reads as under :

" Whereas it is expedient to replace the present enactments by a comprehensive new enactment to establish a three-tier Panchayati Raj system in the State of Punjab with elected bodies at the village, Block and District levels, in keeping with the provisions of the Constitution (Seventy-third Amendment) Act, 1992 for greater participation of the people and more effective implementation of rural development and Panchayati Raj system;

Likewise the Punjab State Election Commission Act, 1994 was enacted and the preamble reads as under:

A “An Act to provide for the constitution of the State Election
Commission and for vesting the superintendence, direction
and control of the preparation of election rolls for, and the
conduct of all elections to the Panchayats and
Municipalities in the State of Punjab, in the State Election
B Commission, and to provide for all matters relating to, or
ancillary or in connection with the elections to the
Panchayats and Municipalities, in terms of the provisions
of Parts IX and IX-A of the Constitution of India.”

This is also a fact that the Act 9 of 1994 came into effect
C on 21.4.1994 and the Act 19 of 1994 came into effect on
19.9.1994. Act 19 of 1994 is definitely later in point of time and
here under Section 11 (f) & (g) the disqualifications have been
prescribed. Though similar disqualifications existed under
D Section 208 of the Act of 9 of 1994 but subsequently the
legislature in its wisdom has reduced the disqualifications and
confined only to the area that one should not hold office of profit
under a Panchayat or a Municipality or under the Government
of India or any State Government. Thus, the legislature in its
wisdom has not considered it proper to continue with the
E disqualification of being an employee of any local authority,
Statutory Corporation or Board or a Co-operative Society. Had
that been the intention of the legislature then perhaps they would
have specifically provided the disqualifications under Section
11 of the Act 19 of 1994. Section 11 clearly says that a person
shall be disqualified for being chosen as, and for being a
F member of a Panchayat or a Municipality if he holds an office of
profit under a Panchayat or a Municipality; or if he holds an office
of profit under the Government of India or any State Government;
whereas Section 208 (g) says a person shall be disqualified for
being chosen as, and for being a member of a Panchayat or a
G Municipality if he is a whole-time salaried employee of any local
authority, Statutory Corporation or Board or a Co-operative
Society registered under the Punjab Co-operative Societies Act,
1961, or of the State Government or the Central Government.
But in the subsequent Act 19 of 1994 the area of disqualification
H has been narrowed down. Since the Act 19 of 1994 is subsequent

[A.K. MATHUR, J.]

in point of time and it also has the provisions of Sections 142 A
and 143 which clearly contemplate that it shall have the complete
over-riding effect, reading of Section 142 makes it clear that
the legislature were aware of the earlier disqualification and
subsequently they have inserted the disqualifications under sub- B
sections (f) & (g) of Section 11 so far as the office of profit is
concerned and provided over-riding effect and have clearly laid
down that notwithstanding anything inconsistent therewith
contained in any other law for the time being in force relating to
the conduct of elections to the Panchayats or Municipalities or C
any incidental matter thereto shall stand repealed. Therefore,
the mandate of the legislature appears on the face of it very
clear and they have saved the actions under Section 143 to the
extent that any other law which is inconsistent with this law shall
stand repealed and only that action taken under the
corresponding provisions of any State law which were in force D
at that time, those actions shall only be saved and not otherwise.
Therefore, the saving clause is very limited if any action has
been taken under the earlier legislation before coming into force
of Act 19 of 1994, those actions would be saved after the coming
into force of Act 19 of 1994. The mandate of legislature is E
categorically clear in view of Sections 142 and 143 and it admits
of no two opinion in the matter. The courts should be very slow
to interfere with the mandates of the legislature unless there are
compelling reasons for doing so. In the present case, the clear
mandate of the legislature was that anything which is inconsistent
with the Act 19 of 1994 shall be deemed to have been repealed F
leaves no room for us to take a contrary view of the matter. With
respect we cannot agree with the view taken by the Division
Bench of the High Court that both the provisions can be read
harmoniously i.e. Section 11 of Act 19 of 1994 read with Section
208 of Act 9 of 1994 but we regret it cannot be. Harmonious G
reading of both the provisions will be limited to the extent of
Section 11 of the Act 19 of 1994. When Section 11 of Act 19 of
1994 clearly contemplates that these are the only
disqualifications mentioned in sub-sections (f) & (g), which are
already present in Section 208 of Act 9 of 1994, beyond that it H

A cannot be read. If Section 208 of Act 9 of 1994 lays down further disqualifications then those disqualifications will run counter to the disqualifications as mentioned in Section 11 of Act 19 of 1994. If Section 208 of Act 9 of 1994 is inconsistent to the extent of Section 11 of Act 19 of 1994, then to this extent the provisions of Section 208 of Act 9 of 1994 cannot be read. Since there are only four disqualifications mentioned in Section 11 of Act 19 of 1994, the rest of the disqualifications cannot be imported by implication of the Act 9 of 1994. Mr. Patwalia, learned senior counsel for the respondents tried to persuade us that the theory of not expressly repealed by implication should be read into but we regret, it cannot be. The intention of the legislature is clear and there is no reason why the intention of the legislature be not given effect to. In fact the Division Bench of the Punjab & Haryana High Court held that Section 11 should be read with Section 208; that means Section 208 can survive to the extent that it is consistent with Section 11 of Act 19 of 1994. Rest part of section 208 i.e. a person who is holding office of profit under local authority, Statutory Corporation, Board or Co-operative Society will not be disqualified. Therefore, if a person holds an office of profit under the local authority, Statutory Corporation or Board or a Co-operative Society cannot by implication be said to be a person disqualified under the Act. These provisions can be read harmoniously to the extent that if a person is holding office under the Panchayat or a Municipality, or under the Government of India or any State Government, to that extent it will be deemed to be office of profit. If he holds an office of profit under any other organization, like local authority, Statutory Corporation or Board or a Co-operative Society, that will not be office of profit so as to disqualify him to be chosen as and for being a member of a Panchayat.

G 7. Mr. Patwalia, learned senior counsel for the respondents invited our attention to Chapter VII at pg.637 of the Principles of Statutory Interpretation (11th Edn.2008) by Justice G.P.Singh, which reads as under :

H “ The use of any particular form of words is not necessary

to bring about an express repeal. All that is necessary is that the words used show an intention to abrogate the Act or provision in question. The usual form is to use the words 'is or are hereby repealed' and to mention the Acts sought to be repealed in the repealing section or to catalogue them in a Schedule. The use of words 'shall cease to have effect', is also not uncommon. When the object is to repeal only a portion of an Act words 'shall be omitted' are normally used. The legislative practice in India shows that 'omission' of a provision is treated as amendment which signifies deletion of that provision and is not different from repeal. It has been held that "there is no real distinction between repeal and an amendment." It has also been held that "where a provision of an Act is omitted by an Act and the said Act simultaneously re-enacts a new provision which substantially covers the field occupied by the repealed provision with certain modification, in that event such re-enactment is regarded having force continuously and the modification or changes are treated as amendment coming into force with effect from the date of enforcement of re-enacted provision."

Similarly, our attention was invited to a paragraph at page 639. There it has been observed as follows:

"The Legislature sometimes does not enumerate the Acts sought to be repealed, and only says that "all provisions inconsistent with this Act" are hereby repealed. With respect to such a repealing provision, it has been said that it merely substitutes for the uncertainty of the general law an express provision of equal uncertainty; and in determining whether a particular earlier provision is repealed by such a repealing provision on the ground of inconsistency with it, the same provisions which are application in determining a question of implied repeal have to be applied."

At page 640, under the heading Implied repeal it has been

A observed as follows:

B “ There is a presumption against a repeal by implication;
and the reason of this rule is based on the theory that the
Legislature while enacting a law has a complete
knowledge of the existing laws on the same subject-matter,
and therefore, when it does not provide a repealing
provision, it gives out an intention not to repeal the existing
legislation. When the new Act contains a repealing section
C mentioning the Acts which it expressly repeals, the
presumption against implied repeal of other laws is further
strengthened on the principle *expressio unius est exclusio
alterius*. Further, the presumption will be comparatively
strong in case of virtually contemporaneous Acts. The
D continuance of existing legislation, in the absence of an
express provision of repeal, being presumed, the burden
to show that there has been a repeal by implication lies on
the party asserting the same. The presumption is, however,
rebutted and a repeal is inferred by necessary implication
when the provisions of the later Act are so inconsistent
with or repugnant to the provisions of the earlier Act “ that
E the two cannot stand together”.”

As already mentioned above it is very clear that Section
142 clearly contemplates that the earlier laws which are
inconsistent with the Act shall stand repealed and it is saved to
the limited extent as provided under Section 143. Therefore, if
F both the provisions i.e. Section 208 of Act 9 of 1994 and Section
11 of Act 19 of 1994 can be read harmoniously to show that the
disqualifications which are mentioned for holding office of profit
are that an incumbent should not be an employee or a salaried
person under the Panchayat, or under Municipality, or under the
G State Government; or the Central Government. To this extent
there is identity between the two provisions and no other
disqualifications have been saved and it has been subsequently
repealed and it is more than apparent from Sections 142 and
143 of the Act 19 of 1994.

H

8. In *Ratan Lal Adukia v. Union of India* [(1989) 3 SCC 537] it has been held as follows: A

“ The doctrine of implied repeal is based on the postulate that the legislature which is presumed to know the existing state of the law did not intend to create any confusion by retaining conflicting provisions. Courts in applying this doctrine are supposed merely to give effect to the legislative intent by examining the object and scope of the two enactments. But in a conceivable case, the very existence of two provisions may by itself, and without more, lead to an inference of mutual irreconcilability if the later set of provisions is by itself a complete code with respect to the same matter. In such a case the actual detailed comparison of the two sets of provisions may not be necessary. It is a matter of legislative intent that the two sets of provisions were not expected to be applied simultaneously.” B C D

9. In *Hyderabad Chemical and Pharmaceutical Works Ltd. etc. v. State of Andhra Pradesh & Ors.* ([1964] 7 S.C.R. 376), it was held as follows: E

“By virtue of Entry 84 List I of the VII Schedule to the Constitution no charge could be levied on the manufacture of medicinal preparations except by the Union of India and since the 1955 Act is a law made otherwise by Parliament within the meaning of Art. 277 the duties and other charges which used to be levied by the State in connection with medicinal preparations could no longer be levied by it. Further the effect of s.21 of the Act is that so far as the Hyderabad Act applied to the use of alcohol in the manufacture of medicinal and toilet preparations, the Hyderabad Act must be deemed to have been repealed.” F G

Therefore, it clearly transpires that by virtue of subsequent amendment of the law made by the Parliament, the Hyderabad Act automatically stood repealed. Similar is the position here H

A also that the subsequent Act 19 of 1994 which has come at later point of time, repeals the provisions of the Act 9 of 1994 so far as it is inconsistent with the Act 19 of 1994.

B 10. As against this, learned senior counsel for the respondents, invited our attention to a decision of this Court in *Municipal Corporation of Delhi v. Shiv Shankar* [**1971 (1) SCC 442**] wherein it has been held as follows:

C “As the Legislature must be presumed in deference of the rule of law to intend to enact consistent and harmonious body of laws, a subsequent legislation may not be too readily presumed to effectuate a repeal of existing statutory laws in the absence of express or at least clear and unambiguous indication to that effect.”

D But in the present case, the intention of the Legislature is more than apparent that the existing legislation as subsequently held under Section 142 of the Act 19 of 1994 that this Act will have over-riding effect on all other laws in the State and likewise, under Section 143 there is repeal. Therefore, there is no question of ambiguity in the matter of intention of the legislature as it is very clear.

E 11. In *Kishorebhai Khamanchand Goyal v. State of Gujarat & Anr.* [**(2003) 12 SCC 274**] their Lordships held as follows:

F “There is a presumption against repeal by implication. The reason is that the legislature while enacting a law is presumed to have complete knowledge of the existing laws on the same subject-matter, and therefore, when it does not provide a repealing provision the intention is clear not to repeal the existing legislation. Besides when G the new Act contains a repealing section mentioning the Acts which it expressly repeals, the presumption against implied repeal of other laws is further strengthened on the principle of *expressio unius (personae vel rei) est exclusion alterius.* (The express intention of one person or thing is the exclusion of another.) H The continuance of existing

legislation, in the absence of an express provision of repeal being presumed, the burden to show that there has been repeal by implication lies on the party asserting the same. The presumption is, however, rebutted and a repeal is inferred by necessary implication when the provisions of the later Act are so inconsistent with or repugnant to the provisions of the earlier Act that the two cannot stand together. But, if the two can be read together and some application can be made of the words in the earlier Act, a repeal will not be inferred. The necessary questions to be asked are:

- (1) Whether there is direct conflict between the two provisions.
- (2) Whether the legislature intended to lay down an exhaustive Code in respect of the subject-matter replacing the earlier law.
- (3) Whether the two laws occupy the same field."

As already mentioned there is no necessary implication. In this case, the intention of the legislature is more than apparent.

12. Learned counsel for the appellant has tried to submit that in fact the incumbent was virtually not holding the office of profit as he ceased to be an employee for the last 8-9 years. We do not want to go into this controversy as we have already decided the question of law involved in the present case that a salaried employee of any local authority, statutory corporation or Board or a Co-operative Society can not be held to have held the office of profit under Section 11 of the Act 19 of 1994. Therefore, we need not to go into the factual controversy. Mr. P.S.Patwalia, learned senior counsel for the respondents tried to persuade us that we should look to the scope of both the Acts. The disqualifications are only mentioned in Section 208 of the Act 9 of 1994 and the intention of the legislature is very clear and Section 11 of the Act of 1994 being in later point of time stating therein what are the disqualifications, therefore, the

A disqualifications mentioned in Section 11 of the Act 19 of 1994 will prevail and not the disqualifications mentioned in Section 208 of Act 9 of 1994. The disqualifications mentioned in Section 208 which are consistent with Section 11 of Act 19 of 1994 can only survive and not other disqualifications.

B 13. As a result of our above discussions, we are opinion that the view taken by the learned Single Judge on the basis of the judgment of the Division Bench of the High Court of Punjab and Haryana cannot be sustained. Consequently, we allow this appeal, set aside the judgment and order of the learned Single Judge and hold that the appellant while serving in the Marketing Committee cannot be held to be holding the office of profit. There would be no order as to costs.

C

R.P.

Appeal allowed.