

CWP-16363-2015

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP-16363-2015

Date of Decision: 12.08.2015

Gurmej Singh

... Petitioner(s)

Versus

State of Punjab and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

- 1) Whether Reporters of the local papers may be allowed to see the judgment ?.
- 2) To be referred to the Reporters or not ?.
- 3) Whether the judgment should be reported in the Digest ?

Present: Mr. Nakul Sharma, Advocate,
for the petitioner.

Mr. Suresh Singla, Addl. A. G. Punjab.

Mr. N.P.S.Mann, Advocate,
for respondent No.5.

Paramjeet Singh, J. (Oral)

Instant petition has been filed under Articles 226/227 of the Constitution of India for setting aside the order dated 30.07.2015 (Annexure P-5) passed by respondent No.3-Joint Development Commissioner, Punjab whereby order dated 23.07.2015 (Annexure P-2) passed by respondent No.2-Director, Rural Development and Panchayats Department, Punjab, with regard to suspension of respondent No.5, has been stayed.

I have heard learned counsel for the parties and perused the

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record.

Learned counsel for the petitioner contends that respondent No.3, who is exercising the powers of Joint Development Commissioner, Punjab, is junior to respondent No.2-Director, Rural Development and Panchayat Department, Panchayat in the IAS cadre. The caveat was filed on 30.07.2015 before respondent No.3 and on the same day, stay was granted by respondent No.3. Vide order dated 14.05.2015 passed in CWP-8779-2015, a Division Bench of this Court has ordered that appeal filed by the Gram Panchayat shall not be entertained and decided by an officer who is junior to Mr. C.Sibban.

Learned State counsel vehemently opposes the contentions of learned counsel for the petitioner and relies upon standing order dated 03.12.2014.

I have considered the rival contentions of learned counsel for the parties.

It would be appropriate to reproduce relevant extract from the Punjab Govt. Gaz. (Extra) dated the 3rd December, 2014 which reads as under:

“GOVERNMENT OF PUNJAB
DEPARMTNET OF RURAL DEVELOPMENT AND
PANCHAYATS
(LEGAL BRANCH)
STANDING ORDER
The 3rd December, 2014

No.S.O.14571/P.A.9/1994/Ss 20, 198, 199,
201/2014. - In suppression of Government of Punjab,
Department of Rural Development and Panchayats order

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bearing No.26/P.A.9/s2/2007 dated 8th August 2007 and standing order dated 04-12-2007 bearing endorsement No.DPLA-1/2007/12698-709 dated 11th December, 2007, the Governor of Punjab is pleased to order that all the cases under sections 20(6) and 199(4) of the Punjab Panchayati Raj Act, 1994, shall henceforth be disposed of by the Joint Development Commissioner, Integrated Rural Development and in addition Special Secretary Rural Development and Panchayats.

MANDEEP SINGH SANDHU
Financial Commissioner and Secretary to
Government of Punjab, Department of
Rural Development and Panchayat”

Respondent No.5 has filed appeal under Section 20(6) of the Punjab Panchayati Raj Act, 1994 which can only be heard by the Joint Development Commissioner exercising the powers of Commissioner. Vide notification dated 03.12.2014, post of Joint Development Commissioner, Integrated Rural Development has been notified who is competent to hear the matter under Sections 20(6) and 199(4) of the Punjab Panchayati Raj Act, 1994. It cannot be determined in any manner that respondent No.3, who was holding the office as Joint Development Commissioner, Integrated Rural Development, is junior to respondent No.2. Otherwise also, the powers have been vested in a particular authority by Gazette Notification. Notification has been issued by referring it as Standing order.

However, it is observed that while giving the powers of appellate authority to an officer, it is for the Government to see that the officer who entertains the appeal, should be senior to the officer, who has passed the order under challenge in appeal. Otherwise, power of

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appeal is assigned by designation only and not with reference to a particular person.

Learned counsel for the petitioner contended that a Division Bench of this Court has passed the stay order. It appears that Gazette Notification dated 03.12.2014 may not have been brought to the notice of the Division Bench. Furthermore, there is no challenge to the notification which has been issued as Standing Order.

In view of above, I do not find any illegality or perversity in the impugned order.

Dismissed.

However in view of the fact that the petitioner has filed caveat and appeal was also heard on the same day, respondent No.5-appellant may not have even received notice of caveat sent by the petitioner through registered post and stay was granted on the same day, the petitioner will be at liberty to move application for preponing the date of the case as well as for vacating the stay.

Copy of this order be given to learned counsel for the petitioner under the signatures of Bench Secretary.

12.08.2015
parveen kumar

(Paramjeet Singh)
Judge