

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

**Civil Revision No.1793 of 2016
Date of decision : 21.03.2016**

Chhinder Kaur

.....Petitioner

Versus

**Deputy Commissioner-cum-Presiding Officer, Election Tribunal,
Moga and others**

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

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

Present: Mr. N.S. Dandiwal, Advocate for petitioner.

DARSHAN SINGH, J.

The present revision petition has been preferred against the order dated 19.01.2016, vide which respondent No.1, the Deputy Commissioner-cum-Presiding Officer, Election Tribunal, District Moga, has ordered the recounting of the votes of the election for the office of the Panch of Gram Panchayat of village Jogewala, Tehsil & Distt. Moga.

2. Learned counsel for the petitioner contended that the recounting of the votes cannot be ordered as a matter of routine. The person seeking recounting of the votes has to make out the case by adducing cogent evidence to claim the recounting. He has to show that

while counting votes, the mandatory provisions of the Punjab Panchayati Raj Act, 1994 and Punjab Panchayat Elections Rules, 1994 have been violated. He contended that the contesting respondent belongs to the ruling party and has procured the illegal order.

3. I have duly considered the aforesaid contentions.

4. In the instant case, the election petition has been filed by respondent No.2 Surjit Kaur under Section 74 read with Section 76 read with Section 89 of the Punjab State Election Commission Act, 1994 challenging the election of petitioner Chhinder Kaur (respondent No.1 in the election petition), who was declared elected to the office of Panch of Gram Panchayat Jogewala. Respondent No.2 has taken the specific plea in the petition that at the time of counting the ballot papers were not shown her or her counting agents. The ballot papers, which were liable to be rejected/cancelled, have been counted in favour of the petitioner. The Presiding Officer was requested to recount the votes but the said request was rejected. She has also not signed the counting sheets as the properly rejected votes were not included. To prove all these facts, respondent No.2 has examined PW-1 Surjit Kaur and PW-2 Gurdev Singh. The learned counsel for the petitioner has only cross-examined Surjit Singh. But the other witness examined by respondent No.2 was not cross-examined and ultimately, the right to cross-examine them was closed vide order dated 01.10.2015. It is the settled principle of law that if the statement of a witness goes unchallenged in the cross-examination, that part of his statement is deemed to have been admitted.

5. Further, the petitioner was called upon to adduce her evidence but she did not adduce any evidence in spite of availing number of opportunities. Thus, the evidence adduced by respondent No.2 Surjit Kaur has gone un rebutted.

6. As already mentioned, respondent No.2 has raised the plea in the petition, which is supported by the un rebutted evidence, that at the time of counting, the ballot papers were not shown to respondent No.2 and her counting agents. The ballot papers liable to be to be cancelled, were counted in favour of the present petitioner. The request made by respondent No.2 for recounting all the votes was rejected by the Presiding Officer. The votes, which were properly rejected, were not included in the list. The petitioner has been declared elected just by 1 vote as the petitioner has scored 76 votes and respondent Surjit Kaur has secured 75 votes. Thus, respondent No.2 has been able to make out a prima facie case for recounting all the votes. There is no material on record to show that respondent No.1 has passed the impugned order under any political pressure. The recounting of the votes is otherwise essential to check the correctness of the allegations mentioned in the petition and to do the complete justice between the parties.

7. Keeping in view my aforesaid discussion, I do not find any illegality in the impugned order passed by respondent No.1.

8. Consequently, the present petition, having no merits, is hereby dismissed.

21.03.2016

sunil yadav

**(DARSHAN SINGH)
JUDGE**