

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.26972 of 2014

Date of decision: 12.07.2016

Jarnail Singh

... Petitioner

Vs.

Financial Commissioner (Appeals), Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. K.S. Dhillon, Advocate
for the petitioner.

Mr. B.M. Vinayak, DAG, Punjab.

Mr. Sanjeev V. Virk, Advocate
for respondent No.4.

RAMESHWAR SINGH MALIK, J. (ORAL)

Present writ petition is directed against the order dated 05.12.2013 passed by Financial Commissioner (Appeals), Punjab, whereby he heard the revision petition filed by respondent No.4 and decide the same ex-parte without issuing even a notice to the petitioner in whose favour Commissioner, Jalandhar Division, Jalandhar has decided the case vide his order dated 01.07.2013 (Annexure P-2).

Notice of motion was issued.

Heard learned counsel for the parties.

It is a matter of record that learned District Collector, Kapurthala vide his order dated 21.09.2010 (Annexure P-1) found both the candidates, as not suitable for appointment to the post of Lambardar. Both the parties felt aggrieved against the said order and filed two appeals before the learned Commissioner,

Jalandhar Division, Jalandhar. The abovesaid order dated 21.09.2010 (Annexure P-1) passed by the learned District Collector, Kapurthala was set aside by the learned Commissioner, Jalandhar Division, Jalandhar vide his order dated 01.07.2013 (Annexure P-2), remanding the case to the learned Collector, Kapurthala. Respondent No.4 filed revision petition before the Financial Commissioner who proceeded on a factually incorrect approach treating that the Commissioner, Jalandhar Division, Jalandhar has dismissed the appeals of both the parties. He has so recorded in the opening paragraph as well as para 2 of the impugned order. Financial Commissioner also did not issue any notice to petitioner in whose favour Commissioner has decided the case vide order dated 01.07.2013.

Learned counsel for the petitioner submits that once the Commissioner has decided the matter in favour of the petitioner, it was least expected from the Financial Commissioner to issue notice to the petitioner before deciding the matter against him. He prays for setting aside the impugned order passed by the Financial Commissioner, by allowing the present writ petition.

On the other hand, learned counsel for respondent No.4 submits that there was no illegality in the order passed by the Financial Commissioner and the same deserves to be upheld. He prays for dismissal of the present writ petition.

After hearing the learned counsel for the parties at considerable length and going through the record of the case, this Court is of the considered opinion that since the impugned order passed by the Financial Commissioner is patently illegal and also runs against the basic principles of natural justice, the same cannot be sustained.

The relevant part of the order dated 01.07.2013 passed by the Commissioner, Jalandhar Division, Jalandhar, reads as under: -

“On the file there is nothing on record, which shows that the Harvinder is owning the land in village. However, the ld. counsel Mr. S.K.S. Chhabra submitted that Sh. Harvinder Singh is having the land in the village. The other candidate Sh. Jarnail Singh, who is personally present in the Court reasonably reads Punjabi. There is no such requirement on education in the appointment of village Lambardari. Therefore, this case is remanded to the District Collector with the directions that the ownership of land of Harvinder Singh needs to be verified at the time of filing of application. If, he owned the land, then his case may also be considered for the candidature of village headman. In case he was not owning land in the village at the time of filing of application, then only the case of Jarnail Singh needs to be considered for the village Headman. With these observations the case is remanded to the District Collector, Kapurthala. The parties present before me are directed to appear in the Court of District Collector, Kapurthala on 30/7/2013.”

A bare reading of the abovesaid order would show that a clear direction was issued by the Commissioner to the District Collector, Kapurthala to proceed further with the matter considering the comparative merits of the petitioner as well as respondent No.4. In such a situation, Financial Commissioner was duty bound to issue notice to the petitioner granting him an opportunity of being heard, before passing the impugned order (Annexure P-3).

Since the petitioner was not granted an opportunity of hearing, the impugned order passed by the Financial Commissioner is liable to be set aside. It is so said because the golden rule of *audi alteram partem* stands violated in the present case.

In view of what has been discussed hereinabove, order dated 05.12.2013 (Annexure P-3) passed by Financial Commissioner (Appeals), Punjab is hereby set aside. Since the order dated 22.07.2014 (Annexure P-4) passed by the District Collector, Kapurthala came to be passed on the basis of the order dated 05.12.2013 (Annexure P-3) passed by the Financial Commissioner, said order is also liable to be set aside and accordingly the same is set aside.

Consequently, the order dated 01.07.2013 passed by the Commissioner, Jalandhar Division, Jalandhar shall stand revived. District Collector, Kapurthala is directed to proceed further with the matter, in compliance of the order dated 01.07.2013 passed by the Commissioner, Jalandhar Division, Jalandhar and conclude the proceedings at an early date, by passing an appropriate order strictly in accordance with law. Since the matter is pending decision for the last about six years, District Collector, Kapurthala is directed to pass the appropriate order within a period of three months from the date of receipt of certified copy of this order.

With the abovesaid observations made and directions issued, present writ petition stands allowed, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

12.07.2016
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