

CWP No.2306 of 2015

[1]

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

**CWP No.2306 of 2015
Date of decision:21.11.2017**

Mahender Pal ...Petitioner

Versus

Financial Commissioner-cum-Principal Secretary and others ...Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Arun Yadav, Advocate,
for the petitioner.

Mr. Sourabh Mohunta, DAG, Haryana.

Mr. Shailender Singh, Advocate,
for respondent No.6.

Rakesh Kumar Jain, J. (Oral)

Costs of ₹2,500/- is paid to the counsel for respondent no.6.

The petitioner has challenged the appointment of Karan Singh (respondent no.6 herein) to the post of Lambardar of village Majri Dooda, Tehsil and District Rewari. The recommending authorities forwarded the name of respondent no.6, who was appointed by the Collector to the post of Lambardar on 07.09.2010 and the appeal filed by the petitioner was dismissed by the Divisional Commissioner by observing that the Collector has selected Karan Singh, who is younger in age and is a practicing advocate. The petitioner filed the revision before the Financial Commissioner, which was dismissed and he also observed that respondent no.6 is a B.A.LL.B. On 28.04.2015, the following order was recorded by this Court:-

“Learned counsel for the petitioner states that respondents is a practicing advocate and shall not available to the Village community.

Learned counsel for the respondent No.6 denies that fact. He is directed to place on record the affidavit in this regard.”

Thereafter, on 20.05.2015, respondent no.6 filed his affidavit, in which the following averments were made:-

“That deponent affirms and declares that he is not a practicing advocate. He has not completed his LL.B. degree, although it is a fact that deponent appeared in LL.B. 2nd year examination held in July 2001 from University of Rajasthan vide Roll No.9062 of which result was declared on 13.08.2001 in which he was declared failed. After that he never completed his LL.B. degree. It is further declared that deponent never contended and claimed that he is a law graduate. In his application submitted to Naib Tehsildar Dharuhera on 08.07.2009 for appointment as Lambardar, he had mentioned his qualification as graduate.”

As a matter of fact, respondent no.6 has changed the entire complexion of his case by making the aforesaid averments that he is not a B.A.LL.B. much-less the practicing advocate in order to wriggle out of the allegation that being a practicing advocate, he would not be available to the villagers throughout the day.

It is argued by the counsel for respondent no.6 that he did not conceal this aspect as this fact was noticed by the Assistant Collector 2nd Grade, Rewari, while making recommendation in his favour, but it is submitted by the counsel for the petitioner that both the Divisional Commissioner and the Financial Commissioner decided against him by recording a positive finding that respondent no.6 is a practicing advocate/B.A.LL.B. and has been given unnecessary weightage in this regard, though it was not true. It is further submitted that had the Divisional Commissioner and the Financial

Commissioner not been under a wrong impression that respondent no.6 is a practicing advocate/BA.LL.B., the complexion of the case would have been altogether different.

After hearing learned counsel for the parties and examining the available record, I am of the considered opinion that this petition has a merit because there is factual error in the observations made by the Divisional Commissioner and the Financial Commissioner. Moreover, the fact that respondent no.6 is neither a practicing advocate nor a B.A.LL.B. has been surfaced when an interim order was passed by this Court on 28.04.2015, otherwise respondent no.6 did not file any kind of application before the Divisional Commissioner or the Financial Commissioner to correct their finding(s) on facts that he was not a practicing advocate much-less even an advocate because he has not completed his B.A.LL.B. degree.

His silence in this regard speaks volume against him, therefore, the present petition is hereby allowed, impugned order(s) are set aside and the matter is remanded back to the Divisional Commissioner to decide it again after taking into consideration the fact that respondent no.6 is not a practicing advocate/B.A.LL.B.

The parties are directed to appear before the Divisional Commissioner on 20.12.2017.

November 21, 2017
suresh kumar/vinod*

(Rakesh Kumar Jain)
Judge

Whether speaking / reasoned : Yes/No

Whether reportable : Yes/No