IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CWP No. 8848 of 2014(O&M)
Date of decision : August 18, 2017

Gurnam Singh

.... Petitioner

Versus

Financial Commissioner (Revenue) Punjab and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present:- Mr. B. S. Sidhu, Advocate
for the petitioner.

Mr. Saurav Khurana, DAG., Punjab.

None for respondent No.4.

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RAKESH KUMAR JAIN, J (oral).

The office of Lambardar of Village Gurusar Saine Wala, Tehsil and District Bathinda fell vacant on the death of the earlier Lambardar on 30.6.2009. After the process for filling up the vacant post started by inviting applications from the desirous candidates, the A.C. Ist Grade and A. C. IInd Grade recommended the name of the petitioner on 4.6.2010 and 22.6.2010 respectively by the Collector but he appointed respondent No.4 as Lambardar on 23.11.2010.

The petitioner challenged the order of Collector by way of appeal before the Commissioner. However, the said appeal was dismissed on 9.5.2012. At that time no other remedy was available to file revision before the Financial Commissioner because power of the Financial Commissioner was withdrawn on 20.4.2011, therefore the petitioner challenged the order of the Collector and Commissioner by way of Writ Petition No. 10850 of 2012. The said writ petition was, however, withdrawn on 25.7.2012 to invoke the jurisdiction of the Financial Commissioner. The petitioner thereafter filed the revision before the Financial Commissioner because according to him, the Financial Commissioner regained power of revision on 28.1.2013 as the order dated 20.4.2011 was withdrawn. However, the revision petition was dismissed by the Financial Commissioner on 1.10.2013 on the ground that, firstly, the petitioner has filed the revision petition on 24.7.2013 and secondly, he had no power to hear the revision petition against the order of the Commissioner when it was passed by him.

Mr. G. S. Sidhu, learned counsel for respondent No.4 had not come present when the case was heard on the last date of hearing and consequently, the following order was passed on 5.9.2016:-

> *"Although respondent No.4 is represented by Mr. G.S. Sidhu, Advocate, yet perusal of the numerous orders passed by this Court would show that learned counsel for respondent No.4 has not been regularly appearing in the present case. In this view of the matter, one last and final opportunity is granted to Mr. G.S. Sidhu, Advocate, learned counsel for respondent No.4.*
>
> *List on 31.01.2017.*
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> *It is further made clear that if he will not come present on the next date of hearing, the case shall be heard and decided in his absence.*
>
> *Let a copy of this order be supplied by the office to Mr. G.S. Sidhu, Advocate, learned counsel for the respondent No.4."*

It was specifically clarified that if counsel for respondent No.4 would not appear on the next date of hearing then the case would be heard and decided in his absence.

Counsel for the petitioner has argued that power of the Financial Commissioner was withdrawn on 20.4.2011 and restored on 28.1.2013. The revision petition was filed on 24.7.2013 which was after restoration of the power of the Financial Commissioner, therefore he should not have dismissed the revision petition only on the ground that he did not possess the jurisdiction at the time when the Commissioner had passed the order on 9.5.2012.

Counsel for the State has submitted that after withdrawal of the writ petition filed before this Court the revision petition was filed after one year and the delay is not explained.

I have heard learned counsel for the parties and perused the record and am of the considered opinion that there is a fallacy in the order of the Financial Commissioner who has dismissed the revision petition, inter alia, on the ground that when the Commissioner had passed the order in his appeal on 9.5.2012 he did not possess the power to entertain the revision.

It is strange that the Financial Commissioner has never looked into this aspect that his power was restored on 28.1.2013 to hear the revision petition and this revision petition was filed by the petitioner after he had regained the jurisdiction to hear the revision petition against the order of the Commissioner as revision petition was admittedly filed much after 28.1.2013. Insofar as the delay is concerned, as soon as the petitioner came to know about the powers having been regained by the Financial Commissioner, the remedy was availed and the revision petition was filed.

Thus, keeping in view the facts and circumstances of the case, the impugned order dated 1.10.2013 (Annexure P-5) is found to be patently erroneous and the same is hereby set aside. The matter is remanded back to the Financial Commissioner with a direction to decide the case on merits after hearing both the parties.

Parties are directed to appear before the Financial Commissioner on 11.9.2017. Since it is an old matter, therefore it is expected that the Financial Commissioner would decide the revision petition as soon as possible, preferably within a period of three months, from the date of receipt of certified copy of this order.

The writ petition is disposed of.

(RAKESH KUMAR JAIN)
JUDGE

August 18, 2017
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Whether speaking/reasoned Yes/No
Whether Reportable Yes/No