

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

CWP No. 10716 of 2018 (O & M)

Date of decision: 09.08.2018

Hardev Singh

....Petitioner(s)

Versus

Financial Commissioner and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr. J.S. Brar, Advocate,
for the petitioner.

Mr. P.S. Bajwa, Addl. A.G., Punjab.

Mr. A.S. Manaise, Advocate,
for respondent no. 4.

G.S.SANDHAWALIA, J. (Oral)

C.M. No. 11386-CWP of 2018

Application for placing on record short reply on behalf of respondents no. 1 to 3 is allowed, subject to all just exceptions.

The same is taken on record.

CWP No. 10716 of 2018

The present writ petition is directed against the order of the Financial Commissioner dated 09.01.2018 (Annexure P-5) whereby, the revision of the petitioner which had been dismissed in default on 03.08.2016 was not restored since the application for restoration was also dismissed on 22.02.2017. Thereafter, another application was filed for restoration of the same which was dismissed on account of the delay of 116 days and by holding that the petitioner-applicant was indifferent, uncaring and negligent and, therefore, it is in such circumstances, the present writ petition has been filed.

The bone of contention is the order passed appointing respondent no. 4-Balwinder Singh as Lambardar in village Badhowal, Tehsil Batala, District Gurdaspur on 10.02.2010 (Annexure P-1). The said order was upheld by the Commissioner on 19.02.2014 (Annexure P-3) which had led to the revision being filed before the Financial Commissioner. Keeping in view these facts and the settled principle that until an order the District Collector is perverse, the authorities would not set aside the same and the choice of the Collector is usually to be honoured, this Court has gone into the gamut of facts to see whether it is a fit case as such even to be restored to the file of the Financial Commissioner.

A perusal of the order of the District Collector would go on to show that the comparative merits were assessed and it was noticed that both the petitioner and the private respondent own approximately same amount of land i.e 85 kanals each. The petitioner has an edge only to the extent that he had done his +2 whereas the private respondent had done his 10+1 though he was mature being 59 years of age in comparison to the petitioner who is 32 years of age and also son of the deceased Lambardar. The factum of being involved in two criminal cases against the petitioner eventually ensured the appointment of the private respondent. The matter was examined by the Commissioner also in deep earnestness and it was noticed that the private respondents' wife also owns 17 kanals of land. The petitioner had disqualifications to the extent that he was involved in an FIR under Sections 307 and 420 IPC and also for fighting with the police as proceedings under Section 290 and 510 IPC had also been lodged against him apart from two other FIRs under Sections 107/151 IPC and proceedings under Section 138 of the Negotiable Instruments Act, 1881 were also pending. He was also defaulter of loan of Housefed of Rs.5,50,000/- and of Rs.80,730/- of Sadarang Co-operative Society.

Counsel for the petitioner has submitted that the loan outstanding to the Co-operative Society already stands paid.

Counsel for the private respondent has placed on record certified copy of judgment of conviction recorded on 19.09.2014 against the petitioner whereby, he has been convicted under Section 323 IPC for one year whereas, his co-accused were also sentenced under Section 307 IPC in

FIR No. 26 dated 22.04.2007 which was lodged well before the proceedings for appointment to the said post.

Once the background of the candidate is one which does not earn respect in the area on account of his involvement in criminal proceedings apart from the fact that he would be a defaulter and is also an accused in Section 138 proceedings on account of the cheques having been bounced and is facing criminal prosecution, the discretion which has been exercised by the District Collector cannot be said to be perverse in any manner being preferred the private respondent for appointment.

The Apex Court in ***Mahavir Singh vs. Khiali Ram and others, 2009 (3) SCC 439*** followed by Division Bench of this Court in ***Phool Kumar vs. State of Haryana and others, 2010 (2) RCR (Civil) 819*** has held that this Court is not to go into the merits as such also and only in cases of perversity, the order of the District Collector is to be interfered with.

In such circumstances, this Court does not feel that there would be any useful purpose in remanding the matter to the Financial Commissioner in view of the above discussion.

Accordingly, the writ petition is dismissed.

09.08.2018
shivani

(G.S. SANDHAWALIA)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No