

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

**CWP No.18915 of 2018 (O&M)
Date of Decision:05.09.2018**

Nazar Singh

...Petitioner

Versus

Financial Commissioner (Appeals), Punjab and others

...Respondents

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

Present: Mr. Varun Dhawan, Advocate
for the petitioner.

G.S. SANDHAWALIA, J. (ORAL)

CM-13056-CWP-2018

Application under Section 151 CPC for placing on record copy of FIR and affidavit of the petitioner as Annexure P-7 and P-8 is allowed, subject to all just exceptions.

CM stands disposed of.

CWP No.18915 of 2018

The present writ petition has been filed under Articles 226/227 of the Constitution of India. The challenge in the present writ petition is to the appointment of Harijan Lamberdar of village Toosa of respondent No.6 Rameshwar Singh. The Financial Commissioner, Punjab while dismissing the revision petition dated 01.03.2018 (Annexure P-6) choose not to interfere in the order of the concurrent findings of the authorities below in view of the principle laid down by the Apex Court in **Mahavir Singh Vs. Khialia Ram & others, 2009 (1) RCR (Civil) 757** on the ground that age of a candidate is also relevant factor. The Financial Commissioner, Punjab also noticed the relevant fact that the choice of the

Collector is not to be interfered unless it is perverse and a unreasonable decision.

Counsel for the petitioner has vehemently submitted that since the petitioner had retired from CRPF was having 10 marlas of land, running a Atta Chakki, therefore, he should have been preferred as he is also 9th class pass. It is further contended that FIR No.85 dated 03.10.2013 under Sections 323, 324, 326, 447, 506, 295, 148 & 149 IPC was lodged during the pendency of the proceedings and was only to harass the petitioner and his family members and therefore, order of the Financial Commissioner, Punjab was not justified.

A perusal of the order of the Financial Commissioner, Punjab would also go on to show that though there is mention of the said FIR in view of the arguments raised by the private respondents but the same had not been relied upon by the Financial Commissioner, Punjab as such. Therefore, the argument for the same is not liable to be taken into consideration and is without merit as the reasoning given by the Financial Commissioner, Punjab is different to uphold the order of the authorities below.

The Collector had considered the case of all the candidates and also the case of respondent No.6 whose name has been recommended by the Assistant Collector, Grade-I, Raikot. It is to be noticed that the said respondent is a younger person and on 30.06.2009 he was only 39 years at that point of time and was having ½ bigha of agricultural land and had passed the course of computer. It was noticed that he is member of youth club and is able to read and write English and Punjabi and participated in the common causes, religious cause and cultural activities.

The age factor is the relevant issue which should be kept in mind in comparison to that the petitioner has already retired from CRPF and was not equally qualified qua the educational aspect also. He was also having only 10 marlas of land. The factum of the age thus is a valid consideration on the basis of which the Collector as such had exercised his choice by coming to the conclusion that the said respondent is meritorious which order was upheld by the Divisional Commissioner, Patiala also on 07.10.2010 (Annexure P-4) on the ground that there is no demerit as such of the respondent herein. In similar circumstances in **Sher Singh Vs. Financial Commissioner and others, 2012(68) RCR (Civil) 165** the order of the Collector had been interfered by the Commissioner who had allowed the appeal, of an ex-serviceman and the said order had been upheld by the Financial Commissioner, Punjab. The same was interfered by this Court on the ground that preference as such of ex-serviceman may be a valid consideration but it alone would not be enough to seek preference. Relevant portion reads as under:

“The Commissioner and the Financial Commissioner have interfered in the choice exercised by the Collector mainly on the ground that the petitioner is young. They, thus, have chosen to give preference to experience. Obvious view of the Collector was that young person would be more suitable as he would have energy to perform. The perception in this regard may vary from person to person. One may decide to give preference to experience whereas another may view that youth is more suitable. The question in such cases would be whether exercise of choice on the basis of a person being young could be termed as arbitrary or capricious. Such a view cannot be branded arbitrary and capricious. One of the valid consideration to be kept in view for appointing a Lambardar is his age. Generally, it is seen that the Collectors have been preferring the younger person compared to the older ones. May be that respondent No.4 is fit as

was exhibited by his counsel before the Court by making him to stand but that is not for this Court to see. The choice is of the Collector. Such choice could have been interfered with only on the limited ground as noticed above. I do not find any valid justification in the action of Commissioner and Financial Commissioner to interfere in the choice exercised by the Collector. Respondent No.4 being exserviceman may be valid consideration to keep in view but it alone would not be enough for the respondent to seek preference over other parameters for taking march over the others. The petitioner has some other qualities which respondent No.4 is not possessing. The petitioner is better educated. He is young. View is to be formed by taking into consideration all the relevant parameters which the Collector did. The interference by the Commissioner and the Financial Commissioner is not found justified. Accordingly, impugned orders passed by the Commissioner and Financial Commissioner are set aside and the order passed by the Collector is restored.

The writ petition is, accordingly, allowed.”

Counsel for the petitioner has placed reliance upon **Rati Ram Vs. Financial Commissioner, Haryana and others, 2013 (2) RCR (Civil) 552.** The said case was when the order of the Collector had been interfered with and the matter had been remanded by this Court taking into account the age of the petitioner, education qualification and the service rendered by him as Ex-serviceman and the factor like community to which the petitioner belonged and population of the said community having been completely ignored by the Financial Commissioner. Finally it was recorded that the interference with the order of the Collector was not justified and in such circumstances the petition was allowed by restoring the order of the Collector and would be of no help to the petitioner.

The present case is also dismissed accordingly by choosing

to follow the same path by respecting the principle that the choice of the Collector is normally to be preferred. Accordingly, there is no merit in the present writ petition and the same is dismissed in limine.

05.09.2018
pvd

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No