

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-5409-2016

Reserved on: 08.10.2018

Date of pronouncement: 23.10.2018

Harpreet Kaur

...Petitioner

Versus

Financial Commissioner(Appeals-I) Punjab & others

...Respondents

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

Present: Mr.Harsh Bunker, Advocate, for the petitioner.

Mr.Ayush Sarna, AAG, Punjab.

Mr.V.J.Singh, Advocate, for

Mr.Puneet Sharma, Advocate, for respondent No.4.

G.S. SANDHAWALIA, J.

Challenge in the present writ petition, filed under Articles 226/227 of the Constitution of India is to the orders passed by the authorities below, whereby respondent No.4-Gurmail Chand has been appointed as Lambardar of Village Kangar Tehsil Anandpur Sahib, District Roopnagar.

The primary argument of counsel for the petitioner is that the petitioner has a clean slate and an additional advantage of being younger in age as she is only 31 years old and has done her +2 whereas the private-respondent had a blot in as much as there was a criminal case registered against him in which he has been acquitted on 19.09.2017 (Annexure R-4/6). It is further pointed out that the petitioner is the daughter-in-law of the previous Lambardar and she also owned 10 acres of land in Village Kangar and the family owned 28 acres of land and she was also the Ex-Sarpanch of the village who had recommendation of the Sub-Divisional Magistrate.

Counsel for the private-respondent, on the other hand, has argued that Gurmail Chand is 46 years old and is better qualified in as much as he is BA pass and owned 10 acres of land in Village Kangar and his family owned 25 acres of land. He also remained ex-member of the PTA committee and a member of SDM Social Security Advisory Committee and apart from the member of the health committee of the village Kangar. He was an Income Tax payee and his mother was also an ex-member of the Panchayat and similar was the position of his father. He himself was also elected as a Member of Panchayat. Regarding the criminal case, it was alleged that a false case had been lodged against him as no FIR had been registered and neither any charge had been framed against him and therefore, there was no conviction, at the point of time of appointment.

The Financial Commissioner, vide order dated 16.07.2015 (Annexure P-6), upheld the order of the District Collector dated 22.06.2011 (Annexure P-2), which order had been further upheld by the Commissioner on 10.05.2013 (Annexure P-4), while holding that there was no illegality or perversity in the order passed by the Collector. Therefore, once the merits and demerits had been weighed of both the candidates, the choice of the Collector was rightly not interfered with. At that point of time, there was no conviction also against the private-respondent and it was, in such circumstances, the Financial Commissioner had also noted the arguments of the counsel for the private-respondent that no FIR was lodged and there was only a criminal

case pending against him and therefore, there was no bar, as such.

A perusal of the record of the case would go on to show that as many as 19 applications had been received and the application of one Radha Krishan, father-in-law of the petitioner, was rejected since he himself had been removed. The name of the petitioner had been recommended by the Field Staff whereas there was recommendation by the Tehsildar in favour of the private-respondent. Eventually, only 10 candidates were left in the fray. It was noticed that most of the candidates had withdrawn in favour of the two candidates, namely, Harpreet Kaur, the present petitioner and Gurmail Chand, private-respondent and the ones who were contesting, as such, did not have much to say about their candidature. Resultantly, petitioner's name was recommended by the SDM on the ground of being a younger and merely because her father-in-law had been convicted in a rape case, as such, was held not to be a ground to disqualify her.

The District Collector noticed that though there were 4 criminal cases against Gurmail Chand, private-respondent, in the form of criminal complaints, but the balance tilted in his favour on account of his better educational qualifications, being BA whereas both the candidates had equal land in their name. The additional factor was that the said candidate was also an Income Tax payee and a social worker, associated with the social works of the area. It was noticed that he revealed more influence in the village and the area and in the absence of any conviction having been recorded, at that point of time. The District Collector was,

thus, well justified in coming to the said conclusion, while accepting the report of the Tehsildar, Anandpur Sahib and disagreeing with the report of the SDM. Before the Commissioner, the same factors weighed, which led to the dismissal of the appeal of the petitioner on 10.05.2013 (Annexure P-4).

The argument raised by Mr.Bunger that on account of the petitioner being younger in age, she should be appointed having a clean slate, as such, though attractive at the first blush, cannot be accepted, in view of the settled principle that this Court is not to go into the merits and demerits of the candidates, as such, in view of the judgment of **Mahavir Singh Vs. Khiali Ram 2009 (3) SCC 439**, but only has to see that the decision making process, as such, do not suffer from any perversity, arbitrariness or capriciousness. The reasoning which weighed with the Collector has already been discussed above.

On the date of appointment, the private-respondent did not have any disqualification against him, apart from the criminal case, which was pending against him, the conviction of which has also been recorded on 25.01.2017, under Sections 341, 297, 296 IPC, were on the basis of a complaint filed by one Anita Rani, qua an incident of 19.08.2009, whereby the cremation of her brother-in-law had been stopped on 12.07.2009 by a set of persons in which the private-respondent was stated to be leading. It was noticed that the complaint was filed on 19.08.2009 and no complaint had been made to the local police. It was further noticed that Radha Krishan, CW-7 in the

complaint, is none other but the father-in-law of the present petitioner and that Harpreet Kaur was Sarpanch in the year 2007 and had lost the election in 2008 and Anita is the wife of Tek Chand and Santosh Kumar had won the election. The petitioner had filed a complaint under Sections 500, 499 IPC against Tek Chand, Baldev, Gurmail-respondent No.4, apart from one Kashmir.

Keeping in view this background and the testimony of the witnesses, that they were in inimical terms with the accused and that Radha Krishan had been removed on the basis of a complaint made by Tek Chand, who was appointed by the Deputy Commissioner, the order of acquittal was passed by the Addl.Sessions Judge on 19.09.2017.

It is, thus, apparent that the sole plank, as such, of the petitioner regarding the alleged criminal background of the private-respondent, does not survive, as the criminal litigation of that complaint also stems from a political fall-out and the the local rivalry of the village. It is to be noticed that even the other complaint under Sections 499, 500 IPC was also filed by Harpreet Kaur, the present petitioner against Gurmail Chand and which is qua the offences of defamation. It is well known that in villages, on account of rivalries and petty egos, resort to criminal litigation is taken to keep one set under pressure. The present set of litigation, *prima facie* in which even the private-respondent has not been convicted, thus, do not warrant any consideration, in the peculiar facts and circumstances of the case. Resultantly, this Court is of the opinion that the argument raised by counsel for the petitioner does not

merit consideration or interference in the well reasoned orders passed by the Revenue authorities below whereby the private-respondent has been appointed as Lambardar of the village, as there is no perversity in the order of the Collector.

Accordingly, in view of the above discussion, finding no merit in the present writ petition, the same is hereby, dismissed.

23.10.2018
Sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No