

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

CWP No. 3410 of 2018
Reserved on: 26.09.2018
Date of decision: 17.10.2018

Baljinder Singh

....Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

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

Present: Mr. Balram Prashar, Advocate,
for Mr. Gurvinder Sandhu, Advocate,
for the petitioner.

Ms. Simran Grewal Randhawa, AAG, Punjab.

Mr. H.S. Baidwan, Advocate,
for respondent no. 4.

G.S.SANDHAWALIA, J.

Challenge in the present writ petition filed under Articles 226 and 227 of the Constitution of India is to the order dated 20.12.2017 (Annexure P-1) passed by the Financial Commissioner (Revenue), Punjab whereby, the matter has been remanded to the District Collector to re-examine the over all merits of the candidates.

The requirement as such for the Financial Commissioner to come to the said conclusion was on account of the fact that the private respondent Jasvir Singh was working at the private firm namely Boyce Manufacturing Company at the Industrial Area, Mohali and, therefore, would not be easily available for the duties for the village Headman for village Mankheri, Tehsil Chamkaur Sahib, District Roopnagar. The petitioner who is working as a Milkman was not given the relief of

appointment as such while passing the said order against which he is aggrieved.

Counsel for the petitioner has accordingly submitted that once it has been found that the private respondent was working outside the village from 8.00 a.m. to 4.00 p.m., the question of reconsideration was not justified and the petitioner should have been appointed in his place.

Counsel for the private respondent, on the other hand, has relied upon the judgment in ***Dhuli Chand vs. State of Haryana and another, 2012 (3) PLR 324*** which has also been relied upon by the Financial Commissioner that merely because if one is working at a reasonable distance his candidature cannot be ignored on this score alone. Therefore, he submits that in similar circumstances, the matter had been remanded and the Financial Commissioner was well justified in following the said view.

The paper book has been perused and the arguments of the counsels have been kept in mind which would go on to show that the Collector, while filling up the vacancy had received only two applications. On account of the objections raised by the petitioner on account of the employment of the private respondent, an inquiry was got made that depicted that the private respondent while working as a helper in the Industrial Area of Mohali had duty time from 8.00 a.m. to 4.00 p.m. and was employed since 4-5 years though he was a permanent resident of the village. The petitioner, therefore, was preferred and appointed vide order dated 04.01.2016 (Annexure P-2) as the Scheduled Caste Lambardar in place of the earlier Lambardar, who had been dismissed. The Commissioner, has upheld the order on the ground that the village residents would not be

benefitted if the private respondent is appointed and, thus, did not interfere with the order of the Collector.

The Financial Commissioner, thus, while accepting the revision petition of the private respondent, has remanded the issue for re-examination of the overall merit of the candidates. The Financial Commissioner has, thus, lost sight of the fact that there were only two persons in the race. The private respondent himself as such would not be easily available on account of the fact that he was employed on regular basis in the industrial area at Mohali which admittedly is at a distance of 25 kilometers from the village in question.

Counsel for the private respondent has vehemently tried to defend the said order on the strength of the judgment in *Dhuli Chand's case (supra)*. A perusal of the said judgment, however, would go on to show that the order of the Collector had been set aside on account of the person working at Faridabad which was also at a distance of 25 kilometers from the village and the matter had been remanded on account of the fact that there was a tendency to move towards the urban area and there would be no difference if a person works at a reasonable distance.

In the present case, an objection was raised at the outset as such regarding the non-availability of the private respondent. The report had also come in favour of the petitioner that the private respondent would not be available on account of his work schedule as such which was from 8.00 a.m to 4.00 p.m. It would, thus, be apparent that the services of the private respondent would be not available as such for the benefit of the residents of the village as his duty hours are such which consumes the working hours of the day wherein the people would require his services in various offices for

the purposes of attestation and identification and, therefore, the purpose of appointing him would be defeated.

The judgment which has been relied upon does not show that the said candidate was unavailable and, therefore, in the considered opinion of this Court, the appointment of the petitioner has been wrongly interfered with by the Financial Commissioner. Reliance can be placed upon the judgment of the Division Bench in ***Neeraj Kumar vs. State of Haryana and others, 2013 (4) RCR (Civil) 207*** and the precedential value of the Division Bench would be one which this Court is bound to follow which was a subsequent judgment passed by this Court which was not brought to the notice of the Financial Commissioner. In the said case, the Division Bench allowed the appeal and set aside the order passed by the Single Judge while restoring the orders of the Commissioner and the Financial Commissioner. The issue in question was the availability of respondent no. 6 who was a government servant and posted at a distance of 5-6 kilometers from the village. It was accordingly held that the Lambardar was to assist in various matters regarding the possession of land, demarcation of land, identification of accused persons, attending to revenue and police officers when they visited the village and was a significant factor. The non-availability as such on account of the fact that the Lambardar was a Teacher would always be in doubt and, therefore, the findings which had been recorded by the Revenue Authorities which were neither perverse nor arbitrary should not have been interfered with under the powers under Articles 226 and 227 of the Constitution of India. Resultantly, the judgment relied upon in ***Amarjit Kaur vs. Financial Commissioner (Corporation), Punjab and others, 2011 (3) LAR 89*** was distinguished on the ground that there the petitioner

was running a school and was not required to be present in school for all times.

The law laid down by the Division Bench, thus, would squarely apply to the facts of the present case and resultantly, the present writ petition is allowed and the order dated 20.12.2017 (Annexure P-1) of the Financial Commissioner as such being not sustainable is quashed.

17.10.2018 shivani	(G.S. SANDHAWALIA) JUDGE
Whether reasoned/speaking	No
Whether reportable	Yes