

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

CWP No.7347 of 2018

Date of decision : 27.03.2018

Malkiat Singh

..... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM : HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present : Mr. Vivek Goyal, Advocate for the petitioner.

Mr. V. S. Rana, Advocate for caveator/respondent No.4.

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DAYA CHAUDHARY, J. (Oral)

The prayer in the present petition is for issuance of a writ in the nature of certiorari for quashing impugned order dated 23.01.2018 (Annexure P-6), whereby the application for interim order has been dismissed at the back of learned counsel for the appellant/petitioner by preponing the date of hearing and no notice was given to the counsel.

Learned counsel for the petitioner submits that the impugned order is totally non-speaking and purpose of filing the appeal has been frustrated by passing order in the application. While preponing the date of hearing, it was the right of the petitioner to get notice and to be heard but no notice was given. The appellant/petitioner made request to give a date but his request was declined. In support of his arguments, learned counsel for the petitioner has relied upon judgment of this Court in case **CWP**

No.15204 of 2015 titled as ***Desh Raj Vs. State of Haryana and others*** decided on 22.04.2016.

Learned counsel for respondent No.4 submits that it was the appellant/petitioner himself who made request by filing writ petition before this Court to decide his application for interim order. Accordingly, on the basis of direction issued by this Court, the pending application was considered and decided in presence of the appellant. It cannot be said that the appellant was not present. No separate notice was required to be given to the counsel, when the appellant himself was present. In support of his arguments, learned counsel for the respondent has relied upon judgment of Madhya Pradesh High Court in case ***Amritlal Jaiswal Vs. State of M. P. and others 2008 (58) RCR (Civil) 479.***

Heard arguments advanced by learned counsel for the parties and have also perused the order passed in the application as well as the earlier direction issued by this Court in CWP No.29878 of 2017 decided on 26.12.2017.

Undisputedly, the petitioner filed earlier writ petition before this Court with a request that in case the appeal was not heard, then his pending application be decided. The petition filed by the petitioner was disposed of with a direction to respondent No.1 to decide application for interim stay on the date which was fixed in the appeal *i.e.* 20.02.2018. It was also mentioned in the order that in the meanwhile, if the petitioner has not relinquished the charge of Sarpanch, he shall continue till the decision on the stay application by respondent No.1. On the basis of said direction,

the application filed along with the main appeal was heard by respondent No.1 and same has been dismissed.

On perusal of the impugned order passed in the application, it appears that a finding has been given that the Matriculation certificate was issued by Delhi Board of Senior Secondary Education, which was not a recognized Board and the petitioner was not eligible to contest the election. Petitioner could not produce any document which could establish that the said Board was recognized.

It has also been brought to the notice of this Court by learned counsel for both the parties that the main appeal is fixed for hearing on 03.04.2018. Otherwise also, passing of impugned order by considering the merits of the case is not appropriate as the appeal is still pending and purpose of filing the appeal is frustrated. The petitioner himself approached this Court with the prayer that his application be decided and because of submission made by the petitioner's counsel, the direction was issued to decide the pending appeal. When adverse order has been passed by the authority concerned, he has approached this Court on the ground that instead of deciding the appeal, the application has been dismissed.

Since the date of hearing in the appeal is 03.04.2018, it is in the interest of justice not to implement the order passed in the application by taking the charge of Sarpanch, in case the same has not been taken.

However, respondent No.1 is also directed to make all efforts to decide the pending appeal on 03.04.2018. In case for any sufficient reasons, the appeal is not decided on the next date of hearing *i.e.*

03.04.2018, the interim order passed by this Court shall continue till disposal of the appeal. It is also directed that appeal be decided in not more than 15 days, if not decided on 03.04.2018.

Meanwhile, status quo as it exists today shall be maintained till the appeal is decided.

27.03.2018

sunil yadav

**(DAYA CHAUDHARY)
JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No