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

CWP-12088-2020 (O&M)
Date of decision : 25.08.2020

Jasvir Singh

...Petitioner

Versus

Financial Commissioner, Punjab, Civil Secretariat, Punjab and others

...Respondent

**CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.**

Present: Mr. Sunny K. Singla, Advocate for the petitioner.

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**ANIL KSHETARPAL, J.**

By filing the writ petition under Article 227 of the Constitution of India, the petitioner challenges the correctness of an order passed on 18.07.2019, by the learned Financial Commissioner, Punjab.

The dispute in the present lis is with respect to appointment of Additional Headman (Lambardar) from amongst the Harijans or members of Scheduled Castes including Christians. Learned Financial Commissioner has appointed respondent No.4.

The Village Headmen are appointed under the Punjab Land Revenue Rules. Under Rule 19-B of the Rules, a provision was made for appointment of one additional Headman from amongst the Harijans or members of Scheduled Castes including Christians which is extracted as under:-

*"**Rule 19-B:-** Notwithstanding anything to the contrary contained elsewhere in these rules, where the population of Harijans, or members of the Scheduled Castes including Christians, as ascertained at the last preceding census is 100 or more in an estate, there shall be appointed one additional headman from amongst the Harijans or members of Scheduled Castes including Christians, subject to the following conditions:-*

*(i) In appointing the headman, regard shall be had among other matters, to-*

*(a) services rendered by the State by himself or by his family;*

*(b)his personal influence, character, ability and freedom from indebtedness.*

*(ii) He shall be dismissed when he is sentenced to imprisonment for one year or upwards or to any heavier sentence.*

*(iii) He may be dismissed when-*

*(a) criminal proceedings which have been taken against him show that he is unfit to be entrusted any longer with the duties of his office; or*

*(b) he is seriously embarrassed by debt;*

*(c) owing to age or physical or mental incapacity or absence from the estate, he is unable to discharge the duties of his office; or*

*(d) there is reason to believe that he has taken part in or concealed illicit distillation, or the smuggling or cocaine opium or charas;*

*(e) he takes part in any unconstitutional agitation against the Government or fails to give his active support to the Government in the maintenance of law and order; or*

*(f) he neglects to discharge his duties or is otherwise shown to be incompetent.*

*(iv) He shall perform all duties prescribed in rule 20 of these Rule except those prescribed in clauses (i) to (iv) thereof.*

*(v) He shall not be entitled to any remuneration in the form of pachotra etc."*

Some facts are required to be considered. On the death of late Sh. Surjit Singh, Additional Harijan Headman, a vacancy arose and hence, applications were invited. Six applications were received. However, three aspirants, thereafter, withdrew their names. Thereafter, Naib Tehsildar submitted report recommending the petitioner for appointment as Additional Headman (Harijan/Scheduled Caste Category) vide report dated 09.04.2013, which was endorsed/approved by the Sub-Divisional Magistrate on 17.02.2014. However, the District Collector, the appointing authority, remanded the case to the Naib Tehsildar vide order dated 10.07.2014. The Naib Tehsildar once again recommended the petitioner in its report dated 13.10.2014, which was again endorsed by the Sub-Divisional Magistrate. Consequently, this time, the District Collector appointed the petitioner as Additional Headman (Scheduled Caste) on 11.02.2015. An appeal filed by respondent No.4, before the Commissioner was dismissed on 31.05.2016. However, the Financial Commissioner has reversed the order and appointed respondent No.4, as Additional Headman.

On a careful reading of the order passed by the Financial Commissioner, it is apparent that the selection of the petitioner as

Additional Headman has been set aside on the ground that the petitioner has been dismissed from the post of Additional Headman by the District Collector on 28.11.2018, on the charge that he is a defaulter of the Excise Department, Punjab.

The petitioner, as noticed above, has now challenged the aforesaid order passed by the learned Financial Commissioner.

This Court has heard learned counsel for the petitioner and with his able assistance gone through the paper book.

Learned counsel for the petitioner has contended that respondent No.4, is in illegal possession of the land belonging to Central Government and, therefore, can not be selected as Additional Headman. He further submitted that the Financial Commissioner, while exercising the powers of revision, could not reverse the order of the Collector or in other words could not interfere in the choice of the District Collector. Further, even if it is assumed that the petitioner could not continue on the post of Lambardar, the Financial Commissioner, ought to have directed the issuance of a fresh advertisement inviting applications. He also contended that the appeal filed by the petitioner against the order of his removal by the District Collector on 28.11.2018, is pending and hence, the order removing the petitioner has not become final.

On deeper analysis of the arguments of the learned counsel for the petitioner, this Court is of the considered view that there is no merit in the petition. At the outset, it must be noticed that this Court is exercising the power of judicial review which is not akin to the Appellate jurisdiction. The petitioner has invoked the extraordinary jurisdiction of this Court for issuance of a writ of certiorari which is a discretionary relief.

The petitioner has not annexed the order removing him from the post of Village Headman dated 28.11.2018.

Although, in the writ petition, the petitioner has not chosen to disclose the amount of default, however, during the course of arguments, learned counsel for the petitioner admitted that the amount of default is more than ₹1,00,00,000/-. On careful reading of the grounds of revision filed before the Financial Commissioner by respondent No.4, it transpires that the petitioner is a proprietor of the firm, M.K. Steel. It has been asserted that as per a communication issued by the Excise and Taxation Officer on 12.05.2015, the actual demand from the petitioner is ₹13,19,48,555/-. It may be noted here that the petitioner in the writ petition does not claim that against the aforesaid demand, any proceedings are pending. The petitioner claims to have filed an appeal against the order passed by the District Collector removing him from the post of Headman.

On careful reading of Rule 19-B(i)(b), it becomes apparent that while appointing the Headman, the appointing authority has to keep in mind that the Additional Headman should be free from indebtedness. Still further, the Headman can be removed/dismissed under Rule 19-B(iii)(b), if the Village Headman is seriously embarrassed by the debt. No doubt, learned counsel has submitted that the amount is due for the

Assessment Year 2006-07 and 2007-08 and hence, this could not be considered a disqualification in the year 2015, when the petitioner was appointed, however, this Court does not find substance in the aforesaid submission. The default is not of the period subsequent rather anterior to the date of appointment.

In view of the afore-said undisputed position, mere pendency of the appeal against the order of removal of the petitioner would hardly be of any relevance. Still further, learned counsel for the petitioner has failed to draw the attention of the Court to any interim protection granted to the petitioner in the pending appeal. In view of the afore-said, the dismissal/removal of the petitioner from the post of Additional Village Headman on account of indebtedness was certainly a relevant factor while hearing a revision petition against the appointment of Additional Headman.

As regards the argument of the learned counsel that the petitioner was recommended by the Naib Tehsildar, endorsed by the Sub-Divisional Magistrate and appointed by the District Collector and therefore, no interference could be made by the Financial Commissioner, does not find favour with this Court because in this case, the Financial Commissioner has not entered into the zone of re-evaluation of evidence or comparative merits or demerits of each candidate. The Financial Commissioner, as noted above, had ordered the appointment of respondent No.4, after finding him to be eligible and more suitable particularly in view of the fact that the petitioner stood removed/dismissed from the office of Headman.

It is apparent from the report of Naib Tehsildar annexed with the petition as Annexure P-1, that in the village in question, certain piece of land is recorded in the revenue record to be owned by the Central Government on which villagers have constructed their houses. Late Sh. Surjit Singh, had also constructed a house which respondent No.4, continues to occupy after his death. The Financial Commissioner before passing the order, sought a report from the Block Development and Panchayat Officer-cum-Executive Officer, Khanna, who reported that Baljinder Singh repondent no.4, is not in illegal possession of the land belonging to the Central Government. Rather, he is residing in the village.

Next argument of learned counsel that the Financial Commissioner should have directed issuance of fresh advertisement inviting fresh application for the appointment of Lambardar, although looks attractive in the first impression, however, on deeper scrutiny, is found to be without merit. The process of appointment/selection of Village Headman is pending and was sub-judice. The petitioner selected by the District Collector stood subsequently removed. In such circumstances, once the proceedings were pending for the appointment of Additional Headman, the Financial Commissioner has correctly selected respondent No.4. It may be noted here that the Revenue Authority has already taken nine years to finalize the selection/appointment as Surjit Singh died on 26.07.2010 whereas the Financial Commissioner passed the impugned order on 18.07.2019. Still further, the writ petitioner has no locus because he has not only been heard, even his application for appointment has also been considered.

Last argument of the learned counsel with regard to pendency of the appeal against the order of removal/dismissal of the petitioner from the post of Village Headman, does not come to the rescue of the petitioner in view of the foregoing discussion.

Keeping in view the aforesaid facts, this Court does not find any merit in the present writ petition. Hence, the writ petition is ordered to be dismissed in limine.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

**25.08.2020** **(ANIL KSHETARPAL)**
*Pawan* **JUDGE**

**Whether speaking/reasoned:- Yes/No**

**Whether reportable:- Yes/No**