IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Sr. No.228

CWP-34359-2019 (O&M)
Date of decision : 16.1.2020

Raj Kumar ..... Petitioner

VERSUS

State of Punjab and others ..... Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Ms. Dhivya Jerath, Advocate, for the petitioner.

Ms. Sakshi Bakshi, AAG, Punjab.

Mr. K.S. Dadwal, Advocate, for respondent No.5.

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SUDHIR MITTAL, J. (Oral)

In compliance of interim order dated 8.1.2020 passed by this Court, respondent No.4-Ms. Isha Kalia, Deputy Commissioner-cum-District Collector, Hoshiarpur, is present in Court today and she expresses her regret for not appearing on 8.1.2020. She submits that her office staff received intimation on 1.1.2020, but they were re-miss in their duty in failing to inform her in time. Thus, appropriate administrative action has been initiated against them.

The explanation is accepted and her personal presence is exempted till further orders.

The petitioner is aggrieved by order dated 19.8.2019 passed by the learned Financial Commissioner, whereby the revision filed by the private respondent i.e. respondent No.5 has been accepted and the matter has been remanded to the Collector for a fresh decision.

Learned counsel for the petitioner submits that the petitioner was far more qualified and keeping in view his merits, the Collector appointed him as the Lambardar. Appeal against the said order was also dismissed. However, the learned Financial Commissioner has set aside the well reasoned orders of the lower revenue authorities without appreciating the merits of the parties. The observations of the learned Financial Commissioner that the recommendations of the lower revenue staff have not been taken into consideration is erroneous as the consideration thereof is automatic. Moreover, hereditary claim cannot be taken into consideration as the same is contrary to the Constitution of India.

Learned counsel for respondent No.5 submits that mis-statement of facts has been made in the writ petition as is apparent from averments made in paragraph No.2 of the writ petition. Therein, it has been stated that the petitioner was recommended by the lower revenue staff, whereas the answering respondent was recommended. Further, he submits that a perusal of the order of learned Collector shows that the recommendations made by the lower revenue staff have not been taken into consideration and thus, the learned Financial Commissioner was justified in remanding the case for a fresh decision.

A perusal of paragraph No.2 of the writ petition, in conjunction with the record, shows that a wrong averment has been made therein that the petitioner was recommended by the lower revenue staff. Learned counsel for the petitioner has sought to explain the same by stating that this was a typographical error. The explanation seems to be plausible as there are other factual errors also in the said paragraph which are patently typographical in nature. The explanation is thus, accepted. It is, however, observed that the drafting counsel should be more alert while checking the petition drafted by him.

A perusal of the order of the Collector shows that he has considered the merits of each individual candidate and thereafter, he has reached a finding that the petitioner is most suitable candidate. He is an ex-serviceman and is a matriculate aged about 49 years, whereas all the other candidates are less educated, older in age or did not respond to the queries of the learned Collector. So far as, respondent No.5 is concerned, he is IX pass and thus, less educated than the petitioner. Moreover, he could not satisfactorily answer the questions regarding the allegations that he has his own business and he remained busy therein. That apart, the villagers have given a majornama in favour of the petitioner and that factor also weighs in his favour. While passing the said order, the factum that the lower revenue staff had recommended the case of respondent No.5 was kept in mind because in paragraph No.1 of the order, it has been mentioned that recommendations of the lower revenue staff were in favour of respondent No.5. If the intention of the Collector was to gloss over this fact, he would not have mentioned it in the order.

The direction of the learned Financial Commissioner to consider the hereditary claim of respondent No.5 is patently illegal. In a democracy, there is no place for any hereditary claim to any public post.

The learned Financial Commissioner has exceeded his jurisdiction while passing the impugned order. In exercise of revisional jurisdiction, all that is required to be seen is whether the authorities below have committed any procedural error and whether the order is perverse. Neither of these situations exists in the present case.

The writ petition is accordingly, allowed and impugned order dated 19.8.2019 (Annexure P-1) is quashed.

(SUDHIR MITTAL)
JUDGE

16.1.2020
Ramandeep Singh

Whether speaking / reasoned Yes / No

Whether Reportable Yes/ No