

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

LPA-936-2019

Reserved on : 15.02.2023

Pronounced on: 22.02.2023

Sudesh Kumar

.....Appellant(s)

Versus

Braham Parkash & others

.....Respondent(s)

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MS.JUSTICE HARPREET KAUR JEEWAN**

Present:- Mr.R.K.Malik, Sr.Advocate
with Mr.Sunil Hooda , Advocate for the appellant.

Mr.Bhupinder Singh Bairagi, Advocate, for respondent No.1.

Mr.Ankur Mittal, Addl.A.G., Haryana
and Mr.Saurabh Mago, AAG, Haryana.

G.S. Sandhawalia, J. :-

Consideration in the present Letters Patent Appeal is to the order dated 26.04.2019 of the Learned Single Judge passed in CWP-1613-2016 titled *Braham Parkash Vs. State of Haryana & others*, wherein the writ petition filed by Braham Parkash, respondent No.1 herein was allowed and the order of the Collector dated 26.03.2014 (Annexure P-2) appointing him as Lambardar of Village Chanduwas, Tehsil Bawal, District Rewari was upheld while setting aside the order of the Financial Commissioner dated 28.10.2015 (Annexure P-4).

2. The reasoning which weighed with the learned Single Judge was that the Financial Commissioner had interfered with the order of the Collector mainly on the ground that Braham Parkash was a person who

was a habitual loan defaulter and failed in his duties as Sarpanch and was

not fit to be appointed as Lambardar. The present appellant being an Ex-serviceman and having experience in the said post and having contributed in donation activities was found to be a fit candidate by the Financial Commissioner. The reasoning given by the learned Single Judge was on account of the status report which had been obtained on 20.05.2016 submitted by the District Revenue Officer-cum-District Collector, 1st Grade, Rewari which was in compliance of the interim order dated 25.01.2016 passed by the learned Single Judge wherein it had been reported that loans had been taken by Braham Parkash had been paid off on an earlier date before his appointment. Also the fact that he had performed his duties as Sarpanch from April, 2005 to April, 2010 satisfactorily and nothing adverse had come against him as per the report. The fact that he was only a defaulter at an earlier point of time and he was not defaulter of the Gram Panchayat during his tenure as Sarpanch weighed with the learned Single Judge who kept in mind the judgment of the Apex Court in **Inderaj Vs. Financial Commissioner, 1994 (3) RRR 562** that the date of consideration for comparison of qualifications is the date of appointment and not the date for application for the post of Lambardar. Thus, the cut-off date was kept in mind and the order of the Financial Commissioner was set aside.

3. Senior Counsel for the appellant has now mainly stressed on the fact that the appointment even by the Collector was bad and placed on record the fact that Braham Parkash was not a Graduate and had failed in the English subject in his BA course which he had done from the Osmania University, Hyderabad. Reliance is placed upon the information received dated 18.04.2019 (Annexure A-1) that on account of failing in the subject, his overall result was fail. It is also pointed out that Braham Parkash had

also filed replication placing on record his total marks certificate dated 04.04.1996 as Annexure P-5 in which it has been specifically mentioned that he had failed in English subject but passed in Hindi as second language and also passed in Political Science, Public Administration and Sociology subjects. It is thus contended that the whole basis for the appointment is that he was a Graduate by the Collector was also wrong. It is further pointed out that even the Financial Commissioner had noticed the said fact in his order and that the factual aspect had not been refuted that he was not a Graduate.

4. We have perused the paperbook. A perusal of the same would go on to show that the appellant Sudesh Kumar was 58 years old and claimed that he was 10+2 pass and he had done the work of Sabrah Lambardar as his father was a Lambardar. He owned 3 kanals of land. Braham Parkash was a younger person as he was 41 years old and claimed to be a Graduate having knowledge of Hindi and English and owned 2 acres of land and his father had 10-12 acres of land. He was also elected as Sarpanch in the year 2005-2010. It was in such circumstances, his case was recommended by the District Revenue Officer on account of being financially sound and owning more land than the other candidates and being an elected member and having good relationship with the people of the village.

5. The Collector while noticing that 8 applications had been received found that Rakesh, Pankaj, Amit Mehta and Billu had withdrawn their applications in favour of the appellant. Two candidates Vijay Singh and Bir Singh had not appeared and resultantly, it was noticed that the appellant had got his Graduation certificate from the Indian Army and he had got an appreciation letter for good service and had a big house and 3

kanals of cultivable agricultural land and 2 kanals of agricultural land in the name of his son and appeared to be financially sound and the 4 candidates had withdrawn their names in his favour. However, a finding was recorded that Braham Parkash was having higher qualifications and was lessor in age and was appointed.

6. The fact that the present appellant had a degree of Graduation from the Indian Army was not kept in mind and a perverse finding was recorded that Braham Parkash had higher qualifications than Sudesh Kumar. The same has also now been verified that he has rather failed in his Graduation which he had done from the Osmania University, Hyderabad, having failed to pass in English subject. Therefore, the finding which was recorded that he was more competent than the others is apparently perverse. The Commissioner had brushed aside the said aspect in his order dated 28.08.2014 (Annexure P-3) wherein the present appellant had projected before him that he was a Graduate from the Indian Army, may be on the ground that the respondent remained a Sarpanch. The said perversity was corrected by the Financial Commissioner by noting that in reality, Braham Parkash was not a Graduate apart from a noting that he was a defaulter which the learned Single Judge has now set aside. The Financial Commissioner had also noticed that Braham Parkash cannot refute the fact that he was not a Graduate.

7. In the reply filed by Sudesh Kumar before the learned Single Judge also, it has specifically been averred in para No.3 that Braham Parkash was an under-graduate and the Graduation certificate had also been attached as Annexure R-4/2, which was allegedly from Maharshi Dayanand University, Rohtak wherein it is shown that he has passed his BA Part-III in April, 1994.

8. To rebut the same, Braham Parkash himself had placed on record the certificate from Osmania University, Hyderabad in his replication which shows that he has not passed English and the said certificate is dated 04.04.1996.

9. A perusal of the certificate from MDU also inspires no confidence with this Court as apparently, respondent No.1 has not passed English subject therein also and neither passed his Political Science subject in the 3rd year. The total of the marks of the 3rd year is not depicted in the certificate and for the 1st year and 2nd year also, he is stated to have got 800 marks and the total of the 1st and 2nd year have also not been appended. Rather he has relied upon the certificate from Osmania University, Hyderabad. In such circumstances, the finding of the Financial Commissioner is correct though not worded in those terms that there would be perversity in the order of the Collector who did not notice the fact that Braham Parkash did not have the higher qualifications and rather it was Sudesh Kumar. It is also not disputed that he is an Ex-serviceman and therefore, has also contributed towards the nation building and served for the same and that aspect should have been kept in mind by the Collector as has been held by the Co-ordinate Bench in **Tarsem Singh Vs. Financial Commissioner & others, 2011 (53) RCR Civil 571**. This aspect also missed the notice of the learned Single Judge who chose to interfere in the orders of the Financial Commissioner without noticing the factual aspect that the petitioner before him was not a Graduate as claimed and on the basis of which he has been appointed.

10. It is settled principle that if the order of the Collector is perverse, the Financial Commissioner would be well justified to reverse the same which he has correctly done. The learned Single Judge thus

erred in interfering with the said order and resultantly, we are of the considered view that the writ petition was wrongly allowed. The matter should have been allowed to rest at the level of the Financial Commissioner who from the 2 candidates who had competed had chosen a better candidate eventually. It is to be noticed that the other candidates also withdrew in favour of the present appellant. In such circumstances, we are of the considered opinion that the order of the learned Single Judge dated 26.04.2019 is not sustainable and the same is accordingly set aside, restoring that of the Financial Commissioner dated 28.10.2015 (Annexure P-4).

11. It is also pertinent to notice that on 20.05.2019, while issuing notice of motion, status quo was also ordered in favour of the appellant within a period of less than one month from the date the order was passed and it is not disputed that he is carrying on with the functions of the Lambardar.

The present appeal stands allowed, in the above said terms.

(G.S. SANDHAWALIA)
JUDGE

22.02.2023
Sailesh

(HARPREET KAUR JEEWAN)
JUDGE

Whether speaking/reasoned :	Yes
Whether Reportable :	No