

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

CWP-1539-2024

Date of decision : 23.01.2024

Baldev Singh and others

.....petitioners

versus

Financial Commissioner to Government of Punjab and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Saurabh Garg, Advocate
for the petitioners.

Mr. Nitesh Jhaghria, Advocate
for caveator/proposed respondent No.6.

RAJESH BHARDWAJ, J.

Prayer in the present petition is for quashing the order dated 21.12.2023 (Annexure P-2) passed by respondent No.1 whereby without assigning any valid reasons and completely overlooking the reports submitted by Additional Deputy Commissioner (Development) Fazilka and District Development and Panchayat Officer, Fazilka, the well-reasoned order dated 01.12.2023 (wrongly typed as 11.12.2023 in the prayer clause and index of the petition) (Annexure P-1) passed by respondent No.2 has been set aside and matter has been remanded to respondent No.2. Further prayer has been made directing the respondents to act upon the enquiry report submitted by Additional Deputy Commissioner (Development) Fazilka and District Development and Panchayat Officer, Fazilka and take remedial action under the provisions of Punjab Panchayati Raj Act, 1994 as well as the criminal proceedings for the fraud and misappropriation which has been committed by

respondent No.6.

It has been submitted by counsel for the petitioners that various complaints were filed against respondent No.6 for the misappropriation of the grants and embezzlement of the Panchayat Funds. On the basis of the same, inquiry reports were submitted by respondent No.3 wherein it was found that the funds taken by respondent No.6 namely, Subhash Chander, Sarpanch for the agricultural year 2021-22 were misappropriated by him. It was further found that subsidy amount of Rs.4,00,000/- along with interest has not been deposited by him in the Government Account. However, in the inquiry, it was also found that Rs.25,000/- sanctioned by the Block Development and Panchayat Officer, Abohar were neither disbursed by respondent No.6 to the concerned Villagers nor deposited back in the Government Account. He has submitted that it was further found in the inquiry that the grant of Rs.10,00,000/- for Kharwanja from Phirni to Balram Bishnoi's house had been used by the Sarpanch for installing kharwanja in his own fields. He submits that on considering the report submitted by respondents No.3 and 4, respondent No.2 passed the order for removal of respondent No.6 from the post of Sarpanch vide order dated 01.12.2023. He has submitted that aggrieved by the same, respondent No.6 filed appeal before respondent No.1. However, respondent No.1 by passing a cryptic order accepted the appeal vide impugned order dated 21.12.2023 and remanded the case to respondent No.2 by directing him to pass order afresh. It has been submitted by counsel for the petitioners that it was duly established in the inquiry conducted that respondent No.6 had misappropriated and embezzled the Gram Panchayat funds and hence, on the basis of the

report, he was rightly suspended by respondent No.2. However, learned Financial Commissioner miserably failed to appreciate the same and thus, illegally *set aside* the order passed by respondent No.2. It is submitted that as per Section 216 of the Punjab Panchayati Raj Act, 1994 (for short 'the Act'), every member of the Panchayat is liable for the loss, waste and misappropriation of any money or property belonging to the Panchayat. As the allegations of embezzlement were proved against respondent No.6, thus, he was liable for the legal action as per Section 216 of the Act. He has submitted that the learned Financial Commissioner has failed in appreciating the same and thus, passed the impugned order which is totally unsustainable in the eyes of law and deserves to be *set aside*.

Learned counsel for the caveator has opposed the contentions raised by counsel for the petitioners and has stated that the learned Financial Commissioner has found that no agricultural implements were supplied to the caveator and as such, there was no question of any embezzlement. He has further stated that the caveator was found to have not embezzled any amount and the grant of Rs.25,000/- was sent back by him and as such, there was nothing against the caveator and the order dated 21.12.2023 has been rightly passed by the Financial Commissioner and the same is liable to be affirmed and the present petition deserves to be dismissed.

Heard. After hearing counsel for the parties and perusing the record, it is apparent that respondent No.6 was appointed as Sarpanch of the Village. The petitioners are the residents of the Village. They have invoked the writ jurisdiction of this Court impugning the order dated 21.12.2023. It was found that various complaints regarding

misappropriation and embezzlement of the Panchayat funds were received against respondent No.6. On the basis of the complaints, respondents No.3 and 4 carried out the inquiry and thus, the inquiry report was submitted. In the inquiry report, the allegations regarding misappropriation and embezzlement of funds were found to be proved. On the basis of the same, respondent No.2 after providing opportunity of hearing to respondent No.6, suspended him from his post vide his order dated 01.12.2023. However, in the appeal filed by respondent No.6, learned Financial Commissioner heard the case and it was found on hearing that the agricultural implements were never supplied to respondent No.6 and thus, there was no question of any embezzlement. The allegation regarding misappropriation of Rs.25,000/- was also said to be not proved against respondent No.6. Hence, in the facts and circumstances of the case, it was held that a fresh decision be taken after re-appreciating the inquiry report. It is an admitted fact that the Sarpanch, respondent No.6 is an elected Sarpanch and any action particularly for removing him from the post has to be taken cautiously. The case has been remanded by learned Financial Commissioner for decision afresh keeping in view the contentions raised by the respondent. This Court does not find any infirmity in the orders passed as fresh order has to be passed after rehearing the parties concerned and reappreciating the relevant record. Thus, this Court does not find any merit in the present petition and the same is hereby dismissed. However, in the facts and circumstances of the case, it is clarified that the Director, respondent No.2 would hear both the parties concerned and would pass afresh order expeditiously preferably, within two months from the receipt of copy of this order. Office is

directed to send a copy of this order to respondent No.2 forthwith who on receipt of the same will issue notice to both the parties for appearance and proceed with the matter as per law.

23.01.2024
m. sharma

(RAJESH BHARDWAJ)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No