

CWP No.1318 of 2008

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

CWP No.1318 of 2008
Date of decision: 11.02.2015

Pishora Singh

....Petitioner

Versus

State of Punjab and others

....Respondents

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

- 1) Whether Reporters of the local papers may be allowed to see the judgment ?
- 2) To be referred to the Reporters or not ?
- 3) Whether the judgment should be reported in the Digest ?

Present: - Mr. Deepak Arora, Advocate, for the petitioner.
Mr. B.S. Cheema, DAG, Punjab.
Mr. G.S. Bawa, Advocate, for
Mr. M.S. Bedi, Advocate, for respondent No.5.

PARAMJEET SINGH, J. (ORAL)

Instant writ petition has been filed under Articles 226/227 of the Constitution of India for quashing the order dated 05.12.2007 (Annexure P-3) passed by Financial Commissioner Appeals-II, Punjab, vide which order dated 05.10.2005 (Annexure P-2) passed by Commissioner, Jalandhar Division, Jalandhar, and order dated 11.10.2004 (Annexure P-1) passed by Collector, Gurdaspur, whereby petitioner was appointed as Lambardar of Village Chandu Wadala, have been set aside.

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Brief facts of the case are that to fill up the vacancy caused on account of death of Piara Singh, Lambardar of village Chandu Wadala, applications were invited from interested persons by making publication/proclamation in the village after obtaining necessary sanction from the Collector. In response to the proclamation, Pishora Singh son of Piara Singh, Nirvair Singh son of Charan Singh, Anoop Singh son of Wassan Singh and Balwinder Singh son of Wassan Singh applied for the post of Lambardar. After completion of all the formalities, matter came up for consideration before the Collector. The Collector after appreciating the comparative merit of the candidates appointed the petitioner as Lambardar of the village by order dated 11.10.2004 (Annexure P-1). Aggrieved against the order of the Collector, respondent No.5 filed an appeal before the Commissioner, which was dismissed by order dated 05.10.2005 (Annexure P-2). Thereafter, respondent No.5 filed revision petition before the Financial Commissioner, which has been allowed, orders passed by Collector and Commissioner have been set aside and respondent No.5 has been appointed Lambardar by order dated 05.12.2007 (Annexure P-3). Hence, this writ petition.

I have heard learned counsel for the parties and perused the record.

Learned counsel for the petitioner vehemently contends that Financial Commissioner Commissioner has wrongly set aside the well-

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reasoned orders passed by Collector and Commissioner. Learned counsel further contends that it is settled principle of law that choice of the Collector cannot be lightly set aside unless there is any perversity in the order. Therefore, this petition deserves to be allowed.

On the other hand, learned counsel for respondent No.5 vehemently contends that respondent No.5 is more meritorious than the petitioner to be appointed as Lambardar of the village. Though, there was criminal case against respondent No.5, however, he has been acquitted subsequently. Learned counsel for respondent No.5 further contends that respondent No.5 has more land than the petitioner and respondent No.5 has served as Sarpanch of the Village for three terms and has experience of doing public/social works.

I have considered the contentions raised by learned counsel for the parties.

So far as contention of the learned counsel for respondent No.5 that he was acquitted in the criminal case is concerned, same is not sustainable. It is a fact that when the comparative merits of the candidates for appointment as Lambardar were considered criminal case was pending against respondent No.5, though he may have been acquitted subsequently.

So far as holding of land is concerned, same is taken into consideration only for the purpose of security towards Government revenue collected by the Lambardar. Petitioner has 45 kanals of land

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which is sufficient to be taken into consideration for the purpose of security of revenue collected by the Lambardar. More land cannot amount to more merits.

So far as experience of respondent No.5 as Sarpanch is concerned, same cannot be taken into consideration. Respondent No.5 was already working as Sarpanch and post of Lambardar is an independent post and Lambardar has to deal with revenue and other concerned officials from time to time and Sarpanch has to do other works. Giving both the posts to one person would not be in the interest of the residents of the village. At this stage, the contention has been raised by learned counsel for respondent No.5 that he was not serving as Sarpanch at that point of time.

Petitioner is the son of deceased Lambardar. When the comparative merits are equal then the preference can be given to the son of deceased Lambardar as per instructions dated 14.09.2011 of the Revenue Department, Government of Punjab.

A perusal of the record shows that District Collector after appreciating the comparative merit found the petitioner to be fit and suitable candidate and appointed him as such. In view of law laid down by Hon'ble the Supreme Court of India in the case of ***Mahavir Singh Vs. Khiali Ram & others, 2009(3) SCC-439, Lila Ram Vs. Asa Ram, 1995 Lahore Law Times-29*** followed by Division Bench of this Court in the case of ***Phool Kumar Vs. State of Haryana and others, 2010(2)***

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RCR (Civil) 819, the choice of the District Collector cannot be lightly set aside. It can only be set aside if there is perversity or illegality in the order of the Collector.

In **Mahavir Singh's** case (supra) the Hon'ble Supreme Court of India has observed that there should be no interference with the choice made by the Collector in the matter of appointment of Lambardar even if two views are possible. It is only the prerogative of the Collector to compare the merits of the candidates for appointment to the post of Lambardar. Therefore, there is no doubt with regard to the proposition of law that choice of the Collector cannot be lightly set aside. The finding of the District Collector has been affirmed by the Commissioner.

In view of the discussion above, writ petition is allowed. Order dated 05.12.2007 (Annexure P-3) passed by Financial Commissioner is set aside and the order dated 11.10.2004 (Annexure P-1) passed by Collector, Gurdaspur, and order dated 05.10.2005 (Annexure P-2) passed by Commissioner, Jalandhar Division, Jalandhar appointing petitioner as Lambardar, are restored. Collector shall withdraw the *sanad* issued in the name of respondent No.5 and shall issue fresh *sanad* in the name of the petitioner.

(Paramjeet Singh)
Judge

February 11, 2015
R.S.