

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Writ Petition No.18383 of 2015

Date of decision: 2.9.2015

Jarnail Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR.JUSTICE G.S.SANDHAWALIA

Present: Mr. Sukhjit Singh, Advocate for the petitioner.

G.S.SANDHAWALIA, J. (Oral)

Challenge in the present writ petition is to the order dated 5.11.2012 (Annexure P/1) whereby respondent no.5 has been appointed as Lambardar on the newly created post of reserved category/SC category of village Mallewal, Tehsil Ludhiana (East), District Ludhiana.

The said order has been upheld by the Divisional Commissioner, Patiala Division, Patiala vide order dated 22.7.2014 and the Financial Commissioner, Punjab vide order dated 11.3.2015 (Annexures P/3 and P/4 respectively).

Counsel for the petitioner has vehemently submitted that the said respondent is running a shop in village Kumkalan which is about 5 Kilometers away from the village and the present petitioner is better qualified and having more support and a younger candidate and therefore, the orders are not sustainable.

The order of the Collector dated 5.11.2012 (Annexure P/1) examines the merits of three candidates namely the petitioner and respondents No.5 and 6. It has been noticed that respondent no.5 had passed his 4th class and his age was 38 years at that point of time and also remained Lambardar for one year prior to that. He was a member of School Committee and also the Senior Vice President of Agricultural Society and was not defaulter of the bank/society and the officials had also recommended his name. In comparison the petitioner was only doing labour but was better qualified since he had passed his 9th class.

Similarly merits of Lachhman Singh have also been discussed. It is settled principle that until the order of the Collector regarding the

appointment of Lambardar is perverse, the same is not to be interfered with and has to be respected. A Division Bench of this Court in **Ujagar Singh Vs. State of Punjab 200(1) PLR 649** held to the following effect:-

“6. The Collector, the Commissioner, as also the Financial Commissioner, (Appeals-II), Punjab, have arrived at concurrent findings that respondent no.5 is the best candidate for the post of Sarpanch. As a general rule, the choice of a Collector is final except where the order discloses a lack of jurisdiction, an error of law or an error of fact so palpable, as to render his order arbitrary, capricious or unreasonable. In our considered opinion, the impugned orders do not suffer from any of the aforementioned disabilities. The Collector's subjective satisfaction is based upon sufficient material. The arguments advanced by the petitioner cannot be accepted, as selection of a Lambardar is best left to the discretion of the revenue authorities. The petitioner's merits were considered by three authorities and found insufficient.”

This view has been affirmed by the Apex Court in the case of **Mahavir Singh Vs. Khiali Ram and others, (2009) 3 SCC 439**, wherein the Hon'ble Apex Court has considered the controversy relating to appointment of Lambardar under Punjab Land Revenue Act, 1887 and Rules framed thereunder. In the said case, the Division Bench of this Court reversed the decision of the District Collector and accordingly, it was held by the Apex Court that without any finding that the order of the Collector was perverse, this Court was not to exercise jurisdiction under Article 226 of the Constitution of India. Relevant portion of the judgment reads as under:-

“16. The High Court while exercising its jurisdiction under [Article 226](#) of the Constitution of India is basically concerned with the correctness of the decision making process and not the merit of the decision. It has not been found by the High Court that Collector in expressing his opinion as regards comparative merit of appellant vis-a-vis respondent No. 1 committed an error in his decision making process. The principles of natural justice have been complied with. Procedure laid down in the Rules had also been complied with. It is also not correct to say, as has been contended by Mr. Mahajan that the Collector had not taken into consideration the services rendered by the respondent No. 1 to the State. He did acknowledge that the respondent No. 1 had rendered the services to the State as a member of the Armed Forces. The Collector also took into

consideration that the views of the respectables of the village were in favour of appellant as also the fact that he had participated in the collection work of the village and helped the government officials at the time of their visit. He further more took into consideration the fact that the Naib Tehsildar, Hansi had also recommended his name. Even the Circle Revenue Officer had recommended therefor.

17. It is, therefore, not a case where the finding of the Collector can be said to be perverse. It has also not been established that the said statutory authority while taking a decision failed to take into consideration the relevant factors or based its decision on extraneous considerations or on irrelevant factors not germane therefor.”

The above view has also been followed by the Division Bench of this Court in of **Phool Kumar Vs. State of Haryana and others, 2010 (2) RCR (Civil) 819** wherein it has been 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 the post of Lambardar. The Financial Commissioner has only limited right to interfere that too when the choice of the Collector is found to be perverse, suffers from material irregularity and only then the order of the Collector can be set aside.

The Collector has assessed all the three candidates and come to the conclusion that the said respondent is a better candidate. In such circumstances, it is not for this Court to substitute the opinion of the Collector. The argument which is now sought to be raised that the said respondent is running a shop was never raised before the authorities below at any stage and the certificate dated 30.7.2015 (Annexure P/6) from the Panchayat which is now being relied upon was never relied upon earlier.

In such circumstances, this Court feels that there is no scope for interference in the concurrent findings of the authorities below in exercise of jurisdiction under Article 226 of the Constitution of India.

Accordingly, the present writ petition is dismissed.

September 02, 2015
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(G.S.SANDHAWALIA)
Judge