

CWP No.22821 of 2014

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

CWP No.22821 of 2014 (O&M)

Date of decision: 28.08.2015

Balbir 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. Ranjit Singh, Advocate, for the petitioner.
Mr. Suresh Singla, Addl. A.G., Punjab.
Mr. H.K. Aurora, Advocate, for respondent No.4.

PARAMJEET SINGH, J.

Instant civil writ petition has been filed under Articles 226/227 of the Constitution of India for quashing the order dated 06.12.2013 (Annexure P-3) passed by Financial Commissioner, Punjab and order dated 22.09.2009 (Annexure P-1) passed by District Collector, Hoshiarpur, whereby respondent No.4 has been appointed as Lambardar of village Naroor, Tehsil Dasuya, District Hoshiarpur.

Brief facts of the case are that to fill up the newly created post of Lambardar (SC category) village Naroor, Tehsil Dasuya, District Hoshiarpur, applications were invited from interested persons by making publication/proclamation in the village after obtaining necessary sanction from the Collector. After completing formalities, matter came

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up for consideration before the Collector. The Collector after appreciating the comparative merit of the candidates found Kishori Lal – respondent No.4 to be fit and suitable candidate and vide impugned order dated 22.09.2009 (Annexure P-1) appointed him as Lambardar of the village. Aggrieved against the order of the Collector Petitioner – Balbir Singh filed an appeal before the Commissioner, Jalandhar Division, Jalandhar. The Commissioner vide order dated 05.05.2010 (Annexure P-2) accepted the appeal, set aside the order dated 22.09.2009 and appointed the petitioner as Lambardar. Against the order of the Commissioner, respondent No.4 preferred the revision petition before the Financial Commissioner, which has been allowed vide order dated 06.12.2013 (Annexure P-3), order of the Commissioner has been set aside and that of the Collector has been restored. Hence, instant writ petition.

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

Learned counsel for the petitioner vehemently contended that petitioner is the Sarpanch, which is not a disqualification rather an extra qualification to be appointed as a Lambardar. Learned counsel further contended that Sarpanch is a tenure post, whereas Lambardar continues for sufficient long time till death or disability or dismissal of the incumbent. Merely on the ground that petitioner was the Sarpanch of the village, claim of the petitioner for appointment to the post of Lambardar, cannot be discarded. Learned counsel for the petitioner further

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contended that order of the Collector was rightly upset by the Commissioner. In this regard, learned counsel for the petitioner made reference to the Division Bench judgments of this Court in ***Pala Singh v. State of Haryana and others***, 2000(3) R.C.R. (Civil) 446 and ***Karamjit Singh v. Financial Commissioner Appeals-II, Punjab, Chandigarh and others***, 2012(1) L.A.R. 651. Order of the Financial Commissioner is against the law and evidence on record. Financial Commissioner has taken into consideration the subsequent events, which were not before the authorities below. Financial Commissioner has made reference to summoning of the petitioner in a complaint case under Sections 465, 467, 468, 120-B IPC. Learned counsel for the petitioner contended that when the orders were passed by the Collector and the Commissioner, there was no such complaint against the petitioner. Otherwise also, subsequent event cannot be taken into consideration and can be a ground for dismissal if ultimately conviction is recorded against the petitioner. Petitioner was also found innocent in an FIR registered against him prior to the advertisement. In support of this, learned counsel for the petitioner relied upon judgments of this Court in ***Gurbachan Singh v. Financial Commissioner (Appeal-I), Punjab***, 2001(4) R.C.R.(Civil) 22 (D.B.), ***Manabhar Hussain v. Financial Commissioner, Department of Revenue, Haryana and others***, 2013(3) R.C.R.(Civil) 266 and ***Satish Kumar v. Financial Commissioner, Social Security, Punjab and others***, 2014(1) R.C.R.(Civil) 1037.

On the other hand, learned counsel for respondent No.4

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contended that choice of the Collector cannot be lightly set aside. Order of the Commissioner has rightly been set aside by the Financial Commissioner. This writ petition is also liable to be dismissed.

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

In view of the law laid down by Division Bench of this Court in ***Karamjit Singh*** (supra) for appointment to the post of Lambardar no adverse inference can be drawn against the person merely that he is holding the post of Sarpanch. Rather in view of Rule 15(d)(e) of the Punjab Land Revenue Rules personal influence, character, ability, freedom from indebtedness and strength and importance of the community from which selection of a Lambardar is to be made also require to be considered for appointment. Once a person is appointed as a Sarpanch, it means that majority of the residents of the village are in his favour and that he has personal influence over the residents of the village. It cannot be taken as a negative ground. In the present case, Collector and the Financial Commissioner have wrongly taken it as an adverse circumstance against the petitioner.

So far as summoning of the petitioner in a complaint case is concerned, no adverse inference can be drawn against the petitioner as he has been summoned many years after the advertisement for the post of Lambardar. A Division Bench of this Court in ***Gurbachan Singh*** (supra) has also held so. Moreover, petitioner has also been found innocent in FIR registered against him. This Court in ***Manabhar***

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Hussain (supra) has held that once the person has been acquitted, he cannot be held to be disentitled for consideration for appointment to the post of Lambardar.

In view of above, present writ petition is allowed. Orders passed by authorities below are set aside and case is remanded to the Collector for fresh decision in accordance with law, specifically keeping in view the Rules made under the Punjab Land Revenue Act with respect to appointment of Lambardar. Parties through their counsel are directed to appear before the Collector on 05.10.2015.

(Paramjeet Singh)
Judge

August 28, 2015
R.S.