

CWP No.9425 of 2014

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

CWP No.9425 of 2014
Date of decision: 02.02.2015

Malkiat Singh

....Petitioner

Versus

Financial Commissioner, (Animal Husbandry), 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. Arvind Thakur, Advocate, for the petitioner.

Mr. Rupam Aggarwal, DAG, Punjab.

None for respondent No.4.

Mr. Sunil Agnihotri, 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 14.03.2014 (Annexure P-9) passed by respondent No.1 – Financial Commissioner (Animal Husbandry), Punjab, order dated 18.12.2007 (Annexure P-2) passed by respondent No.3 – District Collector, Hoshiarpur and for restoration of order dated 13.06.2008 (Annexure P-4) passed by respondent No.2 – Commissioner, Jalandhar Division, Jalandhar.

Brief facts of the case are that to fill up the vacancy caused on account of death of Ujjagar Mal, Lambardar of village Orphur, Tehsil Dasuya, District Hoshiarpur, applications were invited from interested

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persons by making publication/proclamation in the village after obtaining necessary sanction from the Collector. In response to the proclamation, four persons, namely, Malkiat Singh s/o Atma Singh, Jaspal Singh s/o Sarup Singh, Saminder Singh s/o Joginder Singh and Akaljot Singh s/o Darshan Singh applied for the post of Lambardar. After completing formalities, matter came up for consideration before the Collector. The Collector after appreciating the comparative merit of the candidates found Akaljot Singh – respondent No.4 to be fit and suitable candidate and vide order dated 18.12.2007 (Annexure P-2) appointed him as Lambardar of the village. Aggrieved against the order of the Collector, petitioner – Malkiat Singh and respondent No.5 – Saminder Singh filed separate appeals before the Commissioner. The Commissioner vide order dated 13.06.2008 (Annexure P-4) allowed the appeal of the petitioner, set aside the order of the Collector and appointed petitioner as Lambardar of the village. Appeal filed by respondent No.5 was dismissed. Aggrieved against the order of the Commissioner, respondents No.4 and 5 preferred separate revisions before the Financial Commissioner. Vide order dated 14.03.2014 (Annexure P-9), the Financial Commissioner disposed of the revisions, set aside the orders passed by the Collector as well as the Commissioner and has remanded the case to District Collector, Hoshiarpur for fresh decision. Hence, instant writ petition.

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

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So far as the finding recorded by the Financial Commissioner that none of the three candidates whose merits have been discussed, is eligible for appointment to the said post, is concerned the same is not sustainable for the reasons that there is no direction for inviting fresh applications, only case has been remanded to the District Collector. Financial Commissioner should have outrightly rejected the claim of all the candidates and inviting fresh application should have been ordered. Learned counsel for the parties have stated that comparative merits of the candidates are available, thus, Financial Commissioner should have compared the same and passed the order. Therefore, finding recorded by the Financial Commissioner that none of the candidates is suitable is liable to be set aside. Keeping in view the facts and circumstances of the case, order passed by the Commissioner is also against the settled principles of law as without recording any finding with regard to any perversity in the order of the Collector he has appointed the petitioner as Lambardar of the village. 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) RCR (Civil) 819***, the choice of the District Collector cannot be lightly set aside. However, in the present case, it has been brought to my notice that criminal case was registered against Akaljot Singh, reference to which has been made in the order of the Financial Commissioner. The issue of Akaljot Singh's

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involvement in criminal case and its effect has not been examined by the Collector. So order of the Collector is also not sustainable in the eyes of law for not considering the material evidence. Accordingly, order passed by Collector also deserves to be set aside.

In view of above, orders passed by the authorities i.e. Collector, Commissioner and Financial Commissioner are set aside. Case is remitted to the Collector for fresh decision by taking into consideration the comparative merits of the candidates already before him. Liberty is granted to the Collector to pass appropriate interim order with regard to ad hoc/stopgap arrangement for the post of Lambardar. Final order shall be passed by the Collector within two months from the date of receipt of certified copy of this order.

Disposed of.

(Paramjeet Singh)
Judge

February 02, 2015
R.S.