

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

LPA No. 2101 of 2014 (O&M)

DATE OF DECISION : 22.09.2015

Daya Ram

.... APPELLANT

Versus

Sri Bhagwan and others

.... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE SATISH KUMAR MITTAL
HON'BLE MR. JUSTICE HARI PAL VERMA

Present : Mr. Sanjiv Sharma, Senior Advocate, with
Mr. Arvind Kumar Yadav, Advocate,
for the appellant.

Mr. I.D. Singla, Advocate,
for respondent No.1.

Mr. Sudeep Mahajan, Addl. A.G., Haryana,
for respondents No.2 to 4.

None for respondent No.5.

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SATISH KUMAR MITTAL, J.

Daya Ram has filed this intra-court appeal under Clause X of the Letters Patent against the order dated 10.10.2014 passed by the learned Single Judge, whereby the writ petition (CWP No. 4961 of 2014) filed by Sri Bhagwan (respondent No.1 herein) was allowed; and the order dated 20.02.2014 (Annexure P-3) passed by the Financial Commissioner, Haryana was set aside, whereas the orders dated 04.09.2012 (Annexure P-1) and 26.09.2013 (Annexure P-2) passed by Collector, Rewari and Commissioner,

Gurgaon Division, Gurgaon, respectively, were restored. The appellant has also challenged the order dated 27.11.2014 passed by the learned Single Judge dismissing the review application (RA-CWP-610 of 2014 in CWP No. 4961 of 2014) filed by the appellant.

We have heard learned counsel for the parties and have gone through the orders passed by the revenue authorities as well as the impugned order passed by the learned Single Judge.

In this case, on the death of previous Lambardar of village Palhawas, District Rewari, process for filling up the vacant post was initiated. Proclamation to this effect was made in the village. Seven persons, including the appellant and respondent No.1, applied for the post. Collector, Rewari, after considering the comparative merits of all the candidates, vide order dated 04.09.2012 (Annexure P-1) appointed respondent No.1 as Lambardar of the village, finding him more meritorious, while observing as under :

“After hearing the Advocates of three candidates of Lambardari and on perusal of the file, I came to this conclusion that the lambardari candidate Sri Bhagwan is 42 years old, who is younger than Daya Ram. He is having 3.5 acres of land which is higher than the candidate of Lambardari Jaldeep Singh. 45 prominent villagers have supported his claim for Lambardari. He has persuaded the 6 cases of family planning with a good financial condition. The Assistant Collector IInd Grade, Rewari has recommended the appointment of Sri Bhagwan as Lambardar. Keeping in mind the above facts, I considering the candidate of Lambardari Sri

Bhagwan as suitable for Lambardari and therefore, I appoint candidate of Lambardari Sri Bhagwan as Lambardar of the Village Pahalwas on a vacant post of Village Lambardar of Pahalwas.”

Against the said order, the appellant and one Jaldeep Singh, another candidate for the post of Lambardar, preferred separate appeals. The Commissioner, Gurgaon Division, Gurgaon, vide order dated 26.09.2013 (Annexure P-2) dismissed both the appeals and upheld the order of the Collector, while observing as under :-

“After hearing the learned Advocate of both the sides carefully and perusing the files of the courts below, I came to the conclusion that the order dated 4.9.2012 passed by the District Collector, Rewari, whereby respondent Sri Bhagwan of village Pahalwas was appointed as Lambardar. District Collector, Rewari has passed the order by keeping in view the eligibility of all the candidates. The appellant failed to point out any illegality in the order. In addition to that the appellant miserably failed to prove the ineligibility of respondent Sri Bhagwan. I agreed with the submissions of the learned counsel of the respondents that the selection made by the Collector is to be preferred unless there is any infirmity or illegality. The order passed by the District Collector is based on facts, which does not require any interference. Hence, I dismissed the appeal of the appellant on being found without merit.”

The appellant further challenged the order of the Commissioner by filing revision petition before the Financial Commissioner, Haryana, which was allowed vide order dated 20.02.2014 (Annexure P-3), and the

orders of the Collector as well as the Commissioner, appointing respondent No.1 as Lambardar of the village, were set aside; and the appellant was appointed as Lambardar of the village. The choice of the Collector appointing respondent No.1 as Lambardar of the village, which was upheld by the Commissioner, was interfered with by the Financial Commissioner only on the ground that in his opinion, the appellant was more meritorious than respondent No.1. In this regard, the following observations were made by the Financial Commissioner :-

“.... the choice made by District Collector does not appear to be objective and based on merit. It would be hard to believe that respondent Sri Bhagwan was more meritorious and suitable among the candidates, keeping in view the comparative merit of petitioner Daya Ram. He is 48 years old, ex-serviceman, studied up to graduation owns 2 acres land, has motivated 8 cases of family planning, has support of 16 persons, including Sarpanch, is son of deceased Lambardar and has years of experience of Lambardari work as Sarbrah Lambardar. Respondent Sri Bhagwan, who is 43 years old and 9th class pass, outscores Daya Ram, only on the aspect of support from more number of persons, and recommendations in his favour by Assistant Collector 2 Grade. Even here, on the issue of support, petitioner neutralizes the advantage of respondent with the fact that Sarpanch and Panches have supported him and the Gram Panchayat has passed 2 resolutions in his favour. The only remaining advantage in Sri Bhagwan favour, is the recommendation of Assistant Collector 2nd Grade, which alone cannot outweigh the number of very valuable merits possessed by petitioner, such as, higher

qualifications, 22 years service in the Army by him, service rendered by his father as Lambardar, and his years of experience of Lambardari work after, having been appointed as Sarbrah on 05.03.2009. It is relevant to note that except for minor edge on some points, respondent Sri Bhagwan, miserably fails in comparison with petitioner Daya Ram, on most criterion that deserve to be given consideration while evaluating merits of the candidates for the post of Lambardar.”

In the writ petition filed by respondent No.1, the learned Single Judge vide order dated 10.10.2014 set aside the order of the Financial Commissioner, Haryana, while coming to the conclusion that in the present case, the Financial Commissioner has illegally interfered in the choice of the Collector, which was upheld by the Commissioner. It was observed that the order of the Collector is well reasoned, as comparative merits of all the candidates have been considered and finding respondent No.1 more suitable, he has been appointed as Lambardar of the village. The learned Single Judge further observed that the choice which was exercised by the Collector does not appear to suffer from any perversity which would call for interference; and the well reasoned orders passed by the Collector as well as Commissioner have been upset by Financial Commissioner on untenable grounds.

Against the aforesaid order of the learned Single Judge, the instant appeal has been filed.

Learned counsel for the appellant argued that in this case, the Financial Commissioner has rightly set aside the orders of the Collector and

the Commissioner, as both these authorities have not properly appreciated and compared the merits of all the candidates, and have come to a wrong conclusion that respondent No.1 is more meritorious than the appellant. Learned counsel also argued that in such circumstances, the Financial Commissioner was justified in interfering in the choice of the Collector in the matter of appointment of Lambardar. Secondly, learned counsel for the appellant argued that some information received under the Right to Information Act, 2005, was placed before the Financial Commissioner, which indicates that respondent No.1 had adopted certain malpractices in his ration shop, and this fact should have been taken into consideration.

We do not find any merit in any of the contentions. With regard to the first contention, it is now well settled that choice of the Collector in the matter of appointment of Lambardar should not be interfered until and unless there is grave illegality in the order of the Collector, particularly when choice of the Collector has been upheld in appeal by the Commissioner. The Financial Commissioner in exercise of his revisional jurisdiction should not interfere in the choice of the Collector on the ground that in his opinion, the other candidate is more meritorious. He is not supposed to compare the merits and de-merits of the candidates. The only scope of interference is in a case, where there is grave illegality or perversity in the order of the Collector appointing Lambardar; or where a person, who is ineligible for such appointment, has been appointed as such.

So far as the second contention is concerned, the Financial

Commissioner himself has observed that the appellants in the appeals before the Commissioner, in the absence of supply of information to them because of loss of record, have not been able to conclusively prove any thing in this regard. Therefore, merely on the basis of the information, which was not supplied due to loss of record, an inference cannot be drawn that respondent No.1 had adopted malpractices in his ration shop. Even otherwise, before the revenue authorities, i.e. Collector, Commissioner and the Financial Commissioner, no material with regard to the alleged malpractices being adopted by respondent No.1 was produced. Therefore, it cannot be a ground to set aside the appointment of respondent No.1 as Lambardar of the village.

In view of the above, we are of the opinion that the impugned order passed by the learned Single Judge setting aside the order of the Financial Commissioner and restoring the orders of the Collector as well as the Commissioner, does not require any interference.

No merit. Dismissed.

(SATISH KUMAR MITTAL)
JUDGE

September 22, 2015
ndj

(HARI PAL VERMA)
JUDGE