

In the High Court of Punjab and Haryana at Chandigarh

LPA No.29 of 2015 (O&M)

Date of decision: 12.1.2015

Inder Singh

.....Appellant

Versus

Financial Commissioner Haryan and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE RAJ MOHAN SINGH**

Present: Mr.Deepak Girotra, Advocate,
for the appellant.

Raj Mohan Singh, J.

1. This appeal is directed against the order passed by learned Single Judge dated 4.11.2014, vide which writ petition filed by the appellant-petitioner has been dismissed.

2. The appellant filed CWP No. 6660 of 2012, assailing the order dated 25.11.2011 passed by the Commissioner, Hisar and order dated 14.3.2012 passed by the Financial Commissioner, Haryana, whereby the order of Commissioner was upheld.

3. A vacancy became available on account of death of Bansi Lal, Lambardar (General Category) in village Nagoki, District Sirsa. After necessary formalities, candidatures of the appellant and respondent No.4 came to be considered by the Collector, Sirsa being

appointing authority. The Collector found the appellant to be suitable candidate and appointed him vide order dated 21.9.2011. However, in appeal, preferred by respondent No.4, the order of Collector was set aside by the Commissioner, Hisar Division, Hisar vide order dated 25.11.2011. The appellant remained unsuccessful in revision before the Financial Commissioner, Haryana, who dismissed the same vide order dated 14.3.2012.

4. Merits and demerits of the candidates are the relevant considerations for appointment to the post of Lambardar. The candidature of respondent No.4 was recommended by the Tehsildar, vide report dated 27.6.2011 and the record was sent to the Sub Divisional Officer (Civil) Sirsa, who instead recommended the candidature of the appellant. The Lambardari belongs to General Category. In order to appreciate the relevant merits of the candidates, their qualifications and dis-qualifications are tabulated in the following manner:-

<i>Sr. No.</i>	<i>Appellant</i>	<i>Respondent No.4</i>
1	B.A.Pass from Panjab University in the year 1972.	10 th pass
2	was a NCC cadet.	Nil
3	colour in 400 M race.	Nil
4	permanent resident of the village.	permanent resident of the village proved, though, the appellant claimed him to be non resident.
5	owner of 11 acres of land.	owner of 24 acres of land.
6	recipient of old age pension being born in the year 1945.	50 years of age.
7	candidature was recommended by the respectables of the village.	Enjoys good reputation in the village. Remained as Sarbhara Lambardar and has requisite experience for the post of Lambardar being son of deceased Lambardar.

<i>Sr. No.</i>	<i>Appellant</i>	<i>Respondent No.4</i>
8	Acquitted in criminal case, though appeal is pending for the offence under Section 379 IPC.	No criminal case.

5. In view of qualifications of the parties before the Collector, respondent No.4 was apparently more meritorious in view of his age, land holding, experience of Sarbhara Lambardari and clean antecedents in terms of character and reputation. On the other hand, appellant though a graduate from Panjab University, was found to be recipient of old age pension being an old person of more than 66 years of age. Appellant was found to be involved in a criminal case under Section 379 IPC. Though, he was acquitted but as per facts narrated in the impugned order, appeal preferred by Tehsildar is pending as per affidavit dated 10.7.2014 filed by District Collector, Sirsa. The hereditary claim is not the sole criteria for appointment on the post of Lambardar but certainly it is one of the qualification which is also required to be considered along with other qualifications of respondent No.4. Meticulous perusal of both qualifications and dis-qualifications of the parties gives upper hand to respondent No.4. Respondent No.4 is younger in age in comparison to the appellant. He has more agricultural land than the appellant. Respondent No.4 remained as Sarbhara Lambardar and being son of deceased Lambardar has also relevant experience of the post of Lambardar. Besides the aforesaid meritorious grounds, respondent No.4 has no negativity in his credentials as he was never involved in any criminal activity. On the other hand, the appellant was found to be involved in a criminal case, resulting in his acquittal but according

to assertion and affidavit of the authority, the appeal is pending consideration.

6. Though, it is a settled principle that the choice of collector should not be interfered with in normal circumstances. When two views are possible then the choice of the collector should not have been interfered unless and until the same is found to be perverse or having suffered with extraneous consideration or the result of misreading of material evidence. The Appellate Court in normal circumstances cannot be allowed to substitute its own perception as to merits of the candidate when two views are possible before the Collector and the Collector in its wisdom and discretion has taken view in favour of one of the candidates. In such an eventuality, the choice of the Collector is not supposed to be questioned by the Appellate Authority. In the present case, the authority exercised by the Collector is proved to be on wrong information. In terms of the merits, the candidature of respondent No.4 was on superior note and also in terms of its qualification. The candidature of the appellant could not come out from the cloud of suspicion having involved in a criminal case under Section 379 IPC for which matter is under consideration before the Appellate Court.

7. In the instant case, no two views could be formed on the basis of merits as respondent No.4 had a clear edge over the appellant. The Collector has committed patent error in law in assessing candidature of the appellant to be more meritorious than respondent No.4. Apparently, it is a case of perversity and misreading of evidence, which was lawfully set at naught by the Commissioner vide

his order dated 25.11.2011 and the same view has been upheld by the Financial Commissioner as well as by the learned Single Judge. No error can be found in the order of learned Single Judge. Therefore, the appeal is dismissed being totally devoid of merits.

**(SURYA KANT)
JUDGE**

**(RAJ MOHAN SINGH)
JUDGE**

January 12, 2015
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