

Civil Writ Petition No. 11530 of 2002

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

**Civil Writ Petition No. 11530 of 2002
Date of Decision: 26.10.2016**

Natha Ram

.....Petitioner

Vs.

State of Haryana and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Ashok Aggarwal, Advocate
for the petitioner.

Mr. Sandeep S. Mann, SR. DAG, Haryana.

RAMESHWAR SINGH MALIK J. (ORAL)

Instant writ petition is directed against the order dated 5.4.2002 (Annexure P-1) passed by Financial Commissioner, Haryana-respondent No.2, whereby order dated 8.10.1999 (Annexure P-2), passed by the District Collector, appointing the petitioner as Lambardar and upheld by the Commissioner, Amabala Division, on 30.11.1999 vide Annexure P-3, were set aside, remanding the case to the Collector to restart the process for appointing Harijan Lambardar.

The writ petition was admitted vide order dated 29.7.2002, by a Division Bench of this Court and operation of the impugned order was stayed. No written statement has been filed either on behalf of the State or

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on behalf of respondent No.5.

Heard learned counsel for the parties.

It is a matter of record that petitioner was appointed as Harijan Lambardar by the District Collector vide self contained order dated 8.10.1999 (Annexure P-2). Respondent No.5 challenged the said order before the Commissioner, Ambala Division, by way of appeal which came to be dismissed, vide order dated 30.11.1999 (Annexure P-3). Still not satisfied, respondent No.5 filed revision petition before the Financial Commissioner, who accepted the same vide impugned order dated 5.4.2002 (Annexure P-1)

During the course of hearing, petitioner, who is present in person, points out that respondent No.5 has since expired. Neither any reply has been filed on his behalf nor anybody has come present to oppose the present writ petition.

A bare combined reading of the orders passed by learned District Collector as well as Commissioner, Ambala Division, would show that comparative merits of both the candidates were closely examined, properly considered and rightly appreciated before passing their respective orders. Relevant operative part of the order dated 8.10.1999 (Annexure P-2), passed by the District Collector, read as under:-

“I have heard the arguments of both the candidates and have carefully perused the case file. Both the candidates have rendered devotion towards Small Savings Scheme and the Family Welfare Programme. Shri Lal Ram candidate is more educated than Shri Natha Ram. So far as the plea of Shri Lal Ram

that he has worked as a Sarbara Nambardar is concerned, it is not correct as he did not produce any proof on the file to this effect. Shri Natha Ram candidate has deposited a sum of Rs. 46,500/- on 7.8.99 in the Bank out of the amount of Harijan Kalyan Nigam of which he was in debt. He has produced the photocopy of the challan and already he has deposited a sum of Rs. 50,000/- the photocopy of which is also available on the file. Shri Natha Ram candidate is in sound financial condition then Shri Lal Ram candidate and he has remained Member Panchayat of the village for 15 years and now his wife is the Member Panchayat. From this it is established that Shri Natha Ram is a respectable person of village Dhand, whereas the financial condition of candidate Lala Ram is weaker and he has no house to live. Gram Panchayat, Dhand by passing a resolution on dated 23.12.98, has recommended the appointment of Shri Natha Ram candidate as a Nambardar. Naib Tehsildar, Pundri, Tehsildar and The Sub Divisional Officer, Civil, Kaithal, vide their reports have recommended for the appointment of Shri Natha Ram as a Nambardar. In view of the above facts Shri Natha Ram candidate is proved to be more eligible in comparison to Shri Lal Ram candidate. Therefore, I hereby appoint Shri Natha Ram son of Shri Atma Ram resident of Dhand as Nambardar of village Dhand in place of Shri Sadhu Ram

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deceased, Harijan Nambardar. The certificate of Nambardari may be prepared.”

When the abovesaid order was challenged by respondent No.5 before the Commissioner, the matter was reconsidered at the hands of the Commissioner, Ambala Division, and he found that order passed by the District Collector was not suffering from any patent illegality or perversity, thus, he rightly dismissed the appeal of respondent No.5. However, Financial Commissioner, while exceeding her jurisdiction, passed the impugned order setting aside the abovesaid orders of District Collector and Commissioner, without recording any cogent reason in support of the impugned order.

It is the settled proposition of law that choice of the Collector, in the matters of appointment of Lambardar, is not to be upset lightly by the higher revenue authorities until and unless order passed by the District Collector is found suffering from any patent illegality or perversity. Since the order passed by the District Collector and Commissioner were not suffering from any patent illegality or perversity, the same deserve to be restored and the impugned order passed by the Financial Commissioner, being patently illegal, cannot be sustained.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered opinion that since the order passed by the Financial Commissioner dated 5.4.2002 (Annexure P-1) has been found patently illegal order, the same is liable to be set aside. Accordingly, the impugned order (Annexure P-1) is hereby set aside and the orders dated 8.10.1999

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(Annexure P-2), passed by the District Collector and 30.11.1999 (Annexure P-3), passed by the Commissioner, are restored. Writ petition deserves to be allowed.

Resultantly, with the abovesaid observations made, present writ petition stands allowed, however, with no order as to costs.

(RAMESHWAR SINGH MALIK)
JUDGE

26.10.2016
Ak Sharma

Whether speaking/reasoned Yes/No
Whether reportable: Yes/No