

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CWP No.14976 of 1998  
Date of decision: 07.12.2016

Baldev Singh

... Petitioner

Vs.

Financial Commissioner (Appeals), Punjab and another

... Respondents

**CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK**

Present: None for the petitioner.

Mr. Yatinder Sharma, Addl. AG, Punjab.

None for respondent No.2.

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**RAMESHWAR SINGH MALIK, J. (ORAL)**

Feeling aggrieved against the order dated 12.05.1998 (Annexure P-6) passed by Financial Commissioner (Appeals-I), Punjab, whereby appeal filed by the petitioner was dismissed and the order dated 05.06.1997 (Annexure P-5) passed by Commissioner, Faridkot Division, Faridkot, appointing respondent No.2 as Harijan Lambardar was upheld, petitioner has approached this Court by way of present writ petition under Articles 226/227 of the Constitution of India, seeking a writ in the nature of certiorari, for quashing the impugned orders.

The writ petition was admitted for regular hearing and operation of the impugned orders dated 05.06.1997 (Annexure P-5) and 12.05.1998 (Annexure P-6) was stayed. No written statement has been filed on behalf of respondent No.2. That is how, this Court is seized of the matter.

Heard learned counsel for the State.

It is a matter of record that petitioner was appointed as Harijan Lambardar by learned District Collector, Bathinda vide his order dated 23.08.1995 (Annexure P-4). Order passed by District Collector was challenged by respondent No.2 before the Commissioner who accepted the appeal of respondent No.2 vide impugned order dated 05.06.1997 (Annexure P-5), primarily for the reason that since father of the petitioner was defaulter of a bank, petitioner was not having clean reputation in the society. Similarly, learned Financial Commissioner dismissed the appeal of the petitioner, observing that he was duty bound to clear the liabilities of his father.

A careful perusal of both these impugned orders would show that learned Commissioner as well as learned Financial Commissioner fell in serious error of law, while setting aside well reasoned and speaking order passed by District Collector, appointing the petitioner as Harijan Lambardar. In fact, the order passed by learned District Collector was not suffering from any patent illegality or perversity and the same could not have been set aside by the Commissioner as well as Financial Commissioner. Having said that, this Court feels no hesitation to conclude that since the impugned orders passed by learned Commissioner as well as learned Financial Commissioner have been found suffering from patent illegality, the same cannot be upheld and the order passed by learned District Collector, Bathinda deserves to be restored.

It is the settled proposition of law that choice of District Collector, in the matters of appointment of Lambardar, is not to be upset lightly by the higher revenue authorities, unless the order passed by District Collector is found suffering from patent illegality or perversity. In the present case, as noticed hereinabove, order passed by learned District Collector was not found

suffering from any patent illegality or perversity and in such a situation, the Commissioner would have no jurisdiction to replace the choice of District Collector by his own choice, without recording a finding to the effect that the order passed by learned District Collector was suffering from patent illegality and perversity. Since learned Financial Commissioner also failed to appreciate this settled proposition of law, impugned orders passed by learned Commissioner as well as learned Financial Commissioner cannot be sustained, for this reason also.

Ownership of land was not the requirement of law, because the post of Lambardar, which was sought to be filled up, was belonging to Harijan Lambardari. Petitioner was better qualified than respondent No.2. Petitioner was a life member of Red Cross Society. He was a Home Guard Trainee as well. Learned District Collector, after considering the comparative merits of both the candidates, rightly found the petitioner having clear edge on respondent No.2 and accordingly, the petitioner was appointed as Harijan Lambardar. In this view of the matter, it can be safely concluded that learned District Collector was well within its jurisdiction to appoint the petitioner as Harijan Lambardar and the order passed by District Collector deserves to be upheld, for this reason as well.

Before appointing the petitioner as Harijan Lambardar, learned District Collector recorded cogent findings in his order dated 23.08.1995 (Annexure P-4), which deserve to be noticed here and the same read as under: -

*“I have given thoughtful consideration to the arguments put forward by the counsels for both the candidates and have gone through the record on file. No doubt owning of land is not*

*necessary in case of Harijan Lambardari but owning of land by Baldev Singh is plus point in his favour. Moreover he has better educational qualification as compared to the other candidate and is a life member of Red Cross Society. He is a Home Guard Trainee also. After making comparative study of the merits of both the candidates I am of the considered opinion that Sh. Baldev Singh is a better candidate for appointment as Harijan Lambardar. In view of this, I find no reason to disagree with the recommendations made by the lower revenue officers. Accordingly, Sh. Baldev Singh s/o Bachan Singh is hereby appointed as Harijan Lambardar against a newly created post in village Gehlewala.”*

Since the impugned orders passed by learned Commissioner as well as learned Financial Commissioner have been found contrary to the record as well as legal aspect of the matter as noticed hereinabove, both these impugned orders cannot be sustained.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that since the Commissioner as well as Financial Commissioner failed to record any cogent reasons, pointing out any patent illegality in the order passed by learned District Collector, the impugned orders cannot be sustained. Accordingly, the order dated 05.06.1997 (Annexure P-5) passed by Commissioner, Faridkot Division, Faridkot as well as the order dated 12.05.1998 (Annexure P-6) passed by Financial Commissioner (Appeals-I), Punjab are hereby set aside. Order dated 23.08.1995 (Annexure P-4) passed by

learned District Collector, appointing the petitioner as Harijan Lambardar, is restored. Writ petition deserves to be accepted.

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

07.12.2016  
*vishnu*

[ RAMESHWAR SINGH MALIK ]  
JUDGE

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|---------------------------|--------|
| Whether speaking/reasoned | Yes/No |
| Whether reportable        | Yes/No |