

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Writ Petition No. 13501 of 2002

Date of Decision: 26.9.2016

Harjinder Singh

.....Petitioner

Vs.

State of Punjab and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. M.S. Khaira, Sr. Advocate with
Mr. R.S. Khaira, Advocate
for the petitioner.

Mr. Yatinder Sharma, DAG, Punjab.

Mr. Ashish Aggarwal, Sr. Advocate with
Mr. Kartik Gupta, Advocate
for respondent No.4.

RAMESHWAR SINGH MALIK J. (ORAL)

Feeling aggrieved against the impugned order dated 11.4.2002 (Annexured P-5), passed by the Financial Commissioner, (Appeals-I), Punjab-respondent No.1, whereby order dated 28.8.2001 (Annexure P-4) passed by the Commissioner, Jalandhar Division, Jalandhar-respondent No.2, was set aside and the order dated 31.1.2000 passed by the District Collector, Hoshiarpur-respondent No.3, appointing respondent No.4 as Lambardar was restored, 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.

Initially, this writ petition was dismissed by a Division Bench of this Court vide order dated 23.8.2002 and the same reads as under:-

“ It is the choice of the Collector, which has been upheld vide order (Annexure P-5) dated 11.8.2002. It is too well settled that choice of the Collector in appointment of Lambardar should be considered final unless same is shown to be perverse. Such is not the case here.

No merits.

Dismissed.”

Later on, the abvoesaid order was recalled, by allowing application of the petitioner bearing CM No. 26023 of 2002 and the writ petition was admitted for regular hearing, vide order dated 17.9.2002. Reply was filed on behalf of respondent No.4.

Heard learned counsel for the parties.

It has gone undisputed before this Court that it was respondent No.4 namely Sukhwinder Singh, who was appointed as Lambardar by the District Collector, Hoshiarpur, vide impugned order dated 31.1.2000 (Annexure P-2). Petitioner challenged the abvoesaid order by way of appeal before the Commissioner, Jalandhar Division, Jalandhar, who, vide order dated 28.8.2001 (Annexure P-4), set aside the order passed by the District Collector and appointed petitioner as Lambardar. However, order passed by the Commissioner was challenged by respondent No.4 before the Financial Commissioner by way of revision petition. The Financial Commissioner set aside the order passed by the Commissioner, vide impugned order dated 11.4.2002 (Annexure P-5), allowing the appeal of Sukhwinder Singh-

respondent No.4.

Having heard learned counsel for the parties at considerable length, after careful perusal of record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that orders passed by the District Collector as well as Financial Commissioner deserve to be upheld and the writ petition is liable to be dismissed, for the following more than one reasons.

Before passing the impugned order dated 31.1.2000 (Annexure P-2), District Collector discussed each and every relevant aspect of the matter for recording his cogent findings. He came to the definite conclusion that respondent No.4 was having a clear edge over the petitioner. Petitioner was found facing criminal trial in FIR No.74 dated 7.10.2008 under Sections 323/324 IPC. It is also a matter of record that petitioner came to be acquitted vide judgment of acquittal dated 2.7.2010 (Annexure P-8) passed by the learned Additional Sessions Judge, Hoshiarpur.

Both the candidates were matriculate. Respondent No.4 was younger in age than the petitioner. It is also a matter of record that petitioner was not having any land in the Patti concerned. After taking into consideration all the abovesaid relevant factors, the District Collector, Hoshiarpur, was well within his jurisdiction to appoint respondent No.4 as Lambardar, vide impugned order dated 31.1.2000 (Annexure P-2) and the same deserves to be upheld.

So far as order passed by the Commissioner dated 28.8.2001 (Annexure P-4) was concerned, the same was an order without jurisdiction, besides being a cryptic and non speaking order. It was an order without jurisdiction because the Commissioner did not record any finding before

accepting appeal of the petitioner that the order passed by the District Collector was suffering from patent illegality or perversity.

It is the settled proposition of law that District Collector, being the appointing authority, his choice in the matters of appointment of Lambardar, will not be upset lightly by the higher revenue authorities, until and unless the order passed by the District Collector is found suffering from any patent illegality or perversity. Recording of such findings at the hands of the Commissioner was sine qua non for setting aside the order passed by the District Collector. However, since the Commissioner failed to appreciate this crucial aspect of the matter, while passing his order, it was rightly set aside by the Financial Commissioner, while passing impugned order dated 11.4.2002 (Annexure P-5). Thus, order passed by the Financial Commissioner deserves to be upheld.

A bare reading of the impugned order passed by the Financial Commissioner would make it crystal clear that Financial Commissioner was conscious of the fact that choice of the District Collector was not supposed to be taken lightly, while setting aside the said order passed by the Commissioner. Once the petitioner was facing criminal trial, other merits of both the candidates, being almost the same, District Collector was well justified in ignoring the candidature of the petitioner and giving preference to respondent No.4, for the purpose of appointment of Lambardar. Petitioner came to be acquitted of the criminal charge after more than 10 years.

During the course of hearing, learned senior counsel for the petitioner could not point out any patent illegality or perversity in the impugned orders. Further, no prejudice of any kind, whatsoever, has been shown which might have been caused to the petitioner by passing of the

impugned orders.

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 view that instant writ petition is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

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

(RAMESHWAR SINGH MALIK)
JUDGE

26.9.2016
Ak Sharma

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