IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.11107 of 2015
Date of Decision: 31.08.2016

Ishwar Singh

. . . Petitioner

Versus

State of Haryana and others

. . . Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Vivek K. Thakur, Advocate
for the petitioner.

Mr. Pawan Jhanda, AAG, Haryana.

Mr. H.R. Bhardwaj, Advocate
for respondent No.4.

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Rameshwar Singh Malik, J. (Oral)

Present writ petition is directed against the order dated 31.03.2015 (Annexure P-9), passed by the Financial Commissioner, Haryana , whereby orders of District Collector as well as Commissioner, appointing the petitioner as Lambardar were set aside and the case was remanded to the District Collector, to decide the case afresh.

Notice of motion was issued and in compliance thereof, written statements have been filed on behalf of the respondents.

Heard learned counsel for the parties.

It is matter of record that petitioner was appointed as Lambardar by the District Collector vide his order dated 25.10.2012 (Annexure P-6) and pursuant to that, he is working as such. Respondent No.4 filed appeal against the above-said order of the District Collector, which came to be dismissed by the Commissioner, Ambala Division, vide order dated 10.01.2014 (Annexure P-7). Both the above-said orders passed by the District Collector as well as Commissioner were challenged by respondent No.4, before the Financial Commissioner, who accepted the revision of respondent No.4, by passing the impugned order dated 31.03.2015 (Annexure P-9). The primary reason, which seems to have weighed with the Financial Commissioner against the petitioner, was that he was not owning sufficient land in the revenue estate of village Khurana for which the present post of Lambardar was sought to be filled.

However, the Financial Commissioner committed serious error of law, while not considering two major issues. Firstly, that since land revenue has been abolished in the State of Haryana long back, owning of land by the candidate for the post of Lambardar would not be of any great importance any more. It is so said because ownership of land used to be one of the pre-requisites for the reason that if the Lambardar commits a default in the payment of collected land revenue before the competent authority of the State, the said amount of land revenue could be recovered from defaulting Lambardar.

When confronted with this undisputed fact situation, learned counsel for respondent No.4 as well as learned counsel for the State had no answer and rightly so, it being a matter of record. The second serious illegality committed by Financial Commissioner, which is glaring on the face of it, is that despite referring to settled principle of law that choice of the Collector cannot be lightly set aside in the matters of appointment of Lambardar, until the order passed by the District Collector is found suffering from patent illegality or perversity, the Financial Commissioner has reversed the orders, without recording any such finding that the orders passed by the District Collector as well as the Commissioner were suffering from any patent illegality or perversity. Unless a specific finding would be recorded by any higher revenue authority to the effect that the order passed by the Collector, appointing a particular candidate as Lamberdar, was suffering from any patent illegality or perversity, recording cogent reasons in support of such finding, no such higher revenue authority would be justified on facts and in law, to exercise its jurisdiction for setting aside the order passed by the Collector.

In the case in hand, though the Financial Commissioner has referred to different aspects and primarily on the alleged insufficiency of land, owned by the petitioner, but he failed to record any such finding, referring to any patent illegality or perversity in the orders passed by the District Collector or Commissioner, before passing the impugned order. Thus, the Financial Commissioner exceeded his jurisdiction and the impugned order cannot be sustained, for this reason also.

It is also not in dispute that petitioner was son of deceased Lambardar. It is equally true that hereditary claim is no more available. However, the petitioner was having a preferential claim for appointment to the post of Lambardar, on the basis of his working experience on the post of

Lambardar, being the son of deceased Lambardar. This fact has also gone uncontroverted on record. No other alleged disqualification has been pointed out in the candidature of the petitioner. In fact, before appointing the petitioner as Lambardar, the District Collector has considered all the relevant aspects of the matter, including the comparative merits of the contesting candidates.

Further, all the lower revenue authorities namely; Assistant Collector Grade-II, Assistant Collector Grade-I and Sub Divisional Officer (Civil) have made recommendations in favour of the petitioner. It is also not in dispute that before the order of appointment was passed by the District Collector on 25.10.2012, land measuring 8 kanals had already been transferred in the name of petitioner vide release deed No.248/1, dated 19.04.2012 in the same revenue estate. In addition to this, petitioner was owner of land measuring 56 kanals in the adjoining revenue estate. Since, learned Financial Commissioner has failed to examine, consider and appreciate the above-said undisputed material facts available on record, in the correct perspective, the impugned order passed by him has been found suffering from patent illegality and the same cannot be sustained, for this reason as well.

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 since the impugned order passed by the Financial Commissioner has been found patently illegal and contrary to the law laid down by the Hon'ble Supreme Court of India in ***Mahavir Singh Versus***

Khiali Ram and others, 2009 (1) RCR (Civil) 757 *as well as judgments of this Court in* ***Lila Ram Versus Asa Ram, 1995 Lahore Law Times 29*** and ***Phool Kumar versus State of Haryana 2010 (2) RCR (Civil) 819***, the same cannot be sustained.

Accordingly, the impugned order dated 31.03.2015 passed by the Financial Commissioner, contained in Annexure P-9 is hereby set aside. Writ petition deserves to be accepted.

Resultantly, with the above-said observations made, the instant writ petition stands allowed, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

31.08.2016
mks

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No