

Civil Writ Petition No. 11504 of 2015

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

Civil Writ Petition No. 11504 of 2015

Date of Decision: 16.11.2016

Satnam Singh

.....Petitioner

Vs.

Financial Commissioner, (Revenue), Punjab and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Navdeep Chhabra, Advocate
for the petitioner.

Mr. Rupam Aggarwal, DAG, Punjab.

Mr. Sanjeev Kumar Arora, Advocate
for respondent No.4.

RAMESHWAR SINGH MALIK J. (ORAL)

Feeling aggrieved against the impugned order dated 3.9.2013 (Annexure P-7), passed by the Financial Commissioner (Revenue)-respondent No.1, upholding the order dated 19.12.2006 (Annexure P-4) passed by the Commissioner, Ferozepur Division, Ferozepur-respondent No.2, appointing respondent No.4 as Lambardar, 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.

Notice of motion was issued and in compliance thereof, reply by

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way of short affidavit on behalf of respondents No. 1 to 3 was filed. Respondent No.4 filed his separate written statement. However, petitioner did not file any replication.

Heard learned counsel for the parties.

Brief facts of the case, necessary for disposal of the present writ petition, are that one post of Harijan Lamabardar fell vacant in the village of the parties, because of the death of Late Sh. Kartar Singh. Process was initiated for filling up this post. Finally, petitioner and respondent No.4 were the two contesting candidates, who were in the fray. After considering the comparative merits of both the candidates, learned District Collector, Ambala, vide his order dated 29.8.2002 (Annexure P-1), appointed respondent No.4 as Harijan Lambardar. Feeling aggrieved, petitioner filed his appeal before the Commissioner, Ferozepur Division, Ferozepur, against the abovesaid order passed by the District Collector, who set aside the same, vide his order dated 17.11.2003 (Annexure P-2), remanding the case to the District Collector, for passing afresh order.

In compliance of the remand order (Annexure P-2), learned District Collector, vide order dated 3.2.2005 (Annexure P-3), appointed petitioner as Harijan Lambardar, however, primarily on the basis of hereditary claim. Dissatisfied, respondent No. 4 filed appeal before the Commissioner, Ferozepur Division, who accepted the same, setting aside the abovesaid order dated 3.2.2005 (Annexure P-3) and appointed respondent No.4 as Lambardar vide order dated 19.12.2006 (Annexure P-4). On the revision filed by the petitioner before the Financial Commissioner, he remanded the case to the Collector without recording any cogent findings in his order dated 23.4.2008 (Annexure P-5).

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Order dated 23.4.2008 was challenged by respondent No.4 before this Court by way of CWP No. 14844 of 2008, which was allowed, vide order dated 13.7.2010, remanding the case to the Financial Commissioner to decide the matter afresh, in accordance with law. In compliance of the order dated 13.7.2010 (Annexure P-6) passed by this Court, Financial Commissioner, Punjab, passed the impugned order dated 3.9.2013 (Annexure P-7), dismissing the revision petition filed by the petitioner, thereby appointing respondent No.4 as Harijan Lambardar.

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 since the orders passed by the Commissioner as well as Financial Commissioner, having been found based on sound reasons, are not suffering from any patent illegality, the same deserve to be upheld. The writ petition is liable to be dismissed, for the following more than one reasons.

A bare reading of the order passed by the District Collector, appointing petitioner as Harijan Lambardar, would make it crystal clear that petitioner was appointed solely on his hereditary claim. It is not in dispute that hereditary claim was no more available. Considering this material aspect of the matter, it is unhesitatingly held that the Commissioner was well within his jurisdiction to set aside the order passed by the District Collector, because it was suffering from patent illegality. In such a situation, the Commissioner was justified on facts as well as in law to appoint respondent No.4 as Harijan Lambardar.

The Commissioner recorded cogent findings before passing the impugned order (Annexure P-4), which have been found based on sound

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reasons. The relevant operative part of the impugned order passed by the Commissioner, which is available at page 38 of the paper book, reads as under:-

“I have considered the arguments advanced by the learned counsel for the parties and have perused the impugned order. A perusal of the lower court record shows that the name of the appellant has been recommended by the lower revenue officers for the post of Harijan Lambardar. He has studied up to 9th class and a detailed marks certificate of 10th class at page 151 of the file shows that he had obtained a re-appear in the 10th class and according to the photocopy of middle standard certificate at page 149 of the file shows that his date of birth is 1.5.1967, whereas there is no proof on the file pertaining to the education of the respondent and his age but the respondent had simply stated before the learned lower court that he had studied up to 3rd standard. The lower revenue officials have also not made any Naqsha Lambardari. The present respondent has also not controverted the point of more land of the appellant nor the respondent has stated pertaining to his land holding before the lower revenue officers or before me. It means that the respondent does not own land in the village. The appellant is 9th pass and his name has been recommended by the lower revenue officers. He also owns land in the village. His better education makes him a more able person to help the villagers and to assist the Government. It is not understood how the Distt. Collector arrived at a conclusion that the present respondent is younger in age though there is no documentary proof in this regard nor the present respondent had mentioned in his application or before the revenue officers pertaining to his age. As regards hereditary claim of the respondent is concerned,

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the other merits go in favour of the present appellant and due to this reason, he was appointed earlier as Harijan Lambardar of the village by the Distt. Collector though in appeal filed by the respondent, the order of the Distt. Collector was set aside by the then Commissioner. But while considering the merits of all candidates, the merits of the present appellant have not been touched by the District Collector, vide impugned order. It an educated person was available then there was no need to appoint an illiterate person. In this case, it has happened. The appellant is definitely a more able and better candidate for the post of Lambardar. For the reasons, recorded above, I accept the appeal, set aside the impugned order and appoint the appellant as Harijan Lambardar of village Maan Singh Wala, Tehsil and District Muktsar.”

The matter was reconsidered by the Financial Commissioner, who also found respondent No.4 as most suitable candidate for the post of Harijan Lamabardar. He was found having clear edge over the petitioner. Respondent No.4 had studied up to 9th class, whereas the petitioner was hardly a literate person. In addition to this, candidature of respondent No.4 was recommended by all the lower revenue authorities. Since these relevant aspects of the matter were altogether ignored by District Collector, while passing his order appointing the petitioner as Harijan Lambardar, it was rightly set aside by the Commissioner and the Financial Commissioner rightly upheld the order passed by the Commissioner. Having said that, this Court feels no hesitation to conclude that since the petitioner had no better claim than respondent No.4, no fault can be found with the impugned orders and the same deserve to be upheld, for this reason also.

No doubt, choice of the District Collector, in the matters of

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appointment of Lambardar, is not to be upset lightly by the higher revenue authorities. However, it is equally true that as and when the order passed by the Collector, as in the present case, is found suffering from patent illegality, the higher revenue authorities would be well justified in setting aside the order passed by the District Collector. That is what has been done by the Commissioner as well as Financial Commissioner in the present case. Further, no prejudice of any kind whatsoever, has been pointed out by learned counsel for the petitioner, which might have been caused to the petitioner by passing of the impugned orders, warranting interference at the hands of this Court, while exercising its writ jurisdiction under Articles 226/227 of the Constitution of India.

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

16.11.2016
Ak Sharma

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