IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.11506 of 2015
Date of decision: 16.11.2016

Sunil Kumar

... Petitioner

Vs.

Financial Commissioner (Revenue), Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. S.K. Aneja, Advocate
for the petitioner.

Mr. Rupam Aggarwal, DAG, Punjab.

Mr. Anurag Chopra, Advocate
for respondent No.4.

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RAMESHWAR SINGH MALIK, J. (ORAL)

Present writ petition is directed against the revisional order dated 20.01.2015 (Annexure P-6) passed by Financial Commissioner (Revenue), Punjab, whereby the revision petition filed by the petitioner was dismissed and the order dated 22.10.2014 (Annexure P-4) passed by Commissioner, Ferozepur Division, Ferozepur as well as order dated 30.01.2014 (Annexure P-3) passed by District Collector, Fazilka, appointing respondent No.4 as Lambardar, were upheld.

Notice of motion was issued and in compliance thereof, reply by way of short affidavit dated 20.11.2015 was filed on behalf of respondents No.1

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to 3. Respondent No.4 filed his separate written statement in the Court today, which was permitted to be placed on record and copy thereof was supplied to learned counsel for the petitioner.

Heard learned counsel for the parties.

Brief facts of the case are that one post of Lambardar of general category fell vacant in the village of the parties, due to death of late Sh. Kishan Dass @ Suraj Mal on 03.08.2011. Process for filling up this post of Lambardar was initiated. As many as 19 candidates applied, whose particulars are given in Annexure P-1 passed by Assistant Collector 2nd Grade, Abohar. Name of respondent No.4 was recommended by Assistant Collector 2nd Grade, Abohar vide Annexure P-1, whereas name of the petitioner was recommended by Sub Divisional Magistrate-cum-Assistant Collector 1st Grade, Abohar vide Annexure P-2. District Collector, Fazilka, vide his impugned order dated 30.01.2014 (Annexure P-3), appointed respondent No.4 as Lambardar. Feeling aggrieved, petitioner filed his appeal, which was dismissed by the Commissioner, Ferozepur Division, Ferozepur vide order dated 22.10.2014 (Annexure P-4). Petitioner filed his revision petition (Annexure P-5), which was also dismissed by Financial Commissioner (Revenue), Punjab vide impugned order dated 20.01.2015 (Annexure P-6). Hence, the present writ petition.

A bare reading of the impugned order passed by District Collector, Fazilka would make it crystal clear that respondent No.4 made a factually incorrect and misleading statement that he had the knowledge of the working of Lambardar. This factually incorrect and misleading statement made by respondent No.4 was straightway accepted by the District Collector, Fazilka,

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without verifying the veracity thereof. The true fact situation was that respondent No.4 had no knowledge of the working of Lambardar.

Similarly, District Collector committed another serious error of law, while ignoring a material fact that respondent No.4 had been doing the business of commission agent, being the sole proprietor of the firm M/s Vijay Kumar Rajesh Kumar, Commission Agents near PS City-II, Abohar. This had been claimed by respondent No.4 himself, while filing a complaint dated 08.04.2013 (Annexure P-15) under Section 138 of Negotiable Instruments Act (for short 'N.I. Act'). Respondent No.4 also claimed in his complaint (Annexure P-15), himself to be resident of Abohar as well as sole proprietor of the abovesaid firm, doing the business of Commission Agents at Abohar. This relevant factor was also not at all discussed or discarded but altogether illegally ignored by District Collector, while appointing respondent No.4 as Lambardar vide impugned order dated 30.01.2014 (Annexure P-3). Since the learned Collector proceeded on a factually incorrect and legally misconceived approach, his order appointing respondent No.4 as Lambardar, was certainly suffering from patent illegality as well as perversity.

During the course of hearing, when confronted with the abovesaid factual aspect of the matter, learned counsel for respondent No.4 had no answer and rightly so, it being a matter of record. Respondent No.4 was, as a matter of fact, not having any knowledge of the working of Lambardar, as wrongly claimed by him before the District Collector, by making a false and misleading statement, which has been so recorded by the District Collector at pages 44-45 of the paper book. In fact, this false and misleading statement made by respondent No.4 was not only recorded but was also subsequently relied upon

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by District Collector, while appointing respondent No.4 as Lambardar.

Once respondent No.4, as per his own saying, was doing the work of commission agent at Abohar, he shall not be available to the residents of the village, as and when his services would be required. Availability of Lambardar to the residents of the village is one of the relevant factor. So far as respondent No.4 is concerned, since he had been doing the business of commission agent at Grain Market, Abohar, he would be an absentee Lambardar.

Referring to the averments taken in para 3 of the written statement, learned counsel for respondent No.4 has tried to point out that respondent No.4 was resident of the village. However, the contention raised by learned counsel for respondent No.4 in this regard, has been found wholly misplaced and without any force, which could not be accepted. The documents referred by him in para 3 of the written statement would not advance the case of respondent No.4, in view of his own admission made in the complaint under Section 138 of N.I. Act (Annexure P-15). There cannot be any better evidence than his own admission made by respondent No.4 himself. Having said that, this Court feels no hesitation to conclude that District Collector committed a serious error of law, while passing the impugned order dated 30.01.2014 (Annexure P-3), appointing respondent No.4 as Lambardar and the same cannot be upheld.

Similarly, Commissioner, Ferozepur Division, Ferozepur miserably failed to appreciate both the abovesaid relevant factors, rendering respondent No.4 as not suitable candidate for appointment to the post of Lambardar, while passing his impugned order dated 22.10.2014 (Annexure P-4). The Commissioner could not appreciate the abovesaid relevant factors in the correct perspective, because of which the impugned order passed by him, has been

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found suffering from patent illegality, which cannot be sustained. Similarly, allegation levelled by respondent No.4 against the petitioner that he was not living in the village but at Abohar, has been found without any basis. Bare perusal of the documents at Annexures P-9 to P-14 would make it crystal clear that petitioner has been living in the village.

Merely because the petitioner has a house in Abohar town as well, would itself not make him non-resident of the village. This was the strong reason that petitioner was appointed as Sarbara (acting) Lambardar, after the death of his father late Sh. Kishan Dass, Lambardar. Order dated 10.05.2012 (Annexure P-14), whereby petitioner was appointed as Sarbara Lambardar by the competent authority, clearly goes to show that it was the petitioner who was having the knowledge of actual working of the post of Lambardar. Since the respondent revenue authorities have illegally treated the case other way round, accepting the factually wrong statement made by respondent No.4 that he was having the knowledge of the working of Lambardar, impugned orders have resulted in miscarriage of justice and the same cannot be upheld.

So far as the impugned order passed by Financial Commissioner is concerned, he failed to record any finding of his own and upheld the orders passed by the Collector as well as Commissioner, without discussing any of the abovesaid relevant factors. In fact, the impugned order passed by Financial Commissioner has been found a totally non-speaking and cryptic order, which cannot be sustained.

It is true that choice of District Collector, in the matters of appointment of Lambardar, is not to be interfered with lightly. However, it is equally true that this is not the absolute rule. As and when any order passed by

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District Collector is found suffering from patent illegality and perversity, as in the present case, the higher revenue authorities would be well within their jurisdiction to upset such a patently illegal order. Since the Commissioner as well as Financial Commissioner have failed to exercise the jurisdiction vested in them, for setting aside the patently illegal order passed by District Collector, all the three impugned orders passed by the respondent revenue authorities are patently illegal and the same cannot be upheld.

The abovesaid view taken by this Court also finds support from three judgments of this Court in **Sat Pal Vs. Financial Commissioner, Appeals, Punjab, 2007 (4) RCR (Civil) 405 (DB), Neeraj Kumar Vs. State of Haryana and others, 2013 (2) LAR 526 (DB)** and **Hakam Singh Vs. Financial Commissioner (Revenue), Punjab and others, 2016 (4) RCR (Civil) 335.**

Coming to the merits of the petitioner, he was younger in age by 10 years than respondent No.4. Petitioner was better educated than respondent No.4. He was having 22 acres of land, whereas respondent No.4 was having 6 acres of land. Petitioner was not suffering from any disqualification. In addition to the above, petitioner was having working experience to his credit, as he was appointed a Sarbara Lambardar, by the competent authority vide order (Annexure P-14) and he, as a matter of fact, performed the duties of Lambardar, without there being any complaint from any quarters.

Although petitioner would not be entitled for any hereditary claim nor it is being granted to him, yet his working experience on the post of Lambardar goes to his credit. When all the relevant factors noticed hereinabove, considered together, it would become crystal clear that petitioner was having a

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clear edge on respondent No.4. However, since the respondent revenue authorities failed to appreciate all the relevant factors in the correct perspective, while passing their respective impugned orders, the same cannot be sustained, for this reason also.

No other argument was raised nor any contrary judgment was brought to the notice of this Court.

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 orders have been found suffering from patent illegality, the same cannot be sustained. Accordingly, the impugned orders are hereby set aside. There being no other contesting candidate before this Court, District Collector, Fazilka-respondent No.3 is directed to appoint the petitioner as Lambardar, at an early date and in any case within a period of one month from the date of receipt of certified copy of this order.

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

[RAMESHWAR SINGH MALIK]
JUDGE

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Whether speaking/reasoned Yes/No

Whether reportable Yes/No

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