

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.1333 of 2016
Date of decision: 04.10.2016

Joginder Singh

... Petitioner

Vs.

Financial Commissioner (Revenue), Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Tarun Dhingra, Advocate
for the petitioner.

Mr. R.K. Doon, AAG, Haryana.

Mr. B.S. Dhull, Advocate
for respondent No.4.

RAMESHWAR SINGH MALIK, J. (ORAL)

Present writ petition is directed against the order dated 16.07.2015 (Annexure P-3) passed by the Financial Commissioner (Revenue), Haryana, whereby in the appeal filed by respondent No.4, the case was remanded to the Collector to decide it afresh, on merits.

Notice of motion was issued and in compliance thereof, learned counsel for the State as well as learned counsel for respondent No.4 put appearance, however, no written statement has been filed.

Heard learned counsel for the parties.

It is not in dispute that respondent No.4 was appointed as Lambardar by the Collector vide his order dated 11.04.2012 (Annexure P-1). Feeling

aggrieved, petitioner filed his appeal, which was allowed by the Commissioner, Ambala Division, Ambala vide his order dated 15.01.2013 (Annexure P-2), setting aside the abovesaid order passed by District Collector. Order passed by the Commissioner was challenged by respondent No.4 before the Financial Commissioner, who allowed the appeal of respondent No.4, vide his order dated 16.07.2015 (Annexure P-3). Financial Commissioner, instead of deciding the matter on merits finally, remanded the case back to the Collector for fresh decision on merits. Hence this writ petition.

Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that keeping in view the peculiar facts and circumstances of the case, present writ petition deserves to be allowed, for the following more than one reasons.

So far as age and qualification of the petitioner is concerned, it was not in dispute. He was not only eligible but was well qualified to be appointed as Lambardar. So far as educational qualification is concerned, respondent No.4 was 10th pass, whereas petitioner studied upto 9th class. Petitioner was 51 years of age, whereas respondent No.4 was 33 years of age. However, the material and patent illegality in the order passed by the Collector was that he neither discussed nor discarded but altogether illegally ignored the working experience of the petitioner. Petitioner had worked as Sarbarha Lambardar for a period of 10 years and that too without any complaint from any quarter. It would show that the petitioner was well versed with the working and nature of duties of Lambardar.

In addition to the above, Naib Tehsildar, Ladwa as well as Sub

Divisional Officer (Civil), Thanesar recommended the name of the petitioner for appointment to the post of Lambardar. Sub Divisional Officer (Civil), Thanesar with a view to support his order in favour of the petitioner, placed reliance on letter No.89-R-2-2010/1448 dated 15.02.2010 issued by the Department of Revenue and Disaster Management through Financial Commissioner and Principal Secretary of Govt. of Haryana, to give preference to the experience gained by any candidate, while working as Sarbarha Lambardar.

Since all the abovesaid relevant factors were not at all discussed by the District Collector, while appointing respondent No.4 as Lambardar vide his order dated 11.04.2012 (Annexure P-1), the same was suffering from patent illegality and perversity. In such a situation, Divisional Commissioner was well within his jurisdiction to set aside the order passed by District Collector and petitioner was rightly ordered to be appointed as Lambardar.

However, Financial Commissioner fell in serious error of law, while setting aside the abovesaid well reasoned order passed by the Divisional Commissioner. Present case was not a fit case for remanding the matter back to the District Collector for deciding it afresh. The impugned order passed by the Financial Commissioner would amount imposing another avoidable round of litigation on the parties. Having said that, this Court feels no hesitation to conclude that it was the petitioner who was having clear edge on respondent No.4 and was rightly appointed as Lambardar by the Divisional Commissioner, vide his order dated 15.01.2013 (Annexure P-2), which deserves to be restored.

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 the impugned order passed by the Financial Commissioner has been found suffering from patent illegality and the same is accordingly set aside. The writ petition deserves to be accepted. Order dated 15.01.2013 (Annexure P-2) passed by the Commissioner, appointing the petitioner as Lambardar is upheld and restored.

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

04.10.2016

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[RAMESHWAR SINGH MALIK]
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No