

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

CWP No.13403 of 2016
Date of Decision : 22.9.2016

Lachman SinghPetitioner
Vs.
State of Punjab and othersRespondents
...

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK
...

Present : Mr. Jatinder Singla, Advocate , for the petitioner.
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RAMESHWAR SINGH MALIK, J

Feeling aggrieved against the impugned order dated 7.12.2015 (Annexure P-4) passed by the Financial Commissioner, whereby the revision petition filed by respondent no.5 was allowed, upholding the order of the District Collector, appointing respondent no.5 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 order dated 7.12.2015.

Heard learned counsel for the petitioner.

It is a matter of record that the petitioner is illiterate, whereas respondent no.5 was 12th class pass candidate for the post of Lambardar. Petitioner is more than 60 years of age, whereas respondent no.5 is about 35 years of age. Considering all the relevant factors, including the comparative merits of both the candidates, District Collector came to a definite conclusion that respondent no.5 was having a clear edge on the petitioner. Accordingly, the District Collector vide his order dated 9.6.2010 (Annexure P-2) appointed respondent no.5 as Harijan Lambardar. Petitioner

challenged the said order by way of an appeal before the Divisional Commissioner, Patiala Division, Patiala, who, while acting without jurisdiction, accepted the appeal of the petitioner, vide order dated 27.12.2011 (Annexure P-3).

The Commissioner did not record that the order passed by the District Collector was suffering from any patent illegality or perversity, which was sine qua non for accepting the appeal of the petitioner against the order of the District Collector. However, the said order passed by the Divisional Commissioner was rightly set aside by the Financial Commissioner, while passing the impugned order dated 7.12.2015 (Annexure P-4), whereby revision petition filed by respondent no.5 was rightly allowed. The order passed by the Divisional Commissioner was set aside and the order passed by the District Collector, appointing respondent no.5 was restored.

A bare reading of all the three orders passed by the District Collector, Divisional Commissioner and the Financial Commissioner, makes it crystal clear that the learned District Collector was well within his jurisdiction, while appointing respondent no.5 as Lambardar. Since the order passed by the District Collector was not suffering from any patent illegality or perversity, Divisional Commissioner could not have exercised his jurisdiction, setting aside the order passed by the District Collector, without recording a cogent finding that the choice of District Collector in appointing respondent no.5 as Lambardar, was suffering from patent illegality or perversity. Having said that, this court feels no hesitation to conclude that the Financial Commissioner committed no error of law, while passing the impugned order and the same deserves to be upheld.

Two judgements of this court in **Ajay Kumar @ Mange Ram Vs. Financial Commissioner, Haryana and others**, 2011(2) LAR 531, as well as order passed on 31.8.2016 in CWP No.11107 of 2015 (**Ishwar Singh Vs. State of Haryana and others**), relied upon by learned counsel, have not been found of any help to the petitioner, both these judgements being distinguishable on facts. The two specific and strong relevant factors, which go against the petitioner are that he is more than 60 years of age, whereas respondent no.5 is about 35 years of age. On this issue, judgement of the Hon'ble Supreme Court in **Mahavir Singh Vs. Khiali Ram and others**, 2009(1) RCR (Civil) 757, proves to be a clincher against the petitioner.

Secondly, it is also not in dispute that petitioner is illiterate, whereas respondent no.5 was 12th class pass. No doubt, no educational qualification, as such, is the requirement for appointment to the post of Lambardar, yet the educational qualification acquired by respondent no.5, would certainly go in his favour. Further, during the course of hearing, learned counsel for the petitioner could not point out any disqualification in the candidature of respondent no.5. No prejudice of any kind, whatsoever, has been pointed out which might have been caused to the petitioner, while passing the impugned order, warranting interference at the hands of this court, exercising its writ jurisdiction under Articles 226/227 of the Constitution of India.

Another contention raised by learned counsel for the petitioner that name of the petitioner was recommended by the Sub Divisional Officer (Civil) and also that he was having some working experience to his credit were not properly appreciated by the Collector as well as the Financial

Commissioner, has been duly considered, but found wholly misplaced. It is so said, because recommendation made by the Sub Divisional Officer (Civil) was not binding on the Collector. District Collector is the appointing authority. Working experience is not one of the consideration for appointment to the post of Lambardar, as per the relevant provisions of law. Once the age was not on the side of the petitioner and he was also totally illiterate, District Collector committed no error of law, while appointing respondent no.5 as Lambardar, because he was rightly found having clear edge on the petitioner. Under these circumstances, it can be safely concluded that the impugned order passed by the Financial Commissioner deserves to be upheld, for this reason also.

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 dated 7.12.2015 (Annexure P-4) passed by the Financial Commissioner is not suffering from any patent illegality, the same deserves to be upheld. The writ petition having been found wholly misconceived, bereft of merit and without any substance, must fail. No case for interference has been made out.

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

22.9.2016
GS

(RAMESHWAR SINGH MALIK)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No

