HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT CHANDIGARH

CWP No.14282 of 2016
Date of decision:21.7.2016

Ajit Singh

...Petitioner

Versus

Financial Commissioner, Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

1. To be referred to the Reporters or not ?
2. Whether the judgment should be reported in the Digest ?

Present: Mr.B.S.Bhinder, Advocate for the petitioner.

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RAMESHWAR SINGH MALIK, J. (Oral)

Present writ petition is directed against the order dated 18.12.2015 (Annexure P-1), passed by the Financial Commissioner, Punjab, whereby the order dated 19.1.2015 passed by the Commissioner, Jalandhar Division, Jalandhar was upheld, appointing respondent No.2 as Lambardar.

Learned counsel for the petitioner submits that petitioner was appointed as Lambardar by District Collector vide his order dated 14.3.2012 (Annexure P-3). He further submits that since the order passed by the District Collector was based on true facts and was also in consonance with the settled principles of law, Commissioner, Jalandhar Division as well as Financial Commissioner have exceeded their jurisdiction, while setting aside the order passed by the District Collector. In support of his contentions, he places reliance on the judgments of this Court in **Phool Kumar Vs. State of Haryana, 2010 (2) RCR (Civil) 819 and Harjinder Pal Vs. Financial Commissioner Corporation, Punjab and others, 2013**

(3) RCR (Civil) 835. He prays for setting aside the impugned orders, by allowing the instant writ petition.

Having heard the learned counsel for the petitioner at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the contentions raised, this Court is of the considered opinion that since the orders passed by the Commissioner as well as Financial Commissioner do not suffer from any patent illegality or perversity, the same deserve to be upheld and the present writ petition having been found bereft of any merit, is liable to be dismissed.

It has gone undisputed on record that all the revenue authorities, i.e. Naib Tehsildar, Tehsildar as well as SDM Dasuya recommended the name of respondent No.2 for appointment to the post of Lambardar. Although recommendations made by the lower revenue officer would not be binding on the Collector in the cases of appointment of Lambardar, yet such recommendations will certainly carry some weight and cannot be outrightly rejected particularly when the candidate, in whose favour recommendations have been made, does not suffer from any ineligibility and was otherwise fit for appointing as Lambardar.

In the present case, respondent No.2 was better educated than the petitioner. Petitioner was having Higher Secondary Certificate to his credit, whereas respondent No.2 was a Graduate. Similarly, respondent No.2 was owner of more land than the petitioner. So far as the alleged popularity or credibility of both petitioner and respondent No.2 is concerned, respondent No.2 was enjoying a clean record and clear edge over petitioner. He had been Sarpanch of the Village. He also remained member of the Gram Panchayat and currently his wife is Member

Panchayat. Thus, it cannot be accepted that respondent No.2 was not enjoying any popularity in the village. In fact, popularity alone cannot be the sole determinative factor for appointment to the post of Lambardar, particularly when a candidate is otherwise found fit in all respects.

Commissioner as well as Financial Commissioner have recorded concurrent findings of fact and their impugned orders have not been found suffering from any patent illegality or perversity, because of which, the impugned orders deserve to be upheld. The relevant observations made by the Commissioner, discussing all the relevant factors, which deserve to be noticed here, read as under:-

> *"I have considered deeply the arguments put forth before me by the counsel for the contesting parties and have also carefully gone through the record and have assessed the comparative merits of the appellants and the respondent as borne out from the record. I am of the considered view that the appellant/Makhan Singh has a clear edge over the other appellant/Dharminder Singh and the respondent/Ajit Singh. I could not see any reasonable or logical ground to prefer the respondent. Ajit Singh and to discard the claim of appellant/Makhan Singh. Makhan Singh is better educated than others. He had been the Sarpanch of the village Talwandi Dadian and has also remained Member of the Village Panchayat and currently his wife is the Member Panchayat. The appellant Makhan Singh has a clean slate. He is the permanent resident of the village and is*

> *available to the villagers throughout day and night. His name was recommended unanimously by all the lower Revenue Officers i.e. the Naib Tehsildar, Tanda, the Tehsildar, Dasuya, and the S.D.M. Dasuya. Though such recommendations are not binding on the District Collector who is required to make his own independent choice. But at the same time, it cannot be denied that such recommendations do play a pivotal role in the selection of most suitable and eligible candidate for appointment as Lambardar of the village. As per the facts available on the record, Dharminder Singh, appellant, holds 15K-10M land, Makhan Singh holds 48K-19M land and Ajit Singh respondent holds 37K-17M land in the estate. Similarly, Dharminder Singh, appellant, is Matric pass, Makhan Singh appellant is B.A. pass and Ajit Singh, respondent, is Higher Secondary Part-II. Therefore, both in the ownership of land and also in the education, appellant Makhan Singh scores over Dharminder Singh, appellant and Ajit Singh, respondent."*

The above-said order was challenged by the petitioner before the Financial Commissioner who again considered all the relevant factors before passing the impugned order (Annexure P-1). Learned counsel for the petitioner could not substantiate any of his arguments so as to enable this Court to interfere in the findings of fact, recorded by both the senior revenue authorities.

So far as the above-said judgments, relied upon by the learned counsel for the petitioner, are concerned, there is no dispute about the observations made by this Court. However, on close perusal of the cited judgments, none of them has been found of any help to the petitioner, both being distinguishable on facts. It is the settled principle of law that peculiar facts of each case are to be examined, considered and appreciated first, before applying any codified or judgemade law thereto. Sometimes, difference of even one circumstance or additional fact can make the world of difference, as held by the Hon'ble Supreme Court in **Padmasundra (Dead) Vs. State of Tamil Nadu and others, 2002 (3) SCC 533.**

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 passed by the Commissioner as well as Financial Commissioner have not been found suffering from any patent illegality or perversity, the 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 above-said observations made, the present petition stands dismissed, however, with no order as to costs.

21.7.2016 **(RAMESHWAR SINGH MALIK)**
mks **JUDGE**