

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT  
CHANDIGARH**

**CWP No.14288 of 2016  
Date of decision:21.7.2016**

Amrik Singh

...Petitioner

**Versus**

Financial Commissioner Revenue, 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.Gaurav Chopra, Advocate for the petitioner.

**RAMESHWAR SINGH MALIK, J. (Oral)**

Feeling aggrieved against the impugned order dated 15.1.2016 passed by the Financial Commissioner, Punjab (Annexure P-3), whereby order dated 20.8.2014 passed by the Commissioner, Patiala Division (Annexure P-2) and order dated 31.1.2014 passed by the District Collector (Annexure P-1), appointing respondent No.2 as Lambardar, were upheld, dismissing the revision petition of the petitioner, he 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.

While placing reliance on a judgment of the Hon'ble Supreme Court in **Mahavir Singh Vs. Khiali Ram and others, 2009 (3) SCC 439** and a judgment of this Court in **Satpal Vs. State of Punjab and others, 2013 (3) RCR (Civil) 251**, he submits that since the petitioner was younger in age, the respondent authorities ought to have given preference to the

petitioner in the matter of appointment as Lambardar. He also refers to Annexure P-4 to contend that a case was pending between respondent No.2 and Darbara Singh etc. defendants, because of which he should not have been appointed as Lambardar. He concluded by submitting that since the revenue authorities have not properly considered pendency of case between respondent No.2 and his brother Darbara Singh vide Annexure P-4 as well as age of the petitioner in proper perspective, the impugned orders have resulted in miscarriage of justice. He prays for setting aside the impugned orders, by allowing the present 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 all the three revenue authorities committed no error of law, while passing their respective impugned orders and the same deserve to be upheld. The writ petition being totally bereft of merit, is liable to be dismissed, for the following more than one reasons.

A bare combined reading of all the three impugned orders passed by the District Collector, Commissioner as well as Financial Commissioner, would show that they have recorded their concurrent findings, after duly considering the comparative merits of all the candidates. It is a matter of record that respondent No.2 is more qualified than the petitioner. The argument raised by the learned counsel for the petitioner about pendency of a civil suit, at the instance of respondent No.2, has been found wholly misplaced, because it was a suit for injunction which cannot be treated pendency of any case against respondent No.2, as he himself was the plaintiff in said case.

Further pendency of case would always mean any criminal case involving moral turpitude which may embarrass said person, while performing his duty as Lambardar. Pendency of a civil suit against or at the instance of a candidate for the post of Lambardar, as in the present case, would be of no consequence. It is true that if any case is found against such candidate, involving moral turpitude and causing stigma on his character, which would embarrass him in performance of his duty as Lambardar, he can be denied the appointment as Lambardar under such circumstances. However, such is not the fact situation in the instant case.

In the present case, as noticed hereinabove, there was no such allegation against respondent No.2. Pendency of a civil suit filed by respondent No.2 himself would be of no consequence and he cannot be denied appointment to the post of Lambardar, because of filing of civil suit for injunction at his instance. It is so said because pendency of civil suit neither causes any stigma nor it would be treated as disqualification about his candidature for the post of Lambardar. In fact, learned counsel for the petitioner has failed to substantiate any of his arguments.

So far as the above-said judgments, relied upon by the learned counsel for the petitioner, are concerned, there is no dispute about the law laid down and observations made by the Hon'ble Supreme Court as well as 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.**

The issue regarding age was raised for consideration before the Hon'ble Supreme Court, at the instance of a candidate for the post of Lambardar who was aged 36 years, challenging the appointment of Lambardar of a person who was aged 62 years in **Mahavir Singh's** case (supra). Further, **Mahavir Singh** aged 36 years was appointed by the Collector and his appointment was set aside by a Division Bench of this Court, by allowing the writ petition of Khiali Ram. It was also alleged by **Mahavir Singh** that Khiali Ram was guilty of encroachment of Panchayat land and he was being proceeded against under Section 7 of Punjab Village Common Lands (Regulation) Act, 1961. In this view of the matter, the judgment of the Hon'ble Supreme Court in **Mahavir Singh's** case (supra) goes in favour of respondent No.2 and against the petitioner.

Similarly, in **Satpal's** case (supra), the orders passed by the revenue authorities were found by this Court to be non-speaking orders. Satpal was a Graduate, whereas the appointed candidate Banarassi Dass was only 10<sup>th</sup> class pass. When the matter came up for consideration before this Court, the above-said Banarassi Dass was about 69 years of age, whereas Satpal petitioner was about 52 years of age. Moreover, Banarassi Dass was facing a charge of illegal encroachment made by him on public path, besides an FIR had been lodged against him. In spite of these serious allegations against said Banarsi Dass, he was still appointed as Lambardar by the Collector by passing non-speaking and cryptic order. The orders passed by the Commissioner and Financial Commissioner were also found to be non-speaking orders and the same were set aside by this Court, in

those peculiar facts and circumstances of the case.

Reverting to the facts of the case in hand, the fact situation is entirely different as noticed hereinabove. It is the settled proposition of law that choice of the Collector in the matters of appointment of Lambardar will not be disturbed by the higher revenue authorities, until and unless the order passed by the Collector has been found suffering from patent illegality or perversity. In the instant case, learned counsel for the petitioner has miserably failed to point out any patent illegality or perversity in either of the three impugned orders passed by the District Collector, Commissioner as well as Financial Commissioner. In fact, all the three revenue authorities have recorded their concurrent findings of fact, which are based on true fact situation obtaining in the case and the impugned orders have also been passed in consonance with the settled principles of law, referred to hereinabove.

No doubt, age is one of the relevant considerations in the matters of appointment of Lambardar. However, age alone cannot be said to be the sole determinative factor. Respondent No.2 in the present case was only 60 years old. He was found enjoying good health. He was a social worker. He was not found indulging in any party politics. Respectables of the village recommended his name. Assistant Collector 1<sup>st</sup> Grade also recommended the name of respondent No.2. His son was also found serving in the Indian Army. Admittedly, he was better educated than the petitioner. He was owning land measuring 1 Bigha 16 Biswa, although it was no more the requirement of law.

All these relevant factors put together and considered from any angle, would certainly show that respondent No.2 was having a clear edge

on the petitioner. Having said that, this Court feels no hesitation to conclude that respondent No.2 was rightly found a better candidate than the petitioner and was accordingly appointed as Lambardar by the District Collector vide his order Annexure P-1. His appointment was rightly upheld by the Commissioner as well as Financial Commissioner vide their respective impugned orders Annexure P-2 and P-3, thus, all the three impugned orders deserve to be upheld for the reasons recorded above.

The relevant observations made by the Commissioner, Patiala Division in his impugned order dated 20.8.2014 deserve to be noticed here and the same read as under:-

*“I have heard both the parties and have also gone through the record placed on file. The perusal of the record placed on file reveals that the respondent being more suitable person has been appointed as lambardar of the village. The respondent is permanent resident of the village, is a mature person of 60 years of age, has studied upto 10<sup>th</sup> class, owns 1 Bigha 16 biswas land in the village, is not involved with any political party, having good reputation and always remains present in the village for whole day and his son is serving in the Army. Moreover, the AC Ist Gr. (SDM) Amloh had recommended his candidature for appointment as lambardar and most of the villagers have deposed in his favour. The respondent has studied upto 10<sup>th</sup> class whereas the appellant has only studied upto 7<sup>th</sup> class. The appellant has failed to prove anything adverse against the respondent and has also failed to prove himself more meritorious candidate than the*

*respondent. It is a settled law that the choice of the Distt. Collector need not be disturbed unless it suffers from patent discrepancy. In the present case, after considering the facts available on record, the District Collector, in my opinion has rightly appointed the respondent as lambardar of the village. The present appeal filed in this case has no merits and the same is hereby **dismissed**.*”

Financial Commissioner also committed no error of law, while passing the impugned order dated 15.1.2016 Annexure P-3, upholding the above-said orders passed by the District Collector as well as Commissioner. Neither the impugned orders have been found suffering from any patent illegality or perversity nor any prejudice has been shown to have been caused to the petitioner. In this view of the matter, it can be safely concluded that the impugned orders deserve to be upheld.

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 orders are based on true facts of the case and also found having been passed in consonance with the settled principles of law, the same deserve to be upheld. The instant writ petition has been found 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 writ petition stands dismissed, however, with no order as to costs.

**21.7.2016**  
**mks**

**(RAMESHWAR SINGH MALIK)**  
**JUDGE**