

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.14725 of 2016
Date of decision: 26.07.2016

Kuldeep Singh

... Petitioner

Vs.

Financial Commissioner (Revenue), Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. N.P.S. Mann, Advocate
for the petitioner.

RAMESHWAR SINGH MALIK, J. (ORAL)

Present writ petition is directed against the order dated 28.04.2016 (Annexure P-5) passed by the Financial Commissioner, Punjab, whereby the appeal of respondent No.4 was allowed, setting aside the order dated 26.02.2016 (Annexure P-4) passed by Commissioner, Roopnagar Division, Roopnagar and restoring the order dated 15.09.2015 (Annexure P-3) passed by District Collector, SAS Nagar, appointing respondent No.4 as Lambardar.

Learned counsel for the petitioner submits that District Collector failed to appreciate the comparative merits of both the candidates in correct perspective. The illegality committed by the Collector was rightly set right by the Commissioner, Roopnagar Division, Roopnagar, while passing his order dated 26.02.2016 (Annexure P-4), but the Financial Commissioner illegally set aside the order passed by the Commissioner vide his impugned order dated 28.04.2016 (Annexure P-5). He further submits that petitioner is the son of deceased

Lambardar and was having hereditary claim to the post of Lambardar. Respondent No.4 was found involved in a criminal case. Although charge against respondent No.4 was compounded on account of an amicable settlement, yet that fact alone will not completely absolve respondent No.4 and his involvement in the criminal case still reflects against his conduct. Since District Collector as well as Financial Commissioner did not consider this aspect properly, the impugned orders passed by the District Collector as well as Financial Commissioner were patently illegal and the same are liable to be set aside. 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 the District Collector as well as Financial Commissioner have recorded cogent findings which have been duly supported by sound reasons. In fact, the Commissioner, Roopnagar Division, Roopnagar exceeded his jurisdiction, while passing the order dated 26.02.2016 (Annexure P-4), observing that respondent No.4 was involved in a criminal case. He altogether ignored the material fact that the said case had already resulted in disposal and that too based on an amicable settlement between the parties. In this view of the matter, the impugned order passed by the Financial Commissioner deserves to be upheld. Writ petition having been found without any merit, is liable to be dismissed.

It is a matter of record that FIR No.3 dated 11.01.2006 was registered against respondent No.4. However, it is also true that said criminal case was settled before the Lok Adalat vide order dated 19.12.2009, much before passing of the order by District Collector. Once the matter has been amicably

settled, respondent No.4 would be entitled to a clean chit in that regard. In fact, respondent No.4 was never tried for the criminal charge levelled against him. In such a situation, the fact of abovesaid FIR could not have been read against respondent No.4 at the hands of the Commissioner, while passing his abovesaid order (Annexure P-4). Financial Commissioner was well justified to set right the patent illegality committed by the Commissioner and the impugned order passed by Financial Commissioner (Annexure P-5) deserves to be upheld, for this reason also.

So far as the hereditary claim of the petitioner is concerned, same is no more available to him. Regarding qualification and ownership of land, both the candidates were almost at par. Further, no disqualification has been pointed out against respondent No.4 either before District Collector, before the Commissioner, before the Financial Commissioner or even before this Court, which may disentitle him for appointment to the post of Lambardar.

It is the settled proposition of law that the choice of Collector in the matters of appointment of Lambardar is not liable to be upset by the higher revenue authorities until and unless the order passed by the Collector is found suffering from patent illegality or perversity. No such illegality or perversity has been pointed out in the order passed by the District Collector, because of which the order passed by Commissioner was an order without jurisdiction and it was rightly set aside by the Financial Commissioner, while passing his impugned order (Annexure P-5).

The relevant observations made by the Financial Commissioner in operative part of the order, which deserve to be noticed here, read as under: -

“I have considered the arguments advanced by counsel for both the

parties and gone through the orders of lower courts as well as record placed on the file. It has been found that when the matter was taken up by Ld. District Collector, respondent Kuldeep Singh and another candidate Paramjit Singh did not put their case and a plea was taken by them that their transfer application was pending in the court of Commissioner, though there was no stay order by the Commissioner. The District Collector after hearing the candidates present, appointed the appellant as Lambardar. However, the appointment of the appellant was set aside by the Commissioner through a non speaking order on the grounds that Kuldeep Singh is more meritorious being more educated and having more land and that criminal case was registered against the appellant, whereas the said criminal case had already been dismissed as withdrawn in the Lok Adalat dated 19.12.2009. It is an important and relevant fact that Amrik Singh had been working as Sarbrah Lambardar of Mukhtiar Singh, father of the respondent, who did not prefer his son Kuldeep Singh (respondent No.1) for this post. The appellant, being experienced person, as his grandfather and great grandfather also remained Lambardar, surely has edge over the respondent. The appellant is sufficiently educated to perform the duties of Lambardar and also own sufficient land holding. The respondent had lost the opportunity to put his claim before the District Collector despite having been given opportunity of hearing to him, where he refused to put his arguments. Apart from that the name of the appellant was also recommended by the A.C. II Grade (Naib

Tehsildar) and S.D.M. (AC Ist Grade) for the post. All the above factors go into favour of the appellant, in my view the Collector being appointing authority is best placed to adjudge the relative merits of the candidates and make selection for the post of Lambardar. It is settled law that choice of the Collector should be brushed aside, unless the same suffers from any patent illegality or perversity. In the present case, I do not found any illegality in the detailed order of District Collector, which would have warranted interference by the Commissioner in appeal. Thus, the present appeal is accepted. The order of Commissioner is set aside and order of District Collector. Appointing the appellant as Lambardar is upheld.”

Reading of the abovesaid order passed by the Financial Commissioner would show that comparative merits of both the candidates were again considered and respondent No.4 was rightly found to be more suitable candidate for the post of Lambardar than the petitioner. Choice of the Collector was rightly upheld by the Financial Commissioner by restoring the order dated 15.09.2015 (Annexure P-3). In view of what has been discussed hereinabove, order passed by the Financial Commissioner deserves to be upheld, for the reason as well.

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 orders passed by the District Collector as well as Financial Commissioner (Revenue), Punjab deserve to be upheld. Present writ

petition is misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

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

26.07.2016
vishnu

[RAMESHWAR SINGH MALIK]
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No