HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT CHANDIGARH

CWP No.14815 of 2016
Date of decision:27.7.2016

Kulwant Singh

...Petitioner

Versus

The Financial Commissioner (Appeal-1), Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.Naresh Kumar Manchanda, Advocate,
for the petitioner.

RAMESHWAR SINGH MALIK, J. (Oral)

Feeling aggrieved against the impugned order dated 28.11.2014 (Annexure P-4) passed by the Financial Commissioner, Punjab, whereby order dated 22.2.2012 passed by the Commissioner, Patiala Division, Patiala, was upheld, appointing respondent No.4 as Lambardar, petitioner has approached this Court by way of present writ petition under Articles 226/227 of the Constitution of India.

Learned counsel for the petitioner submits that petitioner was appointed as Lambardar by the District Collector vide his order dated 27.7.2009 (Annexure P-1). However, Commissioner, Patiala Division, Patiala committed a serious error of law, while allowing the appeal of respondent No.4 and appointing him as Lambardar vide impugned order dated 22.2.2012 (Annexure P-2). He also submits that when petitioner filed his appeal before the Financial Commissioner, he also failed to appreciate the true facts of the case, while passing the impugned order dated 28.11.2014 (Annexure P-4), illegally upholding the order passed by the Commissioner. He concluded by submitting that since the Commissioner as well as Financial Commissioner failed to appreciate the true factual as well as legal aspects of the matter, while passing their respective impugned orders, the same are liable to be set aside. 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 Commissioner as well as the Financial Commissioner have recorded concurrent findings of fact, which have been found duly supported by sound reasons, the impugned orders deserve to be upheld. The writ petition, having been found without any merit, is liable to be dismissed, for the following more than one reasons.

A bare reading of the impugned orders passed by the Commissioner as well as Financial Commissioner would show that before recording their cogent findings, they considered and rightly appreciated true facts of the case, in the correct perspective. The concurrent findings have been recorded in both the impugned orders, which do not warrant any interference at the hands of this Court, while exercising its writ jurisdiction under Articles 226/227 of the Constitution of India. Having said that, this Court feels no hesitation to conclude that since neither the impugned order passed by the Commissioner nor the impugned order passed by the Financial Commissioner has been found suffering from any patent illegality or perversity, the same deserve to be upheld.

No doubt, it is the settled proposition of law that choice of the Collector, in the matters of appointment of Lambardar, is not 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. However, it is equally true that in case the Collector passes a patently illegal and perverse order while appointing a candidate as Lambardar, the higher revenue authorities would be well within their jurisdiction to upset such perverse order passed by the District Collector.

Coming to the peculiar fact situation obtaining in the present case, a bare glance at the order passed by the District Collector dated 27.7.2009 (Annexure P-1) would show that although respondent No.4 was recorded as an Ex-serviceman, rendering as long as 19 years' service in the Indian Army and thereafter had worked as sarbarah lambarar for a period of seven years, yet the said material aspect of the matter was neither discussed nor discarded but altogether illegally ignored by the Collector, while passing his order, appointing petitioner as Lambardar.

During the course of hearing, when confronted with the above-said patent illegality in the order passed by the District Collector, learned counsel for the petitioner had no answer and rightly so, it being a matter of record. In fact, District Collector fell in serious error of law, while altogether ignoring the factum of respondent No.4 being an Ex-serviceman and had worked as sarbarah lambardar, because of which he was having a clear edge on the petitioner, both the candidates being almost at par regarding other comparative merits. In such a situation, no fault can be found with the impugned order passed by the Commissioner who rightly set right the patent illegality committed by the Collector, in setting aside the perverse order.

Similarly, the Financial Commissioner was well justified in upholding the order passed by the Commissioner. The relevant observations made by the Financial Commissioner in operative part of his impugned order, which deserve to be noticed here, read as under:-

> *"I have heard the counsel for the parties and gone through the record as well as order of lower courts available on file. The merits of both the candidates are almost equal. Respondent is the son of diseased lambardar and has worked as Sarbrah Lambardar for seven years without any complaint and knows the duties of lambardar very well. He is ex-serviceman and served the nation for more than 19 years in Indian Army. There is numerous judgement of High Court as well as Civil Courts that the ex-serviceman should be preferred while appointing the lambardar Collector has not given any reason in his order as to why respondent ignored for appointment as lambardar. So, Commissioner has rightly accepted the appeal of the respondent and set aside the order of the District Collector."*

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 passed by the Commissioner as well as Financial Commissioner have been found based on cogent findings, the same deserve to be upheld. The instant 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 writ petition stands dismissed, however, with no order as to costs.

27.7.2016 **(RAMESHWAR SINGH MALIK)**
mks **JUDGE**

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No