

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH.

CWP No.14923 of 2016  
Date of Decision : 29.7.2016

Sukhram Singh

.....Petitioner

Vs.

Financial Commissioner, Punjab and others

.....Respondents

...

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

...

Present : Mr. G.S. Nagra, Advocate for the petitioner.

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

RAMESHWAR SINGH MALIK, J

Feeling aggrieved against the impugned order dated 31.3.2016 passed by the Financial Commissioner, Punjab, whereby appeal of Satvir Singh-respondent no.4 was allowed, setting aside the order dated 5.2.2016 (Annexure P-2) passed by the Commissioner, Roop Nagar Division, Roop Nagar and the order dated 14.7.2015 (Annexure P-1) passed by District Collector, SAS Nagar, appointing respondent no.4 as Lambardar was restored, 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.

Learned counsel for the petitioner vehemently contended that petitioner has been non-suited only on the ground of his old age. He

further submits that no doubt the petitioner is more than 66 years of age, yet since he is enjoying good health, age alone should not have been made the sole basis for denying him the appointment to the post of Lambardar. He also submits that petitioner retired from the Government service after rendering 37 years of satisfactory police service to the State and this fact should have been considered in favour of the petitioner. He concluded by submitting that since the Financial Commissioner has failed to appreciate the above said material aspect in the correct perspective, the impugned order has resulted in miscarriage of justice. He prays for setting aside the impugned order, by allowing the present writ petition.

After hearing 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 impugned order passed by the Financial Commissioner has been found based on cogent findings, which have been duly supported by sound reasons, the same 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 order dated 14.7.2015 (Annexure P-1) passed by the District Collector would show that the comparative merits of both the candidates were carefully examined, considered and rightly appreciated, before arriving at a definite conclusion that respondent no.4 was having clear edge on the petitioner. Respondent no.4 was found 10<sup>th</sup> pass, which was sufficient qualification for appointment to the post of Lambardar. He was 37 years old, whereas petitioner was 65 years old at that point of time. No doubt, petitioner has rendered long service in the police

department and has been enjoying good health as well, yet age was certainly not only his side. Respondent no.4 was found working as Granthi in Gurudwara Sahib of the village, because of which he would be available to the residents of the village. No allegation was levelled by the petitioner against the conduct of respondent no.4. Thus, after having a comparative study of all the relevant factors, Collector rightly appointed respondent no.4 as Lambardar, vide his order dated 14.7.2015 (Annexure P-1).

Petitioner challenged the above said order before the Commissioner. First appellate authority i.e. Commissioner exceeded his jurisdiction, while passing a totally non speaking and cryptic order dated 5.2.2016 (Annexure P-2). He recorded that petitioner was more meritorious than respondent no.4 and set aside the above said order passed by the District Collector, even without recording any finding that the order passed by the Collector was suffering from any patent illegality or perversity.

Genuinely, feeling aggrieved, respondent no.4 approached the Financial Commissioner, who, vide impugned order dated 31.3.2015, rightly set aside the above said order passed by the commissioner and the order passed by the District Collector was restored. The Financial Commissioner has again considered all the relevant aspects of the matter before passing the impugned order. The relevant discussion and observations made by the Financial Commissioner in operative part of the impugned order, which deserve to be noticed here, read as under :-

“ I have heard counsel for both the parties and gone through the order of both the lower courts. I tend to agree with the contention of the counsel for the appellant that in the matter of appointment of Lambardar choice of

Collector matters and it should not be interfered with unless it suffers from any patent illegality. In the present case the District Collector after comparing the merits and demerits of the candidates held the appellant to be fit for the post of Lambardar and preferred him over the respondent. The Collector is best placed to adjudge the suitability of the candidates being appointing authority. The fact of the respondent having served the police department was also considered by the District Collector while finalising his choice. The Collector in his order has specifically held that the respondent, though has retired from the Police Deptt., yet being old age would not be able to perform the duties of Lambardar efficiently as compared to the appellant. So far as availability of the appellant to the villagers is concerned, since he is running a Tailoring shop in the village itself and also performing the duties of Granthi in the same village, hence he would be available to the villagers as and when required. Further as has been held by Hon'ble Apex Court, in the matter of appointment of Lambardar the age is a relevant factor, a candidate having the age of 65 years should not be appointed as the first time, if a younger candidate is available. I do not find any illegality in the order of the District Collector, which would have warranted interference of the appellate authority. The order of Collector is detailed and

speaking which discusses all the relative merits of the candidate. However, the Commissioner without pointing out any defect in the choice of Collector, wrongly set aside order of Collector by simply mentioning the respondent as more meritorious. Hence the appeal is accepted, order of Commissioner dated 5.2.2016 is set aside and the order dated 14.7.2015 of District Collector, SAS Nagar is upheld.”

Financial Commissioner was duty bound to follow the law laid down by the Hon'ble Supreme court, to which he has rightly referred, although without mentioning the complete details about the judgement. It is relevant to point out here that the Hon'ble Supreme Court in **Mahavir Singh Vs. Khiali Ram and others**, 2009 (3) SCC 439 held that age of candidate for the post of Lambardar was one of the relevant factors. Facts of the present case are almost identical with **Mahavir Singh's case (supra)**. Mahavir Singh was 36 years old, whereas his opponent Khiali Ram was 62 years old. Almost similar is the difference of age between petitioner and respondent no.4 herein.

Further, it is the settled proposition of law that choice of Collector in the matters of appointment of Lambardars, is not to be set aside lightly by the higher revenue authorities, until and unless the order passed by the Collector is found suffering from patent illegality and perversity. In the present case, the Commissioner, who illegally accepted the appeal of the petitioner, while setting aside the order passed by the Collector, did not record any finding that the order passed by the District Collector was

suffering from any patent illegality or perversity. In fact, the order passed by the District Collector was not suffering from any patent illegality or perversity, because of which it could not be so recorded by the Commissioner, as well. The Financial Commissioner was well within his jurisdiction, while passing the impugned order, rightly following the law laid down by the Hon'ble Supreme Court, because of which the impugned order deserves to be upheld for this 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 since the impugned order passed by the Financial Commissioner has not been found suffering from any patent illegality or perversity, the same deserves to be upheld. The 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, present writ petition stands dismissed, however, with no order as to costs.

29.7.2016  
GS

(RAMESHWAR SINGH MALIK)  
JUDGE

Whether speaking/reasoned  
Whether Reportable

Yes/No  
Yes/No