

Civil Writ Petition No. 16450 of 2016

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**Civil Writ Petition No. 16450 of 2016
Date of Decision: 24.10.2016**

Harjinder Singh

.....Petitioner

Vs.

State of Punjab and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Sumit Jain, Advocate
for the petitioner.

RAMESHWAR SINGH MALIK J. (ORAL)

CM-13657-CWP-2016

Applicant seeks permission to place on record Annexures P-4
and P-5 and also seeks exemption from filing certified copies thereof.

Application is allowed, as prayed for.

CM stands disposed of.

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Present writ petition is directed against the order dated
12.5.2016 (Annexure P-3), passed by the Financial Commissioner, Punjab,
whereby revision petition filed by respondent No.5 was allowed, setting
aside the order dated 29.8.2012 (Annexure P-2), passed by the
Commissioner, Jalandhar Division and restoring the order dated 27.5.2010
(Annexure P-1) passed by the District Collector, Shaheed Bhagat Singh
Nagar, appointing respondent No.5 as Lambardar.

Heard learned counsel for the petitioner.

It is a matter of record that comparative merits of the petitioner

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as well as respondent No.5 were duly considered by the District Collector. Petitioner was 8th class pass whereas respondent No.5 was 5th class pass. Petitioner was 35 years of age whereas respondent No.5 was 39 years of age. Petitioner was owning 12 kanals land whereas respondent No.5 was owning 2 acres of land. In addition to the above, respondent No.5 was also the Director of Cooperative Society of the village. His candidature was recommended by Naib Tehsildar, Banga, as well as Tehsildar Nawanshahr. Candidature of petitioner was recommended by Sub Divisional Magistrate, Nawanshahr. Giving due consideration to all the relevant aspects of the matter, District Collector appointed respondent No.5 as Lamabrdar vide impugned order dated 27.5.2010 (Annexure P-1). Petitioner filed his appeal which came to be accepted by Commissioner, Jalandhar Division, Jalandhar 29.8.2012 (Annexure P-2).

A bare reading of the operative part of the order passed by the Commissioner would show that he has proceeded on a factually incorrect and legally misconceived approach. In the present case, respondent No.5 was nowhere found involved in any FIR. It was a private criminal complaint which also came to be withdrawn by the complainant. Since there was no trial, there was no question of saying that he was acquitted. In fact, respondent No.5 neither faced any criminal trial before he was appointed as Lambardar by Collector vide abovesaid order dated 27.5.2010 (Annexure P-1), nor there was any allegation against him even by the petitioner or other candidates for the post of Lambardar. In such a situation, it can be safely concluded that the Commissioner acted without jurisdiction, while passing the order dated 29.8.2012 (Annexure P-2) and the same was rightly set aside by the Financial Commissioner, vide impugned order dated

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12.5.2016 (Annexure P-3), which deserves to be upheld.

The matter was re-considered by the Financial Commissioner and he recorded cogent findings before passing the impugned order which have been found based on sound reasons. The relevant operative part of the impugned order passed by the Financial Commissioner, which deserve to be noticed here, reads as under:-

“I have considered the arguments raised by counsel for both the parties and gone through the matter carefully. In my view the Collector, being appointing authority is best placed to adjudge the relative merits of the candidates and finalize his choice for the post of Lambardar and it is a settled law that choice of Collector should not be brushed aside unless it suffers from any patent illegality. In the present case the order of Collector appointing the petitioner as Lambardar has been passed after considering the merits of all the candidates present. I do not find any illegality in the choice of Collector which would have warranted interference by the Commissioner. The appointment of the petitioner has been set aside by the Commissioner on the ground of filing of complaint against him, in which the petitioner has admittedly been exonerated, thus, the same cannot be considered as a demerit. The Commissioner in his order has himself stated that there was an allegation of misinformation against Harjinder Singh regarding his age, thus, the order of Commissioner

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is liable to be set aside. The latest FIR No. 52 placed on record of this Court has been filed after the appointment of the petitioner as Lambardar which is still pending, thus, mere pendency of criminal case does not cast any stigma. With these observations the present revision petition is accepted. Order of Commissioner dated 29.08.2012 is hereby set aside and order dated 2.7.2010 of District Collector is upheld.”

A bare reading of the abovesaid order of the Financial Commissioner would show that Financial Commissioner was conscious of the fact that choice of the Collector, in the matter of appointment of Lambardar, is not to be upset lightly by higher revenue authorities, unless order passed by the District Collector is found suffering from any patent illegality or perversity. Since no such illegality or perversity was found in the order passed by the District Collector, Financial Commissioner was well within his jurisdiction to set aside the order passed by the Commissioner (Annexure P-2), while passing the impugned order dated 12.5.2016 (Annexure P-3). Having said that, this Court feels no hesitation to conclude that Financial Commissioner committed no error of law, while passing the impugned order Annexure P-3, which deserves to be upheld, for this reason also.

Another issue which was raised by learned counsel for the petitioner was that respondent No.5 came to be named in FIR No. 52 dated 3.6.2015 under Sections 427/447/511 IPC registered at Police Station Behram. However, it is also a matter of record that respondent No.5 was appointed as Lambardar by District Collector, vide order dated 27.5.2010

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(Annexure P-1). The alleged involvement of respondent No.5, in the abovesaid FIR No. 52 would be of no consequence so far as his appointment as Lambardar is concerned. It is so said because the incident on the basis of which FIR No. 52 dated 3.6.2015 was registered will not relate back when the order dated 27.5.2011 (Annexure P-1) was passed by the District Collector. Further, no prejudice or substantial injustice has been shown which might have been caused to the petitioner by passing of the impugned orders, which may warrant interference at the hands of this Court, while exercising its writ jurisdiction under Articles 226/227 of the Constitution of India.

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

24.10.2016
AK Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

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