

CWP No.18023 of 2015

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

CWP No.18023 of 2015 (O&M)
Date of decision: 30.05.2016

Sukhdev Singh

....Petitioner

Versus

The Financial Commissioner (Appeals), Punjab and others

....Respondents

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH DHALIWAL

- 1) Whether Reporters of the local papers may be allowed to see the judgment ?
- 2) To be referred to the Reporters or not ?
- 3) Whether the judgment should be reported in the Digest ?

Present: - Mr. Sherry K. Singla, Advocate, for the petitioner.

PARAMJEET SINGH DHALIWAL, J.

CM No.6330 of 2016

Instant application under Order 9 Rule 4 read with Section 151 of the Code of Civil Procedure has been filed for restoration of CWP No.18023 of 2015, which has been dismissed for non-prosecution vide order dated 19.05.2016.

After hearing learned counsel for the applicant and for the reasons mentioned in the application, same is allowed. Order dated 19.05.2016 is recalled and writ petition is restored to its original number.

CWP No.18023 of 2015

Instant writ petition has been filed under Articles 226/227 of the Constitution of India for quashing the order dated 26.08.2010 (Annexure P-1) passed by District Collector, Jalandhar, appointing respondent No.4 – Ram Lubaya as Lambardar of Village Shahpur, Tehsil and District

CWP No.18023 of 2015

Jalandhar, order dated 10.12.2013 (Annexure P-2) passed by Commissioner, Jalandhar Division, Jalandhar, whereby appeal filed by the petitioner against the order passed by District Collector has been dismissed and order dated 10.03.2015 (Annexure P-3) passed by Financial Commissioner (Appeals), Punjab, whereby revision petition filed by petitioner has been dismissed.

Brief facts of the case are that to fill up the vacancy caused on account of death of Saro Ram, Lambardar (S.C. Category) of Village Shahpur, Tehsil and District Jalandhar, applications were invited from interested persons by making publication/proclamation in the Village after obtaining necessary sanction from the Collector. After completing formalities, matter came up for consideration before the Collector. The Collector after appreciating the comparative merit of the candidates found respondent No.4 to be fit and suitable candidate and vide impugned order dated 26.08.2010 (Annexure P-1) appointed him as Lambardar of the Village. Petitioner filed an appeal before the Commissioner, Jalandhar Division, Jalandhar. The Commissioner vide order dated 10.12.2013 (Annexure P-2) dismissed the appeal filed by the petitioner. Aggrieved against the order of the Commissioner, petitioner filed revision before the Financial Commissioner, which has been dismissed vide order dated 10.03.2015 (Annexure P-3) and orders of the District Collector and Commissioner have been upheld. Hence, instant writ petition.

I have heard learned counsel for the petitioner and perused the record.

Learned counsel for the petitioner vehemently contended that the orders passed by the revenue authorities are erroneous, perverse and against

CWP No.18023 of 2015

the settled principles of law, thus, not sustainable in the eyes of law. Learned counsel for the petitioner contended that petitioner is more eligible candidate to be appointed as Lambardar as he is an ex-serviceman and served in the Army for 15 years and Air Force for 20 years and thus has rendered 35 years of service to the nation. Respondent No.4 on the other hand, is running a shop in a different Village, therefore, is not a suitable candidate for the post of Lambardar.

I have considered the contentions raised by learned counsel for the petitioner.

The Hon'ble Supreme Court of India in the case of ***Mahavir Singh Vs. Khiali Ram & others, 2009(3) SCC-439, Lila Ram Vs. Asa Ram, 1955 Lahore Law Times-29*** followed by Division Bench of this Court in the case of ***Phool Kumar Vs. State of Haryana and others, 2010 (2) RCR (Civil) 819***, held that the choice of the District Collector cannot be lightly set aside.

In ***Mahavir Singh's*** case (supra) the Hon'ble Supreme Court of India has observed that there should be no interference with the choice made by the Collector in the matter of appointment of Lambardar even if two views are possible. It is only the prerogative of the Collector to compare the merits of the candidates for appointment to the post of Lambardar. Collector has recorded categorical finding that petitioner is 60 years old and was involved in a criminal case, although he has been acquitted in that case. There are allegations that petitioner has encroached upon the panchayat land and constructed *haveli* on the same. Whereas respondent No.4 is a 36 years young person, bears good moral character, takes interest in development

CWP No.18023 of 2015

works and enjoys good reputation, regarding which writing has been given by the Panchayat. There are concurrent findings recorded by all the revenue authorities.

It is also pertinent to mention here that petitioner -Sukhdev Singh was 60 years old and respondent No.4 was 36 years old at the time of filing of application. The petitioner is much older than respondent No.4 and, therefore, a young energetic person is to be preferred for the post of Lambardar. The Hon'ble Supreme Court in ***Mahavir Singh's*** case (supra) has held that age of a candidate is relevant factor in the cases of appointment to the post of Lambardar. The Hon'ble Supreme Court further held in ***Mahavir Singh's case (supra)*** that other things being equal, a candidate aged 36 years was rightly appointed as Lambardar in preference to a candidate aged 62 years. The facts in ***Mahavir Singh's case (supra)*** are quite similar to the facts of the present case. The relevant findings rendered by the Hon'ble Supreme Court in ***Mahavir Singh's case (supra)*** are as under:

“14. It is now a well-settled principle of law, keeping in view the decisions in regard to the appointment of Lambardar in the State of Punjab, that age of a candidate is a relevant factor.

In Lt. Malik Abbas Khan v. Ghulam Haidar [1940 Lahore Law Times 25], it was stated :

"...It is certainly not wise, save in very exceptional circumstances, to appoint for the first time, an inamkhor or zaildar whose age is 60 or more."

So far as contention of learned counsel for the petitioner that the petitioner was acquitted in the criminal case is concerned, the Division

Bench of this Court in ***Jog Dhian Vs. Financial Commissioner, Haryana,***

CWP No.18023 of 2015

2005 (1) RCR (civil) 658 has held that even if a person has been acquitted, the stigma attached to it is not completely washed out. Even if it is presumed that no stigma lies, once the Collector has come to a conclusion that respondent no. 4 is a better candidate, in pursuance of ***Mahavir Singh's*** case (supra) the choice of the Collector cannot be lightly set aside.

Learned counsel for the petitioner has not been able to point out any perversity or illegality in the order passed by the Collector. The findings of the Collector have been affirmed by the Commissioner and Financial Commissioner.

In view of the above discussion, the present writ petition fails.

Dismissed.

No order as to costs.

(Paramjeet Singh Dhaliwal)
Judge

May 30, 2016
R.S.