

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.17747 of 2016 (O&M)
Date of decision: 20.10.2016

Puran Singh

... Petitioner

Vs.

Financial Commissioner, Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

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

RAMESHWAR SINGH MALIK, J. (ORAL)

CM No.12508-CWP of 2016

Applicant seeks permission to place on record Annexures P-14
to P-17 and also seeks exemption from filing certified copies thereof.

Application is allowed, as prayed for.

CM stands disposed of.

CWP No.17747 of 2016

Feeling aggrieved against the impugned order dated 02.06.2016
(Annexure P-6) passed by Financial Commissioner, Punjab, whereby the order
dated 08.05.2015 (Annexure P-3) passed by the Commissioner, Roopnagar
Division, Roopnagar 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, seeking a writ in the nature of
certiorari, for quashing the impugned orders.

Brief facts of the case are that due to the death of Sh. Kehar Singh on 18.04.2004, the post of Lambardar fell vacant in the village of the parties. Process for filling up the post was initiated. Four candidates applied, including the petitioner and respondent No.4, for appointment to the post of Lambardar. Sub Divisional Magistrate, Nawanshehar, recommended the name of Kulwinder Singh son of Swaran Singh. However, District Collector vide his order dated 14.09.2005 declared that none out of four candidates was suitable candidate and remanded the case to Sub Divisional Magistrate, Nawanshehar, for fresh proclamation in the village. Against the order dated 14.09.2005 passed by the District Collector, as many as four appeals were filed by the aggrieved candidates before the Commissioner, Jalandhar Division, Jalandhar. Commissioner, vide his order dated 06.06.2006 set aside the order passed by the District Collector and appointed Sarwan Singh son of Karam Singh-respondent No.4 herein, as Lambardar. Puran Singh-petitioner approached the Financial Commissioner vide ROR No.924 of 2006, which was dismissed by the Financial Commissioner vide order dated 10.02.2011. Thereafter, petitioner approached this Court by way of CWP No.19124 of 2011, which was disposed of, vide order dated 24.02.2012 (Annexure P-1), setting aside the orders of Commissioner and Financial Commissioner, remanding the case to the Collector for fresh decision.

In compliance of the abovesaid order (Annexure P-1) passed by this Court, District Collector appointed the petitioner vide order dated 03.05.2012 (Annexure P-2). Respondent No.4 filed his appeal before the Commissioner, Roopnagar Division, Roopnagar, which came to be allowed

vide impugned order dated 08.05.2015 (Annexure P-3). The order passed by Commissioner was challenged by the petitioner before the Financial Commissioner, who dismissed the appeal of the petitioner vide impugned order dated 02.06.2016 (Annexure P-6). Hence the present writ petition.

Learned counsel for the petitioner, while placing reliance on two judgments of this Court in **Nath Singh Vs. State of Punjab and others, 2014 (3) Law Herald 2089** and **Jagdish Singh Vs. State of Punjab and others, 2014 (3) Law Herald 2197**, submits that simply because the petitioner was elder in age, respondent No.4 could not have been preferred over the petitioner. He further submits that Collector rightly appointed the petitioner and Commissioner as well as Financial Commissioner exceeded their jurisdiction, while passing the impugned orders, because the order passed by the District Collector was not suffering from any illegality. Learned counsel for the petitioner concluded by submitting that since the petitioner was more meritorious than respondent No.4 on the basis of all the relevant factors, the order passed by District Collector ought not have been set aside by the Commissioner and Financial Commissioner, because of which the impugned orders 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 keeping in view the totality of facts and circumstances of the present case, instant one has not been found to be a fit case warranting

interference, at the hands of this Court, while exercising its writ jurisdiction. Impugned orders deserve to be upheld. Writ petition is liable to be dismissed, for the following more than one reasons.

No doubt, in the matters of appointment of Lambardar, choice of District Collector is not to be upset lightly by the higher revenue authorities. However, it is not an absolute rule in every given fact situation. In the present case, during the course of hearing, when confronted with the material fact that petitioner is more than 66 years of age as on date, because of which he is not suitable for appointment as Lambardar at this old age, in view of the observations made by the Hon'ble Supreme Court in **Mahavir Singh Vs. Khiali Ram and others, 2009 (3) SCC 439**, learned counsel for the petitioner had no answer and rightly so, it being a matter of record.

Coming to the judgments relied upon by learned counsel for the petitioner, there is no dispute about the observations made by this Court, in both the judgments, in **Nathu Singh's** case (supra) and **Jagdish Singh's** case (supra). However, on close perusal of the cited judgments, none of them has been found of any help to the petitioner, being distinguishable on facts. It is the settled proposition of law that peculiar facts of each case are to be examined, considered and appreciated first before applying any codified or judgemade law thereto. Sometimes, difference of even one additional fact or circumstance can make the world of difference, as held by the Hon'ble Supreme Court in **Padmausundra Rao and another Vs. State of Tamil Nadu and others, 2002 (3) SCC 533**.

It is not even pleaded or argued case on behalf of the petitioner

that respondent No.4 was not eligible for appointment to the post of Lambardar or he was disqualified because of any reason. A bare perusal of the order passed by the District Collector would show that he miserably failed to appreciate true facts of the case. The contention raised by learned counsel for the petitioner that respondent No.4 was involved in a criminal case, has also been found to be misconceived, for the reason that the investigating agency, including the CBI, conducted repeated investigations and found respondent No.4 innocent. In this view of the matter, respondent No.4 was not suffering from any disqualification. Since the District Collector misdirected himself, while not giving due consideration to the comparative merits of both the candidates, his order, appointing the petitioner as Lambardar, was palpably wrong and patently illegal, which was rightly set aside by the Commissioner, while exercising his appellate jurisdiction.

Another reason, which rightly weighed with the Financial Commissioner in dismissing the appeal of the petitioner, was that the petitioner was found involved in electricity theft, because of which he had to deposit an amount of Rs.1500/- and Rs.150/- with the Punjab State Electricity Board, as reflected at pages 41-42 of the Commissioner's file. The relevant observations made by the Financial Commissioner in the operative para of the impugned order, which deserve to be noticed here, read as under: -

“I have considered the arguments advanced by counsel for both the parties and orders of lower Courts. Education wise both the candidates are almost on equal footings, however the respondent has been appointed as Lambardar by Ld. Commissioner on the

ground that he is younger than the appellant. Age is one of relevant consideration in the matter of appointment of Lambardar. Though it is settled law that choice of Collector, ordinarily should not be interfered with, however, the appellant and reversionary authorities are well within their jurisdiction to set aside the appointment of Lambardar if there is any illegality or perversity. In the present case, Id. Commissioner after evaluating the merits of candidates have rightly set aside the appointment of appellant and appointed the respondent as Lambardar. So far as criminal case against the respondent, as referred by the counsel for the appellant, is concerned, this point was never raised before lower Courts, however, as noted above, a cancellation report had already been filed in the court and merely registration of criminal case does not make any ground to draw adverse inference against the respondent. On the other hand, there is a case of electricity theft against appellant as alleged by the respondent (copy of receipts dated 19.4.2011 on account of deposit of amount of Rs.1500/- and 150/- with Punjab State Electricity Board have been placed at Page 41-42 of Commissioner's file) also shows malafide conduct of the appellant.”

A bare reading of the abovesaid order passed by the Financial Commissioner would show that learned Financial Commissioner was conscious of the fact and principle of law about the choice of Collector, in the

matters of appointment of Lambardar. However, rightly not treating it to be an absolute rule, Financial Commissioner was well justified in upholding the order passed by the Commissioner. Further, in the circumstances of the case, no prejudice, of any kind whatsoever, has been caused to the petitioner, by passing 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 the writ petition having been found wholly misconceived, bereft of merit and without any substance, must fail. No ground for interference has been made out.

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

[RAMESHWAR SINGH MALIK]
JUDGE

20.10.2016
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Whether speaking/reasoned Yes/No

Whether reportable Yes/No