

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.19497 of 2014

Date of Decision: 29.09.2016

Sh. Sahib Singh

. . . Petitioner

Versus

Financial Commissioner, Punjab and others

. . . Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. S.S. Dinarpur, Advocate
for the petitioner.

Ms. Monika Chhiber Sharma, DAG, Punjab.

Mr. Hardeep Singh, Advocate
for respondent No.4.

Rameshwar Singh Malik, J. (Oral)

Feeling aggrieved against the order dated 2.7.2014 (Annexure P-5) passed by the Financial Commissioner, Punjab, whereby appeal of the petitioner was dismissed, upholding the order dated 15.10.2013 (Annexure P-4) passed by the Divisional Commissioner, Patiala Division, Patiala, remanding the case to the District Collector to start *denovo* process for filling up the post of Lambardar, petitioner has approached this Court by way of present writ petition under Articles

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226/227 of the Constitution of India, seeking a writ in the nature of Certiorari, for quashing the impugned order.

Notice of motion was issued and in compliance thereof, only contesting respondent No.4 has filed his written statement.

Heard learned counsel for the parties.

It has gone undisputed before this Court that initially, petitioner was appointed as Lambardar by District Collector, Patiala vide his order dated 27.07.2010 (Annexure P-1). Against this order, appeal of respondent No.4 was allowed ex-parte by the Commissioner, Patiala Division, Patiala vide his order dated 08.06.2011 (Annexure P-2). This was challenged by the petitioner before this Court by way of CWP No.12495 of 2011, wherein vide order dated 24.7.2012 (Annexure P-3) the above-said order was set aside by this Court and the case was remanded to the Commissioner, to pass afresh order after granting opportunity of being heard to both the parties.

In compliance of the above said order dated 24.07.2012 (Annexure P-3) passed by this Court, impugned order dated 15.10.2013 (Annexure P-4) came to be passed by Divisional Commissioner, Patiala Division, Patiala, reiterating the earlier view point taken by him in the order dated 08.06.2011 (Annexure P-2), whereby case had been remanded to District Collector, Patiala, for starting *denovo* process for filling up the post of Lambardar. Petitioner challenged this order before the Financial Commissioner, who dismissed the appeal of the petitioner vide impugned order dated 02.07.2014 (Annexure P-5). Hence, this petition.

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It is pertinent to note here that respondent No.4 felt satisfied by the above-said order dated 15.10.2013 (Annexure P-4), passed by the Divisional Commissioner, Patiala Division, Patiala. He did not challenge that order before the Financial Commissioner. It is a matter of record that petitioner as well as respondent No.4 were facing criminal cases. Petitioner was found involved in 2 FIRs, whereas respondent No.4 was found involved in 3 FIRs. One FIR came to be quashed by this Court in favour of the petitioner and in the second FIR, he was discharged by the learned trial Court. These facts have not been disputed by learned counsel for respondent No.4.

Similarly, respondent No.4 was also acquitted in all the three cases and this fact has not been disputed by the learned counsel for the petitioner. Thus, after having been discharged or acquitted in all the criminal cases, there would be no stigma against the character of either the petitioner or respondent No.4, so far their respective claim for appointment to the post of Lambardar is concerned. Once both the candidates are at par about their involvement in criminal cases but now free from any stigma, then their other comparative merits are to be considered, regarding their suitability for the post of Lambardar in question.

Learned counsel for the petitioner refers to the averments taken in para 6 of the writ petition, wherein comparative merits of both the candidates have been given in tabulation form and the same read as under:-

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	Petitioner	Respondent No.4
Qualification	10 th pass	8 th pass
Age on filing of application	41 years old	54 years old
Agricultural Land	48 Bighas	38 Bighas
Recommendation	AC IInd Grade as well as AC Ist Grade recommended the name of the petitioner	Nil
Experience	a) 10 years as Sarpanch b) Remained as Vice President of Market Committee of Dudhan Sadhan	Nil
Hereditary claim	Remained as Sarbrah Lambardar of his father Darshan Singh (deceased)	Nil
Criminal Cases	Nil as FIR against him was quashed by this Hon'ble Court and in the criminal complaint he was discharged by the Ld. JMIC, Patiala.	There are two FIRs against the petitioner, one U/s 379/457/411 IPC and another U/s 447/511/223/423 IPC and one complaint under Section 138 of NI Act is pending against him in the Court of Ld. CJM, Bathinda.

In para 6 of written statement filed on behalf of respondent No.4, the above-said averments have not been denied, saying that the contents of para 6 of the writ petition are matter of record. When the above-said comparative merits of both the candidates are analyzed, petitioner has been found having clear edge on respondent No.4. It is so said because the petitioner was more educated, he was younger in age, having more land, besides his candidature was recommended by Assistant Collector IInd Grade as well as by Sub Divisional Officer (Civil), Patiala.

Petitioner had worked as Sarpanch of the village for a period of 10 years, he remained Vice President of Market Committee, he had

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also worked as Sarbrah Lambardar, thus, was having working experience of the post of Lambardar. Respondent No.4 was not having anything to his credit qua the above-said relevant factors. He was less educated, elder in age and was having less land than the petitioner. Involvement of the petitioner as well as respondent No.4 in criminal cases is not being further discussed here, because both have been either acquitted or discharged. Having said that, this Court feels no hesitation to conclude that the petitioner was rightly appointed as Lambardar by the District Collector, vide his initial order dated 27.7.2010(Annexure P-1) and the same deserves to be restored.

It is the settled proposition of law that choice of the District Collector in the matters of appointment of Lambardar is not to be set aside lightly by the higher revenue authorities, unless the order passed by the District Collector has been found suffering from any patent illegality or perversity. In the instant case, a bare combined reading of the impugned orders passed by the Divisional Commissioner, Patiala Division, Patiala as well as the Financial Commissioner, Punjab, would show that none of them has recorded this finding that the order passed by the District Collector had been found suffering from any patent illegality or perversity, which was sine quo non for setting aside the order passed by the District Collector. Under these circumstances, it can be safely concluded that the learned Divisional Commissioner, Patiala Division, Patiala as well as Financial Commissioner, Punjab, have committed error of law, while passing their respective impugned orders and the same cannot be sustained.

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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 opinion that since the impugned orders passed by the Divisional Commissioner, Patiala Division, Patiala as well as Financial Commissioner, Punjab, have been found suffering from patently illegality and perversity, the same cannot be sustained.

Accordingly, the impugned order dated 15.10.2013 (Annexure P-4) passed by the Divisional Commissioner, Patiala Division, Patiala as well as the impugned order dated 2.7.2014 (Annexure P-5) passed by the Financial Commissioner, Punjab, are hereby set aside. The order dated 27.7.2010 (Annexure P-1) passed by the District Collector, Patiala, appointing the petitioner as Lambardar, is restored.

Resultantly, with the above said observations made, the instant petition stands allowed, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

29.09.2016

mks

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No