

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

**Civil Writ Petition No.1952 of 2014
Date of Decision: December 16, 2016**

Amrik Singh

...Petitioner

Versus

Financial Commissioner Punjab & Ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.J.S.Pannu, Advocate, for
Mr.Avnish Mittal, Advocate,
for the petitioner.

Mr.B.M.Vinayak, DAG, Punjab.

Mr.Jatinder Singla, Advocate,
for respondent No.4.

RAMESHWAR SINGH MALIK, J.(Oral)

Feeling aggrieved against the impugned order dated 11.12.2013 (Annexure P-9) passed by the Financial Commissioner, Punjab, whereby he accepted the revision petition filed by respondent No.4, set aside the orders passed by District Collector and Commissioner and appointed respondent No.4 as Lambardar in place of the petitioner, petitioner has approached this Court, by way of instant writ petition under Articles 226/227 of the Constitution of India, seeking a writ in the nature of Certiorari, for quashing the impugned orders.

Notice of motion was issued and in compliance thereof, reply was filed by way of short affidavit on behalf of respondent Nos.1 to 3.

Separate reply was filed on behalf of respondent No.4.

Heard learned counsel for the parties.

Facts are hardly in dispute. One post of Lambardar fell vacant in the village of the parties on account of death of earlier Lambardar. Process was initiated for filling up the post of Lambardar. Petitioner as well as respondent No.4 were the contesting candidates. Learned District Collector appointed the petitioner as Lambardar, vide his order dated 18.11.2008 (Annexure P-7). Appeal filed by respondent No.4 was also dismissed by learned Commissioner, Patiala Division, Patiala, vide his order dated 19.08.2009 (Annexure P-8). However, revision filed by respondent No.4 came to be allowed by the Financial Commissioner, vide his impugned order dated 11.12.2013 (Anexure P-9). Hence, this petition.

A bare perusal of the order passed by District Collector Annexure P-7 would show that petitioner was 64 years of age in 2008 and by now, he has already attained the age of 72 years. Respondent No.4 was 46 years of age, thus, there was a gap of about 20 years between the age of both these candidates. Petitioner was 4th class pass whereas, respondent No.4 was 10th pass. Petitioner had an experience of about six years as sarbra Lambardar to his credit and was owner of 95 kanals land whereas, respondent No.4 has no such working experience and was owner of 10 kanals of land in the village.

Respondent No.4 remained as Sarpanch of the village. His father had also been Sarpanch of the village and at the time of passing of the orders by the District Collector, wife of respondent No.4 was

Sarpanch of the village. He had also been a member of Block Samiti and President of Punjab Agricultural Development Bank, Sangrur Branch. In view of the above said comparative merits of both these candidates, Financial Commissioner was well within his jurisdiction to set aside the orders passed by District Collector and Commissioner. It is so said because all these relevant factors were not properly appreciated by District Collector and Commissioner, with special reference to the age of the petitioner.

On the issue of age, the view taken by this Court also finds support from the judgment of Hon'ble the Supreme Court in **Mahavir Singh vs. Khiali Ram & Ors., 2009(3) SCC 439.** In **Mahavir Singh's** case (supra), Hon'ble the Supreme Court was dealing with an identical situation wherein, a candidate aged 36 years was ordered to be appointed as Lambardar, in preference to a candidate aged 62 years. As noticed hereinabove, petitioner is 72 years of age.

Having said that, this Court feels no hesitation to conclude that since the learned District Collector as well as Commissioner miserably failed to consider and appreciate the law laid down by Hon'ble the Supreme Court in **Mahavir Singh's** case (supra), Financial Commissioner committed no error of law, while setting aside said orders and respondent No.4 was rightly appointed as Lambardar by the Financial Commissioner.

No doubt, it is the settled proposition of law that choice of District Collector, in the matters of appointment of Lambardar, is not to

be upset lightly by the higher revenue authorities. However, it is equally true that as and when the order passed by the District Collector is found suffering from any patent illegality or perversity, higher revenue authorities would be well within their jurisdiction to set aside such a perverse order passed by the District Collector. Similar was the fact situation in the case in hand. Learned District Collector did not consider the abovesaid merits of respondent No.4 because of which he was having a clear edge on the petitioner, for appointment to the post of Lambardar. Similarly, learned Commissioner also failed to consider the abovesaid glaring facts which speak volumes in favour of respondent No.4 and against the petitioner.

Under these undisputed circumstances of the case, learned Financial Commissioner rightly set aside the orders passed by District Collector and Commissioner and the impugned order dated 11.12.2013 (Annexure P-9) deserves to be upheld, for this reason also. It does not appeal to reason that a person of 72 years is to be appointed as Lambardar ignoring the preferential claim of a person of 46 years.

During the course of hearing, learned counsel for the petitioner could not point out any ineligibility or disqualification attached to the candidature of respondent No.4, which may disentitle him for the post of Lambardar. However, to be fair to the learned counsel for the petitioner, involvement of respondent No.4 in some criminal cases much after his appointment, would be of no consequence, particularly when he already stood acquitted in one case and in other case, FIR was lodged

against him, after passing of the order by the Financial Commissioner. In fact, it is conceded position between the parties that respondent No.4 has been acquitted in both the cases but in one case, appeal against acquittal is pending.

Be that as it may, if respondent No.4 would incur some disqualification on account of his alleged misconduct after having been appointed as Lambardar, that could be, at the most, a ground for his removal from the post of Lambardar and for that purpose, different set of provisions of law would be attracted and entirely different procedure has to be followed. Since this is not the issue for consideration before this Court at this stage, no further comments are called for, in this regard.

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 present 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.

December 16, 2016

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**(RAMESHWAR SINGH MALIK)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No