

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

CWP No.8306 of 2011

Date of decision: 11.07.2016

Khazan Singh

... Petitioner

Vs.

Financial Commissioner Appeals-II, Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Sandeep Arora, Advocate
for the petitioner.

Mr. Yatinder Sharma, Addl. AG, Punjab.

Ms. Manpreet Kaur, Advocate
for respondent No.4.

RAMESHWAR SINGH MALIK, J. (ORAL)

Instant writ petition is directed against the order dated 27.10.2010 (Annexure P-4) passed by Financial Commissioner Appeals-II, Punjab, whereby order dated 15.06.2004 (Annexure P-2) passed by learned Collector, Hoshiarpur and the order dated 25.10.2005 passed by learned Commissioner, Jalandhar Division, Jalandhar, upholding the order passed by the Collector appointing the petitioner as Lambardar, were set aside.

Notice of motion was issued and pursuant thereto, reply on behalf of only contesting respondent No.4 has been filed.

Learned counsel for the petitioner submits that petitioner was appointed by the Collector after comparing the merits of both the candidates and having found the petitioner more meritorious on every relevant aspect of the matter. The order passed by Collector was rightly upheld by the learned

Commissioner, because the same was not found suffering from any illegality or perversity. He further submits that the Financial Commissioner fell in serious error of law, while passing the impugned order which is cryptic on the face of it. He concluded by submitting that once there was no patent illegality or perversity in the orders passed by the learned Collector as well as Commissioner, Financial Commissioner ought not have interfered in the matter, while setting aside the well-reasoned orders passed by the Collector and Commissioner. He prays for allowing the present writ petition.

Learned counsel for respondent No.4 submits that respondent No.4 has died during pendency of the present writ petition and his legal representatives are not coming forward. As rightly pointed out by learned counsel for the petitioner that respondent No.4 died on 13.05.2012 and despite passing of a long period of more than four years, nobody has come forward as legal representatives of respondent No.4. Learned counsel for respondent No.4 has expressed her inability in this regard.

Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful considerations to the contentions raised, this Court is of the opinion that the impugned order passed by Financial Commissioner Appeals-II, Punjab is liable to be set aside, it being illegal as well as cryptic one.

Order dated 15.06.2004 passed by learned Collector, Hoshiarpur (Annexure P-2) would show that merits of both the candidates were duly considered. Collector is the competent authority to appoint the Lambardar. The order passed by Collector was a reasoned one. Operative part of the order passed by Collector reads as under: -

“Candidate Sh. Khazan Singh s/o Munsha Singh is 30 years of age. He is 8th pass. He owns five and half acres of land. His claim is recommended by all the lower Revenue Officers. Counsel for the candidate Sh. Kashmir Singh pointed out that candidate Sh. Khazan Singh is a defaulter of Central Co-op Bank Hambowal for Rs.60,000/- as on 4.7.2003. But candidate Sh. Khazan Singh has filed an affidavit in this regard and he also produced clearance certificate issued by the Manager, The Gurdaspur Co-op. Bank Ltd. Branch Bhattian.

I have considered the comparative merit of both candidates and have the considered view that candidate Sh. Khazan Singh being younger in age but mature, having better qualification and land holding than Kashmir Singh candidate is preferred and appointed as Lambardar of village Hambowal, Tehsil and District Gurdaspur in place of deceased Lambardar Sh. Sardar Singh. Sanad Lambardari be prepared accordingly. Original file be returned to the District Collector, Gurdaspur for its consignment in record room at Gurdaspur.”

Rightly observing that the abovesaid order passed by the Collector was not suffering from any illegality or perversity, Commissioner, Jalandhar Division, Jalandhar dismissed the appeal of respondent No.4 vide order dated 25.10.2005 (Annexure P-3) and the relevant part thereof reads as under: -

“I have given my thoughtful consideration to written arguments and have also carefully examined the comparative merits of these candidates as borne out from the record. The District Collector has

made choice in favour of the respondent after taking into account and weighting the comparative merits of both these candidates and also hearing their counsel at length. The appellant does not have better merits than the respondent. Moreover, the appellant cannot claim appointment as Lambardar, as a matter of right. His claim was duly considered by the Collector. The choice of the District Collector is neither perverse nor contrary to rules. The appeal has no merits and is dismissed. To be communicated.”

Financial Commissioner exceeded his jurisdiction, while setting aside the abovesaid both the well-reasoned orders passed by the Collector as well as Commissioner. It is the settled proposition of law that choice of District Collector must be allowed to prevail in the matters of appointment of Lambardar until and unless the order passed by the Collector is found suffering from perversity or contrary to the record. Financial Commissioner, while passing the impugned order failed to point out any patent illegality or perversity in either of the abovesaid two orders passed by the Collector and Commissioner. Further, the impugned order passed by Financial Commissioner is a non-speaking order. It is also pertinent to note here that during pendency of the writ petition, respondent No.4 has since expired and no contest remains qua the appointment of the petitioner as Lambardar. Petitioner is working as Lambardar for the last more than 12 years and no complaint about his conduct has come to the notice.

In view of what has been discussed hereinabove, the impugned order passed by Financial Commissioner has been found suffering from patent illegality and the same cannot be upheld. Accordingly, the impugned order dated 27.10.2010 passed by Financial Commissioner Appeals-II, Punjab (Annexure P-

4) is hereby set aside and the abovesaid orders passed by the Collector as well as Commissioner are restored. Resultantly, petitioner shall continue as Lambardar.

With the abovesaid observations made, instant writ petition stands allowed, however, with no order as to costs.

11.07.2016
vishnu

[RAMESHWAR SINGH MALIK]
JUDGE