

Civil Writ Petition No. 26861 of 2013

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

Civil Writ Petition No. 26861 of 2013

Date of Decision: 27.10.2016

Vijay Pal

.....Petitioner

Vs.

Financial Commissioner and Principal Secretary to Government, Haryana,
Revenue Department and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

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

Mr. Sandeep S. Mann, Sr. DAG, Haryana.

Mr. R.S. Budhwar, Advocate
for respondent No.4.

RAMESHWAR SINGH MALIK J. (ORAL)

Present writ petition is directed against the order dated 3.7.2013 (Annexure P-9), passed by the Financial Commissioner, Haryana, whereby he dismissed revision petition of the petitioner and upheld the orders dated 28.9.2010 (Annexure P-7) passed by the Commissioner as well as order dated 4.3.2010 (Annexure P-5) passed by the District Collector, thereby appointing respondent No.4 as Lambardar.

Writ petition was admitted for regular hearing, vide order dated 13.1.2014. Reply was filed on behalf of respondent No.4. Petitioner sought to file some additional documents, including Annexure P-15, by way of CM

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No. 7570 of 2016, which were taken on record vide order dated 8.7.2016.

Heard learned counsel for the parties.

One post of Lambardar of General Category felt vacant in the village of parties because of the death of Lambardar Sh. Jagdish Singh. Process for filling up the said vacant post was initiated. Tehsildar, Bilaspur, recommended the name of the petitioner whereas Sub Divisional Officer (civil), Bilaspur, recommended the name of respondent No.4 for appointment to the post of Lambardar. Learned District Collector examined, considered and rightly appreciated the comparative merits of all the candidates and finally, arrived at a just conclusion that it was respondent No.4 who was the most suitable candidate for the post of Lambardar. Accordingly, vide his impugned order dated 4.3.2010 (Annexure P-5), District Collector, Yamuna Nagar, appointed respondent No. 4 as Lambardar. Petitioner felt aggrieved and filed his appeal before the Commissioner, Ambala Division, which came to be dismissed vide order dated 28.9.2010 (Annexure P-7). The revision filed by the petitioner before the Financial Commissioner was also dismissed vide impugned order dated 3.7.2013 (Annexure P-9).

A combined reading of all the three impugned orders passed by the respondent revenue authorities would make it crystal that none of them have committed any error of law, while passing their respective impugned orders. In fact, Collector, Commissioner as well as Financial Commissioner have recorded cogent findings which have been found based on sound reasons and the impugned orders deserve to be upheld. It is so said because none of the impugned orders have been found suffering from any patent illegality or perversity which may warrant interference at the hands of this

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Court, while exercising its writ jurisdiction under Articles 226/227 of the Constitution of India.

Petitioner was trying to set up his case on the basis of his hereditary claim. Case of the petitioner was wholly misplaced for the reason that hereditary claim was no more available to him. He was 10th class pass and 31 years of age. However, petitioner was found facing criminal trial in FIR No. 115 dated 12.8.2008 under Section 148/149/323/325 IPC registered at Police Station Bilaspur. Allegation against the petitioner was that he caused obstructions for the Gram Panchayat in taking possession of the land and he cultivated Shamlat land illegally. In this regard, report dated 848 dated 2.6.2008 was also sent to learned District Collector, Yamuna Nagar. These material facts have gone undisputed before this Court, being a matter of record.

So far as candidature of respondent No.4 was concerned, he was a Graduate. He remained Member Panchayat twice over. Residents of the village had reposed faith in him. He himself had deposited an amount of ₹18,000/- in small saving scheme. His name was recommended for post of Lambardar by Sub Divisional Officer (Civil), Bilaspur. No disqualification of any kind, whatsoever, was pointed out in the candidature of respondent No.4 by any of the contesting candidates, including the petitioner.

In view of what has been discussed hereinabove, learned District Collector was well within his jurisdiction, being the competent authority, to appoint respondent No.4 as Lambardar of the village, because it was respondent No.4 who was found having clear edge over the petitioner. Similarly, Commissioner, Ambala Division, rightly appreciated the findings recorded by District Collector and the appeal filed by the petitioner, having

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been found bereft of merit, was dismissed.

Again, case was reconsidered by the Financial Commissioner. Since the abovesaid orders passed by the District Collector as well as Commissioner were found legally sustainable orders, revision of the petitioner was dismissed by the Financial Commissioner vide impugned order dated 3.7.2013 (Annexure P-9). As the order of District Collector, he being the appointing authority, has been upheld by the Commissioner as well as Financial Commissioner, in appeal as well as revision, findings recorded by the District Collector in the operative part of his impugned order deserve to be noticed here and the same reads as under:-

“I have thoughtfully considered the arguments raised by the counsel for the candidates and also taken into consideration the record which is present on the file. In between the interested candidates for this post, candidate Kashmir Lal’s merit is very less as compared to other candidates. He is only 8th pass and is the oldest amongst the candidates. Between rest of the two candidates, candidate Vijay Pal only has an advantage of hereditary claim over the other but against this candidate a case has been registered under Sections 148/149/323/325 IPC. It is correct that mere institution of a case does not make a person incompetent for the post of Lambardari but if we consider the situation of the criminal proceedings against him, it does not come within the ambit of the person discharging his duties under the post of Lambardar. This case has been

registered against him by the people who take the Gram Panchayat land on lease because he had alongwith those people cultivated the Gram Panchayat's land with tractor. Regarding this issue, a report was also presented to Collector, Yamuna Nagar by the Block Development and Panchayat Officer against this candidate. This clearly proves that this person has created hindrance in administrative work. This is why in my consideration this candidate is not competent for the post of Lambardar. So, the only competent candidate left of this post is Ramesh Chand. He is B.A. pass and also has property. This candidate has also remained member of Panchayat two times because of which his standing is good in the village. He has also himself deposited Rs. 18,000/- in small saving scheme, which has come on record. He was also recommended by Sub Divisional Officer, Bilaspur.

On the basis of aforementioned reasons, I have reached at conclusion that Sh. Ramesh Chand son of Sh. Om Parkash, reside of Malikpur Bangar is better in comparison with other candidates and also competent. So, in the end Sh. Ramesh Chand is appointed as Lambardar in place on late Lambardar Jagdish son of Subey Singh for the post of General Category Lambardar of village Malikpur Bangar, Tehsil Bilaspur. Sanat Lambardari is accordingly issued. One copy of the order

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*should be sent as record to Sub Divisional Officer,
Bilaspur. File be consigned to the record room.”*

During the course of hearing, learned counsel for the petitioner could not point out any prejudice or substantial injustice which might have been caused to the petitioner by passing of the impugned orders. In fact, all the three revenue authorities have recorded concurrent findings of facts, based on true facts of the case. However, to be fair to learned counsel for the petitioner, reference deserves to be made to later order dated 26.5.2016, placed on record vide Annexure P-15. Contention raised by learned counsel for the petitioner in this regard has not been found worth acceptance. As rightly pointed out by learned counsel for respondent No.4, this order dated 26.5.2016 (Annexure P-15) has already been set aside by the Collector, by allowing appeal of respondent No.4.

It is the settled proposition of law that the order of the District Collector, in the matters of appointment of Lambardar, is not to be upset lightly by the higher revenue authorities, unless the order passed by the District Collector is found suffering from any patent illegality or perversity. In the present case, no such illegality or perversity has been pointed by learned counsel for the petitioner. The Commissioner as well as Financial Commissioner were well within their jurisdiction while passing their respective impugned orders, upholding the abovesaid order passed by the District Collector, appointing respondent No.4 as Lambardar. Under these undisputed circumstances of the case, it can be safely concluded that the orders passed by all the three revenue authorities are just and legal which deserve to be upheld for this reason also.

No other argument was raised.

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Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that since the impugned orders passed by the respondent revenue authorities have not been found suffering from any patent illegality or perversity, the same deserve to be upheld. Present writ petition is misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

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

(RAMESHWAR SINGH MALIK)
JUDGE

27.10.2016
Ak Sharma

Whether speaking/reasoned Yes/No
Whether reportable: Yes/No