

Sr. No.739

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

CWP NO.6572 OF 2012 (O&M)

Date of Decision: 03.11.2016

Kulwinder Singh

.....Petitioner

vs.

Financial Commissioner Punjab and others

.....Respondents

CORAM HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present:- Mr. J.S.Brar, Advocate for the petitioner.

Mr. Yatinder Sharma, Addl. A. G. Punjab.

Mr. Navdeep Chhabra, Advocate
for respondent no.4.

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RAMESHWAR SINGH MALIK, J

Feeling aggrieved against the order dated 04.01.2012 (Annexure P-15) passed by Financial Commissioner, Punjab whereby he set aside the remand order dated 08.06.2011 of the Commissioner Patiala Division, Patiala, petitioner has approached this Court, by way of present writ petition under Article 226 and 227 of the Constitution of India, for issuance of a writ in the nature of Certiorari, for setting aside the impugned orders.

Notice of motion was issued and in compliance, thereof, reply was filed on behalf of respondent no.4. Writ Petition was admitted vide order dated 07.02.2014. That is how this Court is seized of the matter.

Heard learned counsel for the parties.

It is a matter of record that respondent no.4 was the only

candidate at the time when order dated 26.04.2011 (Annexure P13) was passed by District Collector appointing respondent no.4 as Lamberdar. It is also a matter of record that respondent no.4 was the only candidate, at the time when order dated 26.04.2011 (Annexure P13) was passed by District Collector, appointing respondent no.4 as Lamberdar. It is also not in dispute that he was facing a criminal trial on the date of his appointment. Annexure P6 was the FIR no.184 dated 18.05.2009 under Sections 323/325/447/148 and 149 of the Indian Penal Code registered at Police Station Kharar, District SAS Nagar (Mohali).

After investigation of the case, report under Section 173 of the Code of Criminal Procedure was presented by the Investigating Agency, before the learned Court of competent jurisdiction. Thereafter, learned trial Court vide its order dated 17.08.2009 (Annexure P7) framed charges against respondent no.4, who got recorded his factually incorrect and misleading statement as Annexure P5 before Naib Tehsildar, SAS Nagar (Mohali), during the proceedings which were initiated to fill up the post of Lamberdar in question.

SHO Police Station Balongi, vide the report dated 08.01.2011 (Annexure P4), pointed out that petitioner was facing criminal trial in the above said case. However, surprisingly there was not even a passing reference of the above said material fact, regarding facing of criminal trial by respondent no.4, at the time of passing the order dated 26.04.2011 by District Collector Mohali and respondent no.4 was still appointed as Lamberdar.

Petitioner filed his appeal against above said order of District

Commissioner Patiala Division, Patiala vide order dated 08.06.2011 (Annexure P14), remanding the matter to District Collector SAS Nagar, with a direction that proclamation be again got conducted in the village inviting fresh applications and thereafter most suitable candidate be appointed as Lamberdar. Respondent no.4 challenged the above said order passed by the Commissioner and his appeal was accepted by the Financial Commissioner, by passing a totally non speaking and cryptic order dated 04.01.2012 (Annexure P15), setting aside the remand order passed by the Divisional Commissioner, Patiala Division, Patiala.

The only argument raised by learned counsel for respondent no.4 was that since the respondent no.4 has been granted the benefit of probation by the Appellate Court, no stigma would be attached to the candidature of respondent no.4. However, giving thoughtful consideration to the solitary argument raised, same has not been found worth acceptance for the reason that said judgment granting benefit of probation to respondent no.4 came to be passed much later. It has gone undisputed before this Court that respondent no.4 was facing criminal trial when he was appointed as Lamberdar by District Collector, vide his order dated 26.04.2011 (Annexure P13) and said material fact of criminal trial was not even noticed.

No doubt the choice of District Collector in the matters of appointment of Lamberdar is not to be upset lightly by the higher revenue authorities, however, it is equally true that if the order passed by the District Collector is found suffering from patent illegality and perversity, the higher revenue authorities would be well within their jurisdiction to set aside such a patently illegal order passed by the District Collector. As noticed here-in-

criminal case against respondent no.4 because of which this aspect could not be appreciated at all. It would have been altogether different had the District Collector noticed the said fact and then distinguished the same in favour of respondent no.4.

Having said that, this Court feels no hesitation to conclude that learned Divisional Commissioner, Patiala Division, Patiala was fully justified to pass the remand order (Annexure P14). However, Financial Commissioner committed serious error of law, while setting aside the remand order passed by the Commissioner, vide impugned order dated 04.01.2012 (Annexure P15) and the same cannot be sustained.

Infact, a bare reading of the impugned order passed by Financial Commissioner would show that it is a cryptic and non speaking order. Respondent no.4 was not only facing the criminal trial but he also got recorded a factually incorrect and misleading statement before the revenue authorities, during the process of appointment of Lamberdar. He concealed the material fact from the notice of competent authority, thus, he did not come to the Court with clean hands. Under these circumstances, it can be safely concluded that District Collector committed a serious error of law, while passing the order dated 26.04.2011 (Annexure P13), appointing respondent no.4 as Lamberdar. Since all these relevant factors were not properly appreciated by the Financial Commissioner, the impugned order passed by him cannot be sustained, for this reason also.

Learned counsel for respondent no.4 also sought to raise another argument that keeping in view the background of registration of FIR, criminal trial pending against respondent no.4 at the time of his appointment as Lamberdar would not be treated as a disqualification.

However, this argument raised by learned counsel for respondent no.4 has also been found wholly misplaced for the reason that it was respondent no.4 himself who got recorded his factually incorrect statement that he was not facing any criminal trial, despite knowing fully well that even charges have been framed against him by the learned Court of competent jurisdiction.

No other argument was raised.

Considering the peculiar facts noticed above, this Court is of the considered view that since the impugned order dated 04.01.2012 passed by Financial Commissioner, Punjab Revenue, Punjab is an illegal order, the same cannot be sustained.

Accordingly, the impugned order dated 04.01.2012 (Annexure P15) is hereby set aside and the order dated 08.06.2011 (Annexure P14) passed by Commissioner, Patiala Division, Patiala is restored. District Collector SAS Nagar (Mohali) shall proceed further in compliance with the directions already issued by the Divisional Commissioner, Patiala Division, Patiala, vide its order dated 08.06.2011 (Annexure P14) with a view to fill up the post of Lamberdar by passing an appropriate order, however, strictly in accordance with law.

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

(RAMESHWAR SINGH MALIK)
JUDGE

November 03, 2016
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Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No