

Civil Writ Petition No. 25117 of 2014

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

**Civil Writ Petition No. 25117 of 2014
Date of Decision: 8.12.2016**

Randeep Singh

.....Petitioner

Vs.

Financial Commissioner, (Appeals), Punjab and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Sherry K. Singla, Advocate
for the petitioner.

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

Mr. Abhishek Singla, Advocate
for respondent No.3.

RAMESHWAR SINGH MALIK J. (ORAL)

Present writ petition is directed against the order dated 1.10.2014 (Annexure P-5), passed by the Financial Commissioner, Punjab, whereby he set aside the order dated 18.9.2012 (Annexure P-4) passed by the Divisional Commissioner, Patiala Division, Patiala, appointing the petitioner as Lambardar, and remanded the case to the Collector for fresh decision.

Notice of motion was issued and in compliance thereof, reply by way of short affidavit was filed on behalf of respondents No.1 and 2. However, no reply has been filed on behalf of the contesting respondent No.3.

Heard learned counsel for the parties.

It has gone undisputed before this Court that petitioner as well

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as respondent No.3 were contesting for the post of Lambardar. Assistant Collector 2nd Grade, Samana, recommended the name of respondent No.3, treating him as 7th class pass. This detailed report was made on 25.4.2011 (Annexure P-1). When the matter was under consideration before the District Collector for appointment of respondent No.3 as Lambardar, he never denied this fact that he was not 7th class pass. He also did not deny that certificate of 7th class was not produced by him before the Assistant Collector 2nd Grade, Samana. On the other hand, it was specifically recorded by the District Collector that respondent No.3 was 7th class pass. This was one of the relevant considerations which weighed with the District Collector while appointing respondent No.3 as Lambardar, vide his order dated 27.9.2011 (Annexure P-2).

Feeling aggrieved against the abovesaid order appointing respondent No.3 as Lambardar, petitioner filed his appeal, which was rightly accepted by Divisional Commissioner, Patiala Division, Patiala, vide his order dated 18.9.2012 (Annexure P-4). It is pertinent to record here that in the meantime, certificate of 7th class of respondent No.3 had been found to be a forged one, vide communication dated 8.12.2011 (Annexure P-7), issued by Sub Divisional Magistrate, Samana. Proceeding on a positive approach, Commissioner, Patiala Division, Patiala, rightly appointed the petitioner as Lambardar, after setting aside the order passed by the District Collector, which was found suffering from a patent illegality.

When respondent No.3 filed his appeal before the Financial Commissioner against the order (Annexure P-4) passed by the Divisional Commissioner, appointing petitioner as Lambardar, it was allowed vide impugned order dated 1.10.2014 (Annexure P-5). A bare perusal of the

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totally non speaking order passed by the Financial Commissioner would show that he has acted without jurisdiction. In the circumstances of the case, when certificate of 7th class had already been found to be a forged one, there was no scope left with the Financial Commissioner to remand the case imposing another unwarranted round of litigation on the parties. Having said that, this Court feels no hesitation to conclude that the impugned order cannot be sustained, for this reason also.

The Divisional Commissioner, Patiala Division, Patiala, considered each and every relevant aspect of the matter and found that respondent No.3 was not a deserving candidate for appointment to the post of Lambardar. The relevant observations made by the Divisional Commissioner, Patiala Division, Patiala, in operative part of his order dated 18.9.2012 (Annexure P-4), which deserve to be noticed here, read as under:-

“I have heard both the counsels and have also gone through the record of the lower court. In this case the Collector has appointed the respondent as Lambardar of the village vide order dated 27.9.2011. The appellant is alleging that the respondent is not a trustworthy person as he had produced a forged certificate regarding his qualification on record that he is 7th class pass which on inquiry has been reported to be not issued by the concerned school from where the appellant claimed that he got 7th class passed. Secondly the respondent is in illegal possession of village land and has not correctly mentioned his age. The perusal of the report of SDM, Samana obtained under RTI by one

Gurwinder Singh son of Karam Singh shows that on the inquiry conduct by Tehsildar, Samana, it is revealed from the record of Senior Secondary School, Arno that on this number the certificate of Gurnam Singh son of Karnail Singh was issued as a result. The certificate of Kulwant Singh son of Raghbir Singh of 7th class is forged. The respondent is stated his claim to the post of Lambardar on forged certificate of education. This would render him unsustainable for this post as the Lambardars are required to be reliable with good character. The Collector has appointed the respondent only on the ground of hereditary claim and recommendations of lower revenue officers which is not sufficient. In view of the above, I am not satisfied with the orders of the Collector and the present appellant seems to be a better person for the post of Lambardar. Thus, the appeal filed in this case is hereby accepted, the order dated 27.9.2011 passed by District Collector, Patiala are set aside and the present appellant, i.e. Sh. Randeep Singh son of Bhajan Singh is ordered to be appointed as Lambardar of the village.”

When the matter was being reconsidered by the Financial Commissioner, he did not record any cogent finding for setting aside the abovesaid self contained order passed by the Divisional Commissioner, Patiala Division, Patiala. Operative part of the impugned order (Annexure P-6) passed by the Financial Commissioner, reads as under:-

“After going through the arguments made by both the parties and evidence on record I am of the considered opinion that in view of the enquiry report of SDM, Samana and the various rulings submitted by both the parties, the case need to be looked afresh. Therefore I accept the appeal and remand the case of the Collector with the direction to decide the case afresh after taking into consideration the material evidence available on record against both the candidates. Order be communicated to the parties and the file be consigned to the record room.”

A bare reading of the abovesaid impugned order passed by the Financial Commissioner would make it crystal that he fell in serious error of law, while passing the impugned order. In the circumstances of the case, it was the petitioner alone who could have been appointed as Lambardar and he was rightly appointed by the Divisional Commissioner, Patiala Division, Patiala, vide his abovesaid order (Annexure P-4). Appeal filed by respondent No.3 was wholly misconceived and ought to have been dismissed by the Financial Commissioner, avoiding another round of litigation between the parties.

During the course of hearing, when confronted with communication dated 8.12.2011 (Annexure P-7) issued by the Sub Divisional Magistrate, Samana, learned counsel for respondent No.3 had no answer and rightly so, it being a matter of record. Despite having made his best efforts, learned counsel for respondent No.3 could not advance the case of respondent No.3 in any manner. In fact, respondent No.3 was trying to

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play smart with the respondent authorities and when he was caught at the wrong foot, Divisional Commissioner rightly upset the order passed by the District Collector, appointing the petitioner as Lambardar. Since other candidate was only the petitioner, he was rightly appointed as Lambardar by the Divisional Commissioner, vide Annexure P-4 and that was the just order, which deserves to be restored.

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 since the impugned order dated 1.10.2014 (Annexure P-5) passed by the learned Financial Commissioner has been found to be suffering from patent illegality and perversity, the same cannot be sustained. Accordingly, impugned order is hereby set aside. Consequently, order dated 18.9.2012 (Annexure P-4) passed by the Divisional Commissioner, Patiala, Division, Patiala appointing petitioner as Lambardar is restored. The writ petition deserves to be accepted.

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

8.12.2016
Ak Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

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