

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

CWP No.25477 of 2014

Date of Decision: 15.11.2016

Hardial Singh

. . . Petitioner

Versus

Financial Commissioner (Appeals), Punjab and others

. . . Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. G.S. Nagra, Advocate
for the petitioner.

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

Mr. Sherry K. Singla, Advocate
for respondent No.4.

Rameshwar Singh Malik, J. (Oral)

Present writ petition is directed against the order dated 18.09.2014 (Annexure P-9) and also the order dated 29.07.2008 (Annexure P-3), whereby respondent No.4 was appointed as Lambardar, despite having attained the age of more than 75 years.

Notice of motion was issued and in compliance thereof, written statement by way of short affidavit was filed on behalf of respondents No.1 to 3. Separate written statement was filed on behalf of respondent No.4.

Heard learned counsel for the parties.

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One post of Lambardar fell vacant in the village of the parties, because of the death of Late Shri Jagir Singh, Lambardar. Process was initiated to fill up this vacancy. Petitioner as well as respondent No.4 were the contesting candidates for this post of Lambardar. As per the comparative merits recorded by the District Collector, at page 17 of the paper book, respondent No.4 Balbir Singh was 74 years of age whereas petitioner Hardial Singh was 64 years of age. The District Collector appointed the petitioner as Lambardar vide order dated 29.04.2008 (Annexure P-2). Respondent No.4 filed his appeal before the Commissioner, who allowed the same without even issuing any notice to the petitioner, vide order dated 29.07.2008 (Annexure P-3).

Petitioner filed his revision petition before the Financial Commissioner, who set aside the above-said order passed by the Commissioner and remanded the case to the District Collector with a direction to re-examine the issue and thereafter pass an appropriate order, appointing suitable candidate as Lambardar. This order was passed by the Financial Commissioner on 26.02.2010 (Annexure P-4). Respondent No.4 came to this Court by way of Civil Writ Petition No.7527 of 2010 (Balbir Singh Vs. The Financial Commissioner, Co-operation Punjab and others).

This Court, vide order dated 28.04.2010 (Annexure P-5), remanded the case to the Financial Commissioner for fresh decision of the revision petition on merits. In compliance of the order dated 28.04.2010 (Annexure P-5), passed by this Court, Financial Commissioner passed the impugned order (Annexure P-9) dated 18.09.2014, appointing respondent No.4 as Lambardar. Hence, this writ petition.

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Having heard the learned counsel for the parties at considerable length, after careful perusal, this Court is of the considered opinion that keeping in view the totality of the facts and circumstances of the case and particularly the age of both these candidates, none of them was suitable for appointment to the post of Lambardar. It is so said because respondent No.4 had already crossed the age of 80 years, when he was appointed by the Financial Commissioner as Lambardar, vide impugned order dated 18.09.2014 (Annexure P-9).

This material aspect of the matter was not at all considered by the learned Financial Commissioner, in spite of the fact that the issue was raised for his consideration, as referred at page 42 of the paper book. So far as petitioner is concerned, he has also already crossed the age of 72 years. In this view of the matter, Financial Commissioner ought to have considered the age factor, which was not on the side of either of these two candidates.

A person of 80 years would not be in a position to perform his duties of Lambardar in efficient manner. He is supposed to travel from his village to the town, with a view to appear in Government offices, particularly, the Tehsil and Courts. Once owing to his age, respondent No.4 would not be in a position to perform his duties well, hardly any purpose would be served by appointing him as Lambardar. In fact, neither the petitioner nor respondent No.4 ought to have applied for the post of Lambardar, at this stage, when both of them had already become senior citizens. There would be no dearth of suitable and young candidates in the village for appointment to the post of Lambardar. Similarly, there is no

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compulsive necessity to appoint a person of more than 80 years of age, as Lambardar for the first time. In addition to the above, there were some allegations against the petitioner that he had been facing criminal trials.

In view of what has been discussed hereinabove, and also keeping in view the observations made by the Hon'ble Supreme Court of India in *Mahavir Singh Versus Khiali Ram and others, 2009 (1) RCR (Civil) 757*, this Court is of the considered view that since the Financial Commissioner failed to appreciate one of the most material aspects of the matter, regarding age of both these candidates, while passing the impugned order, the same cannot be sustained. Learned counsel for the parties could not advance any meaningful argument in this regard and rightly so, it being a matter of record. Having said that, this Court feels no hesitation to conclude that the impugned order passed by Financial Commissioner has been found suffering from patent illegality and perversity, which cannot be sustained, for this reason as well.

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 impugned order passed by Financial Commissioner cannot be upheld and the same is accordingly set aside. Writ petition deserves to be accepted.

The matter is remanded to the District Collector, Kapurthala to start the *denovo* process for filling up this post of Lambardar, strictly in accordance with law.

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Resultantly, with the above-said observations made and directions issued, the present writ petition stands disposed of, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

15.11.2016
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Whether Speaking/reasoned : Yes

Whether Reportable : Yes