

Civil Writ Petition No. 25753 of 2016

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

**Civil Writ Petition No. 25753 of 2016
Date of Decision: 13.12.2016**

Hakam Singh

.....Petitioner

Vs.

State of Punjab and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Gurmeet Singh, Advocate
for the petitioner.

RAMESHWAR SINGH MALIK J. (ORAL)

Feeling aggrieved against the impugned order dated 1.9.2016 (Annexure P-10) passed by the Financial Commissioner, whereby appeal of the petitioner was dismissed and the order dated 10.1.2014 (Annexure P-6) passed by the Commissioner, Jalandhar Division, Jalandhar-respondent No.3, appointing respondent No.5 as Lambardar, was upheld, petitioner has approached this Court by way of present writ petition under Articles 226/227 of the Constitution of India, seeking a writ in the nature of Certiorari, for quashing the impugned orders.

Heard learned counsel for the petitioner.

It is a matter of record that petitioner is serving as security guard in a Bank ATM. Owing to the nature of his duties, petitioner cannot afford to leave the ATM unattended even for a short while and because of

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this strong reason, he would not have been available to the residents of the village, as and when services of the petitioner as Lambardar would be required. Since this material fact was neither considered, nor discarded but altogether ignored by the District Collector, while passing the order dated 2.5.2011 (Annexure P-1), appointing the petitioner as Lambardar, said order was rightly set aside by the Commissioner, Jalandhar Division, vide order dated 10.1.2014 (Annexure P-6), appointing respondent No.5 as Lambardar.

Feeling aggrieved against the order passed by the Commissioner, Jalandhar Division, Jalandhar, petitioner filed his appeal before the Financial Commissioner which also came to be rightly dismissed vide impugned order dated 1.9.2016 (Annexure P-10). Having said that, this Court feels no hesitation to conclude that neither the Commissioner nor the Financial Commissioner committed any error of law, while passing their respective impugned orders and the same deserve to be upheld, for this reason also.

Before passing the impugned order, the Financial Commissioner recorded cogent findings in operative para 5 of the impugned order, which have been found based on sound reasons and the same read as under:-

“I have considered the arguments of both the parties and gone through the orders of lower courts as well. The appellant was appointed as Lambardar by the District Collector. This appointment has been set aside by the Commissioner on the ground that that respondent has more merits than the appellant, as he is younger in age and available to the villagers whole day, whereas respondent was not available to the villagers for whole

day. I tend to agree with the findings of the Ld. Commissioner, since the availability of the Lambardar to the village community is one of the main considerations. The appellant is admittedly working as Security Guard in a Bank ATM, though he claims that his duty is in shifts but his availability to the villagers at the time of need is not sure. On the other hand the respondent work as Granthi in the village and also younger in age. The age is also one of the considerations while making selection for the post of Lambardar. Although it is settled law that Collector being appointing authority is the best placed to select a Lambardar, however the appellant and revisionary authorities can upset the choice of the Collector is the same is found to be perverse on its face. In the present case, Commissioner has rightly set aside the order of Collector. Ld. Collector had appointed the appellant only on the ground that he is ex-serviceman and more experienced than the other candidates, however the other vital points with regard to availability and age of the Lambardar has not been considered at all while appointing the appellant as Lambardar, whereas the respondent has surely edge over the appellant. Therefore, the order of Commissioner is upheld and the present appeal is hereby dismissed being devoid of merit.”

A bare reading of the impugned order passed by the Financial

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Commissioner would show that he was well within his jurisdiction to pass the impugned order. He rightly considered and appreciated that petitioner was serving as guard in a Bank ATM and would not be available to the villagers, as and when his services would be required. So far as respondent No.5 is concerned, his availability in the village throughout a day has never been in dispute, because he is working as Granthi in the village itself.

No doubt, it is the settled proposition of law that choice of the District Collector, in the matters of appointment of Lambardar, is not to be upset lightly, unless the order passed by the District Collector is found suffering from any patent illegality or perversity. However, it is equally true that whenever an order passed by the District Collector is found to be suffering from patent illegality or perversity, higher revenue authorities would be well within their jurisdiction to set aside such a perverse order. Similar was the position in the present case. Since the District Collector has not at all considered the abovesaid material fact that petitioner was serving as security guard in a Bank ATM and would not be available to the residents of the village to perform his duties of Lambardar, the Commissioner rightly set aside the order passed by the District Collector, thereby appointing respondent No.5 as Lambardar in place of the petitioner. It is so said, because appointment of petitioner as Lambardar would serve no purpose, as he would have been proved to be an absentee Lambardar, due to the nature of his duties as security guard in a Bank ATM.

During the course of hearing, learned counsel for the petitioner could not point out any patent illegality or perversity in either of the impugned orders passed by this Commissioner as well as Financial Commissioner. Further, no prejudice of any kind, whatsoever, has been

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shown which might have been caused to the petitioner by passing the impugned orders, warranting interference at the hands of this Court, while exercising its writ jurisdiction under Articles 226/227 of the Constitution of India.

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 instant writ petition is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

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

13.12.2016
Ak Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

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