

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

**CWP No.26470 of 2016
Date of decision:21.12.2016**

Harjit Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.R.D.Sharma, Advocate for the petitioner

RAMESHWAR SINGH MALIK, J. (Oral)

Feeling aggrieved against the impugned order dated 11.5.2016 (Annexure P-3) passed by the Financial Commissioner (Appeals), Punjab-respondent No.2, whereby he accepted the revision petition filed by respondent No.5-Sahib Singh, setting aside the appointment of the petitioner ordered vide order dated 25.4.2011 (Annexure P-1) and order dated 21.2.2014 (Annexure P-2) passed by District Collector and Commissioner, respectively, appointing respondent No.5 as Lambardar in place of the petitioner, 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.

A bare combined reading of order dated 25.4.2011 (Annexure P-1) and the order dated 21.2.2014 (Annexure P-2) passed by the District Collector, Gurdaspur and Commissioner, Jalandhar Division, Jalandhar,

respectively, would make it crystal clear that the learned District Collector miserably failed to examine, consider and appreciate the true facts of the case, including the merits of respondent No.5, while appointing the petitioner as Lambardar by passing a patently illegal order. The learned District Collector just accepted the report made by Assistant Collector 1st Grade, without recording his own findings after due application of his independent and judicious mind. The District Collector, being the appointing authority, was duty bound to consider and appreciate the comparative merits of all the candidates, before arriving at a just conclusion, to find the most suitable candidate, for appointment to the post of Lambardar. However, in the instant case, the District Collector miserably failed to do so and that too for no good reasons.

The Assistant Collector 1st Grade, Pathankot, pointed out in his report that criminal cases were pending against respondent No.5. However, surprisingly no particulars or facts of any criminal case were even remotely referred or recorded. It was very serious on the part of the Assistant Collector 1st Grade to make such sweeping allegations, which have gone completely unsubstantiated on record and the District Collector also committed a serious error of law, while simply accepting the said unwarranted report made by the Assistant Collector 1st Grade.

In case, somebody was levelling serious allegation against respondent No.5 that criminal cases were pending against him, the District Collector and Commissioner were under legal obligation to notice the particulars and seriousness of those alleged criminal cases, before passing

their respective impugned orders. However, since the District Collector has failed to discharge his legal obligation in this regard, the impugned order passed by him, appointing the petitioner as Lambardar, was found suffering from patent illegality and perversity, which could not have been sustained.

Similarly, the Commissioner fell in serious error of law, while passing his appellate order (Annexure P-2), without recording even the bare minimum fact, as to which criminal case was pending against respondent No.5. Although Commissioner noticed in the operative part of impugned order that respondent No.5, who was appellant before the Commissioner, stood acquitted of criminal charges against him, yet he did not record any particulars thereof. When confronted with this patent and repeated illegality committed by the District Collector as well as the Commissioner, learned counsel for the petitioner had also no answer and rightly so, it being a matter of record.

Learned counsel for the petitioner fairly conceded this much that respondent No.5 had been acquitted and no criminal case was pending against him, however, he is not aware about the date of judgment of acquittal. Since the orders passed by the District Collector as well as the Commissioner were not speaking orders qua the merits of respondent No.5, those were rightly set aside by the learned Financial Commissioner by passing the impugned order (Annexure P-3) and the same deserves to be upheld.

So far as the impugned order passed by the Financial Commissioner is concerned, learned counsel for the petitioner raised only

one issue that Financial Commissioner wrongly recorded that petitioner was illiterate, because petitioner was also 10th class pass like respondent No.5. So far as the only reason given by the District Collector as well as the Commissioner, rejecting the candidature of respondent No.5, on the basis of alleged pendency of criminal cases against him, is concerned, said sole ground was factually incorrect and was not even available. It has been so recorded by the Financial Commissioner in his impugned order that respondent No.5 already stood acquitted in both the criminal cases, which were falsely registered against him and District Collector as well as the Commissioner proceeded on a factually incorrect approach. Having said that, this Court feels no hesitation to conclude that the learned Financial Commissioner committed no error of law, while passing the impugned order and the same deserves to be upheld, for this reason also.

Even if the petitioner and respondent No.5 are treated at par on account of their educational qualification, still respondent No.5 was having a clear edge on the petitioner. It was also recorded by the learned Financial Commissioner that respondent No.5 was having more land in the village than the petitioner. Although, respondent No.5 rightly did not put any hereditary claim, being the son of an Ex-Lambardar, yet he would be having the knowledge of working to the post of Lambardar, which would certainly go to his credit and not against him.

Learned counsel for the petitioner could not point any disqualification or ineligibility in the candidature of respondent No.5 for appointment to the post of Lambardar. No doubt, choice of the District

Collector, in the matters of appointment of Lambardar, is not to be upset lightly by the higher revenue authorities. However, it is equally true that as and when any order passed by the District Collector is found suffering from patent illegality or perversity, higher revenue authorities would be well within their jurisdiction to set aside such a perverse order. Only that is what has been done by the learned Financial Commissioner in the present case.

As noticed hereinabove, the order passed by the District Collector as well as the Commissioner were not only non speaking qua merits of respondent No.5 but both these orders were suffering from patent illegality and perversity, which were rightly set aside by the learned Financial Commissioner. Under these circumstances, it can be safely concluded that the learned Financial Commissioner was well justified, while passing the impugned order and the same deserves to be upheld, for this reason as well.

Despite making his best efforts, learned counsel for the petitioner could not substantiate any of his arguments for advancing the case of the petitioner. Peculiar facts and circumstances of case speak volumes in favour of respondent No.5. The District Collector as well as the Commissioner treated respondent No.5 in a most arbitrary manner, while not at all considering his merits because of which the orders passed by them were not sustainable in law. Further, no prejudice of any kind, whatsoever, has been shown, which might have been caused to the petitioner by passing the impugned order, which may warrant interference, at the hands of this Court, while exercising its writ jurisdiction.

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 present 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 above-said observations made, the instant writ petition stands dismissed, however, with no order as to costs.

21.12.2016
mks

(RAMESHWAR SINGH MALIK)
JUDGE

Whether Speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No