

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

LPA No.673 of 2015 (O&M)
Date of decision: 11.5.2016

Ved Pal

..... Appellant

Versus

Financial Commissioner, Haryana and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU**

Present: Mr. Tapan Kumar Yadav, Advocate, for the appellant.

Mr. Ankur Mittal, Additional Advocate General, Haryana.

Mr. J.P. Sharma, Advocate, for respondent No.4.

RAJESH BINDAL, J

By filing the present intra-court appeal, the order dated 29.11.2014 passed by the learned Single Judge, dismissing the petition filed by him, has been impugned.

In the writ petition, the appellant had challenged orders dated 14.6.2013 and 19.3.2014 passed by the Commissioner, Gurgaon and Financial Commissioner, Haryana, respectively remanding back the case to the Collector for fresh decision. The issue involved is regarding appointment of Lambardar of village Bachhod, Tehsil Narnaul, District Mohinderghar.

Learned counsel for the petitioner submitted that after the death of Banwari Lal, Lambardar of the village in 2009, the appellant submitted his application on 14.12.2009 to the Assistant Collector IInd Grade, Ateli for consideration of his candidature. The post is reserved for backward class category. The Department initiated the process for filling up the post of Lambardar on 25.7.2010. The applications were invited from all eligible and desirous candidates. The applications were to be filed up to 25.7.2010. The appellant having come to know that his earlier application was not being considered, filed application before the Assistant Collector IInd Grade for

consideration of his application dated 14.12.2009 for the post of Lambardar. His request was allowed by the Assistant Collector IInd Grade vide order dated 30.8.2010. Respondent No.4 being aggrieved against the order, preferred revision before the Collector, who dismissed the same vide order dated 13.10.2010. The order attained finality and was not challenged any further by respondent No.4 and other applicants for the post of Lambardar. Vide order dated 4.5.2011, the appellant was appointed as Lambardar by the Collector, he being better qualified and involved in more public service. Respondent No.4 preferred appeal before the Commissioner, who allowed the same noticing that the appellant had not filed the application within the time permitted, hence, his candidature could not be considered and remanded the matter. The order was upheld by the Financial Commissioner and even the writ petition was dismissed by this Court.

Learned counsel for the appellant submitted that all the authorities from Commissioner onwards have failed to appreciate the fact that in the case in hand, the issue regarding filing of application by the appellant was considered and decided by the Collector vide order dated 13.10.2010 and the same having attained finality, could not be raised by respondent No.4 in the proceedings challenging his appointment as Lambardar. It is not disputed that the Collector had jurisdiction to pass the order.

On the other hand, learned counsel for respondent No.4 submitted that in response to the notice inviting applications, the appellant did not file his application. The application filed by him earlier could not have been considered. The Assistant Collector IInd Grade could not extend the last date fixed for filing the applications. In support of his plea, reliance was placed upon Division Bench Judgment of this Court in Harsunjit Singh v. The Financial Commissioner, Punjab and another, 2008 (4) RCR (Civil) 794. However, he did not dispute the fact that the order accepting the application of the appellant, though filed prior to even inviting the applications by the Department by the Assistant Collector IInd Grade, which was upheld in revision filed by respondent No.4, attained finality.

Heard learned counsel for the parties and perused the paper book.

The undisputed facts on record are that after the death of Banwari Lal, Lambardar of the village, the appellant submitted his application on

14.12.2009 to the the Assistant Collector IInd Grade. The authorities invited applications for the post of Lambardar. The last date fixed for receipt of applications was 25.7.2010. As the appellant came to know that his application already filed was not being considered, he made a request to the Assistant Collector IInd Grade. The same was allowed by the Assistant Collector IInd Grade on 30.8.2010. Respondent No.4 being aggrieved, preferred revision against that order before the Collector, who vide order dated 13.10.2010 dismissed the same finding that the appellant had not given any fresh application and did not want the date to be extended, rather his prayer was only for consideration of his earlier application filed, which had rightly been allowed by the Assistant Collector IInd Grade and there was no cause for interference. The order attained finality. Meaning thereby, the candidature of the appellant was to be considered. The competence of the Collector is not in dispute.

On consideration of candidature of the appellant along with respondent No.4, the Collector vide order dated 4.5.2011 appointed the appellant as Lambardar of the village. He noticed the fact that respondent No.4 was 50 years old and was studying in 10th class. He motivated people to deposit ₹ 2,90,000/- in small savings. He was living separate from his father. He had four sons, one daughter and got second marriage. Beside this, the primary contention raised by him is that he was son of the deceased Lambardar. In a way, the claim was made on the basis of inheritance. As against this, the Collector found that the appellant was 40 years old. He is MA in History, B.Ed. and D.P.Ed. He was posted as teacher in a private school. He motivated people and got deposited ₹ 6,96,000/- in small savings. He motivated the people for family planning as well.

Respondent No.4 being aggrieved, preferred appeal before the Commissioner. The Commissioner accepted the appeal filed by respondent No.4 on a wrong premise that the application filed by the appellant prior to the date when the applications are invited, was wrongly considered by the Assistant Collector IInd Grade, whereas the power vested with the Collector and prior permission of the Collector should have been taken. It is not in dispute that the order passed by the Assistant Collector IInd Grade was challenged by respondent No.4 before the Collector, which was upheld.

Meaning thereby, the Collector endorsed that the application filed by the appellant even prior to the date when the applications were invited and in fact, on whose application, the process for appointment of Lambardar was initiated, be considered. There was no error in the procedure adopted. The order of the Collector accepting the application filed by the appellant attained finality. The same could not be subject matter of consideration before the Commissioner in proceedings initiated by respondent No.4 regarding appointment of Lambardar, where the only issue under consideration was comparative merit. In a way, the Commissioner travelled beyond his jurisdiction. The Financial Commissioner by passing the sketchy order, upheld the order passed by the Commissioner.

In view of our aforesaid discussions, we find merit in the present appeal. The impugned order passed by the learned Single Bench is set aside and as a consequence, the writ petition is allowed. The orders dated 14.6.2013 and 19.3.2014 passed by the Commissioner, Gurgaon and Financial Commissioner, Haryana, respectively are set aside and that of the Collector appointing the appellant as Lambardar is restored.

The appeal stands disposed of.

(RAJESH BINDAL)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

11.5.2016

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(Refer to Reporter)