IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP No.16435 of 2013
Date of decision:26.04.2017

Harmeet Singh ... Petitioner

Vs.

Financial Commissioner and others ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

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

Mr. Rajbir Singh, AAG, Haryana.

Mr. Vineet Chaudhary, Advocate
for respondent No.4.

AMIT RAWAL J. (Oral)

The petitioner is aggrieved of the order dated 11.04.2013 (Annexure P-4) rendered by the Financial Commissioner, whereby, revision petition preferred by private respondent No.4, namely, Vimal Aggarwal, represented by Mr.Vineet Chaudhary, Advocate, has been accepted on the premise that the petitioner was not having any land holding when the application for appointment of Lambardar, was submitted.

Mr. Sherry K. Singla, learned counsel appearing on behalf of the petitioner has relied upon the ratio decidendi culled out by the Hon'ble Intra Court Bench in **LPA No.555 of 2013 titled as Subhash Chand vs. State of Haryana and others decided on 18.03.2013**. The relevant portion of the order reads as under:-

> *"Admittedly, the selected candidate was owner of the land in the revenue estate of village Garhi Patti Hodal, Tehsil Hodal, District Palwal, on the day, the matter was taken up for consideration by the District Collector, Palwal and decided in favour of respondent No. 2, vide order dated 18.01.2010. The relevant date for consideration of the merits and demerits of contesting candidates is the day, on which, the case is taken up by the appointing authority, for appraisal and appreciation as well as adjudication of contesting claims. As respondent No. 2 was owner of the land on that day, no fault can be found with the decision of the District Collector, Palwal, restored by the Financial Commissioner, while setting aside the order passed by the Commissioner. We would like to record that owning of land in the revenue estate is not a qualification but a factor to be taken into consideration."*

and thus, submits that it is the only point which weighed in the mind of the Financial Commissioner, whereas, other points have not been referred to.

Mr. Vineet Chaudhary, learned counsel appearing on behalf of respondent No.4 submits that though the Collector did not reject the candidature of the petitioner on the ground of non-holding of land but on certain other grounds, i.e., also regarding his residence at Musimbal Musalmanan. He further submits that order of the Financial Commissioner was not sustainable in the eyes of law as there is no illegality and perversity.

I have heard learned counsel for the parties and appraised the paper book.

The relevant portion of the order dated 11.04.2013 of the Financial Commissioner reads as under:-

"I have studied the facts placed on record and also considered the arguments put forth by the contesting parties through their learned counsel. It is evident that the Commissioner aside while remanding the case to Collector has not given any cogent reason in setting aside the appointment of the petitioner. After weighing the comparative merits of both the candidates, it is clear that the petitioner has an edge over the residence in terms of more land, depositing more funds in small savings. In contract to the petitioner there is an overwhelming evidence against the respondent vis-a-vis petitioner. As per naksha Lambardari Harmeet Singh is not having any agricultural land whereas the petitioner is having about 12 acres of land. The land claimed to be in the name of respondent was released on 02.04.2010 after the commencement of appointment proceedings before the revenue authorities. It is evidence that when he filed his application he was not having any land which is mandatory in the case of General Lambardari. In view of the foregoing discussions it is evident that Sh. Vimal Aggarwal was rightly found suitable for the post of Lambardar by the Collector and was rightly

impugned order passed by the Commissioner dated 11.05.2011 is set aside and the order of appointment of the petitioner as Lambardar is Lambardar is upheld."

On reading of the aforementioned order, the only consideration which weighed in the mind of the Financial Commissioner was regarding non-holding of the land by the petitioner at the time of submission of the application, whereas, the ratio decidendi culled out by the Intra Court Bench in Subhash Chand' case (supra) relied upon by learned counsel for both the parties, leaves no manner of doubt that the date on which the matter is taken up for consideration is relevant for the merits and de-merits of the contesting candidates. Admittedly, the order of the Collector is 24.11.2010, whereas, the petitioner acquired the holding of land on 02.04.2010, thus, the Financial Commissioner ought not to have allowed the revision petition, should have considered other aspects also while dealing with the revision petition, thus, the order is not sustainable in the eyes of law. Accordingly, the order dated 11.04.2013 is hereby set aside and the matter is remitted back to the Financial Commissioner to decide ROA No.19 of 2010-11 afresh.

This Court is sanguine of the fact that the Financial Commissioner shall decide ROA No.19 of 2010-11 in a most objective and pragmatic manner.

Resultantly, the writ petition stands allowed.

Parties through their counsel are directed to appear before the Financial Commissioner, on 10.05.2017.

April 26, 2017 **(AMIT RAWAL)**
savita **JUDGE**
Whether Speaking/Reasoned Yes/No

Whether Reportable Yes/No