

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP No.10407 of 2017
Date of decision:16.05.2017

Mohan Lal

... Petitioner

Vs.

The Financial Commissioner (Revenue), Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Dinesh Ghai, Advocate
for the petitioner.

AMIT RAWAL J. (Oral)

Notice of motion.

Mr. K.B.Raheja, Advocate has put in appearance on behalf of
respondent No.4.

The petitioner is aggrieved of the impugned order dated
31.01.2017 (Annexure P-4) rendered by the Financial Commissioner,
whereby, the appeal filed by respondent No.4, has been allowed.

Mr. Dinesh Ghai, learned counsel for the petitioner submits that
owing to demise of previous Lambardar, the process for filling up the post
of Lambardar was initiated. In lieu thereof, the petitioner and respondent
No.4 along with other five persons submitted their applications for the post
of Lambardar. He is younger in age and more qualified *vis-a-vis* respondent
No.4, who is 65 years old. The residents of five villages falling within the
jurisdiction of the area have recommended the name of petitioner for

appointment as Lambardar. Resultantly, the Collector, vide order dated 21.12.2011 appointed the petitioner as Lambardar. The matter was taken up in appeal before the Commissioner and vide order dated 20.12.2012 (Annexure P-5) the matter was remanded to the Collector, who appointed respondent No.4 as Lambardar. However, the Commissioner, on 03.07.2014 (Annexure P-3), appointed the petitioner as Lambardar. The findings of the Financial Commissioner being non-resident of the village is neither here nor there. It is the brother of the petitioner, who is carrying out the business and therefore, the orders under challenge are not sustainable in the eyes of law.

In support of his contention, relies upon the ratio decidendi culled out by the Hon'ble Division Bench of this Court in **Amarjeet Singh vs. Financial Commissioner Appeals and others 2000(4) RCR (Civil) 18** to contend that being a Government employee is not a disqualification for appointment as Lambardar and discretion is with the competent authority to select the most suitable candidate.

Mr. K.B.Raheja, learned counsel appearing on behalf of respondent No.4 submits that as per the driving licence (Annexure P-8), the petitioner is the resident of Ferozepur City. Even he has passed higher secondary education from the Ferozepur City and carrying out business there. The Voter Card also reflects that he is a resident of house No.9/33, Ferozepur City. All these factors have been taken into consideration by the authorities below by considering the report of Kanungo but after remand, the Collector had appointed respondent No.4 as Lamabrdar and the Commissioner while setting aside the order has not taken into consideration

the report of Kanungo. This is what has been noticed by the Financial Commissioner and order of the Financial Commissioner does not suffer from any illegality and perversity. No doubt, the order of the Collector can be tinkered with when it suffers from gross illegality and perversity and thus, prays for dismissal of the writ petition.

I have heard learned counsel for the parties, appraised the paper book and of the view that the order of the Financial Commissioner is perfectly legal and justified as the Collector after remand from the Commissioner, after examining the evidence brought on record, appointed respondent No.4 as Lambardar. No doubt, the order of the Financial Commissioner can be tinkered with when there is gross illegality and perversity but the fact remains that the aforementioned ingredients are not in existence. In my view, the order cannot be deviated. The order of the Commissioner relied upon by the petitioner vide which he has been appointed as Lambardar, is without advertence to the report of Kanungo, thus, is not sustainable in the eyes of law. The driving licence and other documents show that the petitioner is resident of house no.9/33 Ferozepur City. The person who is not resident of village would not be able to fulfill the requirement of the villagers needed to be discharged by the headman.

During the course of hearing, Mr. Raheja, has brought to the notice of this Court that qualification of respondent No.4, as per the certificate issued by the Punjab School Education Board is equivalent to graduation.

The Identity Card issued by the Election Commission of

India,(Annexure P-11), would not clothe the petitioner to be the resident of area. The identity card issued in the year 2012, is an attempt to create evidence for the purpose of adjudication of the lis.

There is no dispute with regard to the ratio decidendi culled out in the aforementioned judgment cited by Mr. Ghai, but it was a case where Government servant was rejected for being appointed as Lambardar, therefore, the aforementioned judgment would not apply to the facts and circumstances of the present case.

Be that as it may, the fact remains that the Financial Commissioner has taken into consideration all the aspects. I am of the view that the orders under challenge are perfectly legal and justified.

Accordingly, the writ petition stands dismissed.

(AMIT RAWAL)
JUDGE

May 16, 2017
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Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No