

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP No.1910 of 2016

Date of decision:19.04.2017

Balbir Singh

... Petitioner

Vs.

The District Collector, Hisar and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Keshav Partap Singh, Advocate
for the petitioner.

Mr. Indresh Goel, Addl.A.G.Haryana.

Mr. Ashok Kumar, Advocate
for respondent No.4

AMIT RAWAL J.

The petitioner has knocked the door of this Court seeking quashing of the orders dated 06.08.2015 (Annexure P-5) and 02.12.2008 (Annexure P-3) rendered by respondents No.1 and 2, respectively, whereby, the Commissioner, Hisar Division remanded the matter back to the authority for holding de-novo proceedings on the premise that the order of the Collector appointing Balbir Singh was not correct owing to non-effecting of *munadi* in the village, reiterated by the Financial Commissioner and private respondent No.4, namely, Raj Kumar son of Hukam Singh has been appointed as Lambardar.

Mr. Keshav Partap Singh, learned counsel appearing on behalf of the petitioner submits that on demise of previous Lambardar Bhagwana, procedure for filling-up the post of Lambardar was initiated. The Naib Tehsildar Uklana on 03.09.2005 caused a proclamation in village Litani and

last date for submission of the application was 26.09.2009. Total 11 applications were received, out of which, it was found that a criminal case against candidate namely, Kuldip Singh was pending and the antecedents of the remaining candidates were found satisfactory. 8 candidates withdrew the application, one candidate died and only two candidates namely Balbir Singh -petitioner and Raj Kumar remained in the race. The Naib Tehsildar found the petitioner to be better candidate than Raj Kumar and recommended the case to Tehsildar, who further agreed with the report and sent the case to the SDO, Hisar. The SDO Hisar also recommended the name of the petitioner. Resultantly, the Collector, vide order dated 22.11.2006 (Annexure P-2) finding the petitioner to be most suitable and meritorious candidate appointed him as Lambardar.

Respondent No.4 – Raj Kumar preferred an appeal under Section 13 of the Punjab Land Revenue Act, 1887 (hereinafter referred to as “1887 Act”) before the Commissioner by raising all frivolous and baseless pleas. The Commissioner set aside the order and remanded the matter back to the Collector for conducting de-novo enquiry on account of the fact that no proper proclamation was submitted. The matter was taken up before the Financial Commissioner, who dismissed the appeal and erroneously appointed respondent No.4- Raj Kumar, as Lambardar which is not within his domain. He further submits that the orders under challenge are not sustainable, for, the order of appointment is the primarily administrative in nature and cannot be tinkered and objected to until and unless found to be capricious or illegal. There is no legal impediment in Rule 15 of the Punjab Land Revenue Rules to appoint a person of 69 years old as Lambardar. The

petitioner had an experience of 37 years as Government JBT Teacher and having more land holding than respondent No.4. Age is no criteria until and unless some physical or medical disability has been alleged and proved. Respondent No.4 is 10th pass and have no experience. The land holding of the petitioner is 7 acres 7 canals vis-a-vis 5 acres 4 canals of respondent No.4. No doubt, respondent No.4 is 35 years of age at the time of application vis-a-vis petitioner being 69 years old. There is no small saving of the private respondent. Private respondent No.4 was never recommended by any of the authorities.

In support of his aforementioned contention, he relies upon the judgment rendered by the Hon'ble Division Bench of this Court in **Ram Kumar vs. The Financial Commissioner Haryana and others 2013(1) PLJ 240**, wherein, by taking into consideration the landmark judgment of the Hon'ble Supreme Court in **Mahavir Singh vs. Khiali Ram and others 2009(3) SCC 439** has held that in the absence of any plea of incapacitated from discharging the functions of a Lambardar, in view of the old age, is no ground for challenging the appointment.

He further submits that the Financial Commissioner has no power to appoint the Lambardar. At the best, he could have accepted the order of the Commissioner and left the question of appointment to the domain of the Collector. The proclamation was duly effected which is evident from *rapat roznamcha* dated 03.06.2005 (Annexure P-1). More than 8 applications were filed, therefore, the Commissioner could not have arrived at erroneous finding having not effected the proper proclamation and thus, urges this Court for setting aside the impugned orders by allowing

the writ petition.

Per contra, Mr. Ashok Kumar, learned counsel for respondent No.4 submits that judgment relied upon by Mr. Keshav Partap Singh, cannot be looked into, in view of the ratio decidendi culled out by the Hon'ble Supreme Court in *Ishwar Singh vs. Satbir Singh and others 2009(3) RCR (Civil) 955*, wherein, the Hon'ble Supreme Court had an occasion to hold that age of the candidate would be relevant factor for the purpose of holding the post of Lambardar.

He further submits that even the Financial Commissioner while exercising the powers under Section 16(1) of 1887 Act, can pass any order, like appointing respondent No.4 as Lambardar. The age is one of the most important criteria for the purpose of holding the post of headman as younger person in age have more enthusiasm and energy to discharge the duties and thus, urges this Court for upholding the orders under challenge.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of Mr.Keshav Partap Singh, for, no doubt, till date no physical or medical incapability has been pointed out but the fact remains that the petitioner is now 78 years old vis-a-vis private respondent, who is almost 40 years now.

It is settled law that ordinarily choice of Collector is not to be interfered with. However, it is not sustainable, particularly, when the orders passed by the District Collector or higher revenue authorities are found to be suffering from patently illegality and perversity. The observation of the Commissioner in not effecting the proclamation was one of the grounds in accepting the appeal of the respondent but the Financial Commissioner

while exercising power of revisional authority on comparison of the criteria of age, education and other aspects found respondent No.4 to be suitable candidate, therefore, ordered for appointment instead of undergoing the rigmarole of calling for more applications as at relevant point of time only the petitioner and respondent No.4 remained in race. The situation of inviting fresh applications would have arisen in case of possibility of disability or incapability or disqualification of the private respondent.

No doubt, the petitioner had 37 years experience of JBT Teacher, in essence, he is now 78 years old. His reflexes and energy level would be quite low vis-a-vis respondent No.4, who would be having more zeal and energy to render assistance to the local residents for discharging the obligation.

The Hon'ble Supreme Court in Ishwar Singh's case (supra) has also held that the main job of headman is collection of the revenue and also to appear as a witness in the cases of registration of various documents. The criteria for appointment of Lambardar includes the educational qualification, age and experience. The reasoning assigned by the Financial Commissioner, in my view, is the most satisfactory and plausible as respondent no.4 would be in better position to run around while discharging the duties of headman. The acquisition of land is only for the purpose of safeguarding the revenue of the Government which is to be collected by the Lambardar nothing beyond.

For the reasons aforementioned, I do not find any illegality and perversity in the orders under challenge, much less the same cannot be said to be vitiated in law. No ground is made out for interference.

Accordingly, the writ petition stands dismissed.

(AMIT RAWAL)
JUDGE

April 19, 2017

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Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No