

CWP No.21905 of 2017 (O&M)

[1]

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

**CWP No.21905 of 2017 (O&M)
Date of decision:07.11.2017**

Amrik Singh

...Petitioner

Versus

Financial Commissioner (Appeal), Punjab and others

...Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Kanwaljit Singh, Senior Advocate, with
Mr. Ajit Singh, Advocate, for the petitioner.

Ms. Poonam Josan, Advocate,
for respondent no.4-caveator.

Rakesh Kumar Jain, J.

The post of Lambardar of village Surkhan, Tehsil Bhulath, District Kapurthala, fell vacant after the death of Hazara Singh S/o Ladha Singh and in order to fill up the said vacancy, proclamation was made, which attracted 9 applications. The Collector appointed the petitioner as Lambardar vide his order dated 21.04.2011. The order of the Collector was challenged in an appeal by respondent no.4 before the Divisional Commissioner, who set aside Collector's order of appointing the petitioner on the ground that he had recorded a perverse finding while ignoring respondent no.4 on the ground that he may go to America in future. This order was further challenged in an appeal by the petitioner before the Financial Commissioner. The appeal was filed by the petitioner after a delay of 166 days and also did not appear when the application for condonation of delay was listed for hearing. Consequently, the revision

petition was dismissed on 18.01.2017. The petitioner filed Miscellaneous Application No.9 of 2017 for restoration of the appeal. The application for restoration as well as the main appeal was dismissed by the Financial Commissioner on 29.03.2017, observing that firstly there is no sufficient reason to condone the delay of 166 days in filing the appeal and secondly, the order of the Collector was totally perverse while he has ignored the candidature of respondent no.4 on the presumption that if he is appointed as Lambardar, then he may go to America being a young man.

Learned counsel for the petitioner has argued that the Divisional Commissioner and the Financial Commissioner have not taken into consideration the fact that the petitioner was also appointed as Sarbrah Lambardar and was having an edge over the candidature of respondent no.4.

On the other hand, learned counsel appearing on behalf of respondent no.4 has submitted that respondent no.4 has rightly been appointed as Lambardar in place of the petitioner because he has been found more literate and having more land than him. It is also submitted that even the petitioner was remiss in pursuing his remedy before the Financial Commissioner as he has not only filed the appeal belatedly but also did not choose to appear to pursue the same. It is also submitted that in the order dated 29.03.2017, the Financial Commissioner has categorically recorded that the case was called many times till the rising of the Court but neither the petitioner nor his counsel put in appearance. Moreover, the appeal was filed after a delay of 166 days, without giving any cogent reason.

I have heard learned counsel for the parties and examined the available record with their able assistance.

The Collector, in his order dated 21.04.2011, has recorded that the petitioner is 52 years of age, matriculate and owned 1-1/2 acres of land. At the same time, in the case of respondent no.4, it was mentioned that he is 35 years of age, studied upto 12th class and owned 2 Acre 6 Kanal land. It was also found that the petitioner was a Member of the Executive Committee of Cooperative Society and has worked for some time as Sarbrah Lambardar of his Taya (paternal uncle). However, respondent no.4 was ignored on a flimsy ground that he had been living in America for a long time and because of his young age, he can go back to America, therefore, he would not be a suitable candidate.

This order, passed on presumption, was set aside by the Divisional Commissioner, holding that there was a perversity in the approach of the Collector. At the same time, it was also found that respondent no.4 is not less in merits than others and, thus, he was appointed as Lambardar. Moreover, the petitioner did not file the appeal before the Financial Commissioner in time rather there was a delay of 166 days. He did not even pursue the application for condonation of delay, which was dismissed because of his non-appearance on 18.01.2017. The Financial Commissioner though entertained the application for recalling of the order of dismissal of appeal but did not find any sufficient ground for condonation of delay of 166 days and also held that the reason given by the Collector in his order, ignoring the candidature of respondent no.4, was totally perverse and found that there is no error committed by the Divisional Commissioner while appointing him to the post of Lambardar.

I am in total agreement with the findings recorded by the

Divisional Commissioner and the Financial Commissioner and do not find any reason to interfere in the impugned orders.

Consequently, the present petition is hereby dismissed being denuded of any merit, though any order as to costs.

November 07, 2017
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(Rakesh Kumar Jain)
Judge

Whether speaking / reasoned:	Yes/No
Whether Reportable:	Yes/No