

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

**C.W.P. No.22233 of 2017
Date of Decision:03.10.2017**

Harbans Singh

.....Petitioner

Vs.

Financial Commissioner, Punjab and others **.....Respondents**

CORAM:- HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present:- Mr. H.N.S. Gill, Advocate for the petitioner.

Mr. B.S. Seemar, Advocate for the caveator- respondent.

Rakesh Kumar Jain, J. (Oral)

This petition is filed for quashing the order of the Financial Commissioner dated 16.08.2017 by which respondent No.4 has been appointed as Lambardar of Village Rakran Dhaha, Tehsil Balachaur, District SBS Nagar (Nawan Shahar).

In short, the previous Lambardar Mehnga Singh died on 15.12.2009. Pursuant thereto, the proceedings were initiated to fill up the vacant post. The applications were filed, including the petitioner and respondent No.4. Tehsildar recommended the name of respondent No.4 but the SDM recommended the name of the some other candidates. Be that as it may, the Collector vide his order dated 25.11.2014 found the petitioner more suitable than other candidates and appointed him as the Lambardar. He observed that the petitioner is 9th Class pass and can read Punjabi, Hindi and English. He is doing farming on 7 acres of land in the Village and would be available to the people. He remained General Secretary of the Society for 8-9 years. It was also observed that though respondent No.4 is

more literate than the petitioner but he remained in Army most of the time and he is less acquainted with the general public and is not capable of doing Lambardari work. The order of the Collector was successfully challenged by respondent No.4 in appeal before the Commissioner who had found him to be more suitable than the petitioner and the order of the Collector was set aside by him vide order dated 06.05.2016. The petitioner then challenged the order of the Commissioner by way of an appeal before the Financial Commissioner. The Financial Commissioner set aside the order of the Commissioner and restored the order of the Collector vide her order dated 29.09.2016. Now it was the turn of respondent No.4 to challenge the order of the Financial Commissioner by way of CWP No.25178 of 2016. The said writ petition was allowed and the matter was remanded back to the Financial Commissioner to decide the lis between the parties. After the order was passed by this Court on 26.05.2017, the Financial Commissioner reappraised the material on record, much less some additional material, allegedly given by respondent No.4 about the medals which he has earned during his service career and found him more suitable and appointed him as such on 16.08.2017. Aggrieved against the said impugned order, the present petition has been filed.

Counsel for the petitioner submits that in the matter of appointment of Lambardar (General Category), the order of the Collector has to be respected until and unless any perversity is found. It is also submitted that respondent No.4 was tried in a criminal case No.49 dated 15.12. 1997 in the Court of Additional Sessions Judge, Ludhiana in which though he has been acquitted because the witnesses had resiled but he

remained in custody during the pendency of the trial for a long period, therefore, suffer from a stigma. It is also submitted that respondent No.4 did not place on record the alleged medals awarded to him during the service career, therefore, it cannot be looked into at this stage. In support of his submission, counsel for the petitioner has relied upon a Division Bench judgment of this Court in **Jog Dhian v. Financial Commissioner, Haryana and others, 2005(1) R.C.R. (Civil) 658** to contend that even if respondent No.4 was acquitted of the criminal charge by giving the benefit of doubt, the stigma still remains with him. In case the Collector chooses to appoint the other candidate who is equally of good merit then the choice of the Collector shall stand.

On the other hand, counsel for respondent No.4 has argued that Collector did not find him unsuitable on the ground that he remained in custody during the criminal trial rather he was not found suitable on the ground that he was in Army for most of the time, therefore, he was less acquainted with the general public of the Village and would not be in a position to do the lambardari work. Otherwise, it was submitted that the Collector has found the respondent No.4 more literate than the petitioner. It is also submitted that the Commissioner has decided in his favour but the Financial Commissioner did not look into the fact that he is younger in age than the petitioner who is 65 years whereas he is 45 years of age and more active and more disciplined being from the Army background. He has also relied upon a decision of the Supreme Court rendered in the case of **Mahavir Singh v. Khiali Ram and others, 2009(1) R.C.R. (Civil) 757** to contend that age should also be taken into consideration as a relevant factor

in case other things are equal and the person who is younger in age be appointed.

I have heard learned counsel for the parties and examined the record with their able assistance. As per Rule 15 of the Punjab Land Revenue Rules, 1908 (applicable to the Punjab), at the time of appointment of the Lambardar, regard shall be had to various factors including the service rendered by the candidate to the State. The Collector has to look into the naksha Lambardar prepared by the subordinate authorities and then take a decision about the suitability of the person who can perform the job of the Lambardar to the satisfaction of the revenue authorities and the public at large to whom he has to serve. There is no dispute that the petitioner is 9th class pass. He can read Punjabi, Hindi and English and possess some land also in the village but it cannot be lost sight of the fact that respondent No.4 is more literate than him as observed by the Collector himself and has been in Army. He has served the nation while serving in the Army and as has been recorded in the order by the Financial Commissioner that he had been decorated with the following medals namely:-

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|-------|----------------------|-------|
| (i) | Siachen Glacier | Medal |
| (ii) | SPL Service | Medal |
| (iii) | Saina Seva | Medal |
| (iv) | 9 year long service | Medal |
| (v) | 50 th INP | Medal |
| (vi) | OP Vijay | Medal |

Generally, the choice of the Collector is not disturbed until and unless perversity is found by the higher authorities. The perversity would

be in case there is evidence on record which is not looked into or the evidence has been misread by the Collector. In this case, the Collector has observed that the petitioner has been in Army, therefore, he was not well acquainted with the General Public. The observations of the Collector does not seem to be sound because respondent No.4 might be coming back to his village, while serving in the Army and knowing the people of the Village as such. He is younger in age because at the time when application was filed, he was 45 years of age and the petitioner was 67 years of age at that time and thus was more active and energetic. The fact that he was involved in a criminal case and was ultimately acquitted because the prosecution failed to prove its case would not go against him. With deference to the decision of the Division Bench in the case of **Jog Dhian (supra)**, I would observe that in that case, the Division Bench has held that if the Collector chooses to appoint other candidate of equally good merit then the choice of the Collector is final. Though the Collector has not looked into the fact that respondent No.4 has served the nation while in Army and earned lot of medals with his hard work much less dedication. The respondent No.4 is otherwise having an edge over the petitioner in view of the decision in the case of **Mahavir Singh (supra)** being younger in age. Respondent No.4 was in jail not because of his own choice but somebody falsely implicated him in a criminal case. It would have been an altogether different issue, had respondent No.4 been convicted. There are cases in which this Court has even held that even if a criminal case is pending, the candidature of person can be considered for the purpose of appointment as Lambardar because until and unless a person is proved to be guilty, he cannot be discarded from

being appointed to the said post. Thus, in view of the aforesaid facts and circumstances, I am of the considered opinion that there is no error in the order of the Financial Commissioner in appointment of respondent No.4 as Lambardar and hence this petition is dismissed.

October 03, 2017
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(RAKESH KUMAR JAIN)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No