

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

CWP No.29035 of 2017
Date of Decision: 19.12.2017

Jaswinder Singh

. . . . Petitioner

Vs.

The Financial Commissioner, Revenue, Punjab and others

. . . . Respondents

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

Present: Mr.Sarju Puri, Advocate,
for the petitioner.

Mr.Balram Singh, Advocate,
for the caveator.

RAKESH KUMAR JAIN, J. (ORAL)

The petitioner has challenged the validity of the order dated 29.11.2017 passed by the Financial Commissioner, Punjab by which she has remanded the case back to the District Collector, SBS Nagar to decide the issue regarding the appointment of Lambardar of Village Mehli, Tehsil Nawanshahar.

In brief, the post of Lambardar was advertised, pursuant to which three applications were received, one filed by the petitioner (Jaswinder Singh), 2nd by Harbhajan Singh (since deceased) and 3rd by Major Singh (respondent No.3). The District Collector appointed the petitioner as Lambardar on 25.2.2010. The said order was challenged both by Major Singh and Harbhajan Singh before the Commissioner, Jalandhar Division, Jalandhar by way of two appeals. The appeal of Major Singh was dismissed but Harbhajan Singh's appeal was allowed vide order dated 25.7.2011. The petitioner then challenged the order of the Commissioner in

respect of the appointment of Harbhajan Singh as Lambardar by way of an appeal before the Financial Commissioner. The said appeal was allowed on 4.10.2012. Major Singh challenged the order of the Commissioner by way of a writ petition which was withdrawn by him on 25.4.2013. Since there were no revisional power with the Financial Commissioner and only appellate powers were conferred upon him, therefore, Harbhajan Singh did not file revision petition and preferred a writ petition against the order of the Financial Commissioner dated 25.4.2013 but since the Financial Commissioner was conferred with the revisional powers, therefore, Major Singh filed the revision before the Financial Commissioner, which was dismissed on 13.8.2015. Major Singh filed LPA No.202 of 2016 in order to challenge the order dated 25.4.2013 by which his writ petition was dismissed and order dated 13.8.2015 by which his revision was dismissed. The said LPA was disposed of by this Court on 10.8.2017 with the following observations: -

“After hearing the learned counsel for the parties, we are of the opinion that it has resulted serious prejudice to the appellant as he has not been heard even though he was vigilant and alert enough to pursue his remedies as he was not impleaded as a party respondent before the Financial Commissioner and in the writ proceedings. He has been deprived of an opportunity of presenting his claim and, therefore, it would

be in the fitness of things if the impugned order of the writ Court as also the Financial Commissioner dated 4.10.2012 are set aside and the matter remitted to the Financial Commissioner to decide the issue of Lambardari afresh by hearing all the three contestants, namely, Major Singh-appellant, Harbhajan Singh-respondent No.5 and Jaswinder Singh-respondent No.4.

At this stage, it is pointed out that Harbhajan Singh has since expired.

Consequently, we direct that the matter be decided afresh by hearing the appellant and Jaswinder Singh-respondent No.4. Since the issue is pending for the last 7 years, it would be just and appropriate to give further direction that Financial Commissioner concludes the process within a period of 3 months after appearance.

Parties shall put in appearance before the Financial Commissioner on 5.9.2017.”

Thereafter, the matter was heard by the Financial Commissioner, who vide her order dated 29.11.2017, has remanded the case back to the Collector with the following observations: -

“I have considered the arguments advanced on behalf of both the parties and examined the evidence on record. The settled law in the matter of Lambardari is that the order of Distt. Collector, being the appointing authority of Lambardar, is to be respected unless illegality or perversity is established. It is not appropriate for other revenue authorities, including this Court, to substitute their own opinion for that of the appointing authority. In this case the Hon’ble High Court has specifically held that Sh. Major Singh candidate has been deprived of the opportunity of presenting his claim and has remitted the matter to decide the issue of lambardari afresh by hearing both the candidates. The candidates have raised certain issues and proper determination of the merits of the candidates should be done by the Distt. Collector.

In view of the above, this matter is remanded to Distt. Collector, SBS Nagar to hear the parties and pass orders keeping in view the directions of the Hon’ble High Court.

In view of the fact that this matter is highly delayed, as observed by the Hon'ble High Court, the parties are directed to appear before the Distt. Collector SBS Nagar on 08.12.2017 without waiting for any further notice or intimation. The Distt. Collector should decide the matter within 30 days."

Learned counsel for the petitioner has submitted that the Financial Commissioner has committed a patent error as there was no direction to her to remand the case back to the Collector to determine the suitability of the candidate for the purpose of appointment as Lambardar rather direction was issued by the Court to the Financial Commissioner to decide the issue of Lambardar afresh by hearing all the three contestants. It is further submitted that during the pendency since Harbhajan Singh had expired, therefore, there are two candidates in fray, namely, the petitioner and respondent No.3 and it was for the Financial Commissioner have to decide as to which candidate is suitable for the post of Lambardar.

Learned counsel for the caveator/respondent No.3 submits that there is no error in the order of the Financial Commissioner because she has remanded the case back to the Collector to decide the same within 30 days and also gave all opportunities to the petitioner and respondent No.3 as well to raise all issues.

I have heard learned counsel for the parties and after examining the record, am of the considered opinion that the impugned order is patently erroneous because respondent No.1 had to follow the directions issued by

this Court while disposing of LPA No.202 of 2016 in which he/she was directed to decide the issue of Lambardari afresh by hearing all the contestants and was further directed to conclude the process within a period of 3 months after appearance of the parties. Once, there was no direction issued by the Division Bench of this Court to the Financial Commissioner to further remand the case, it should not have been remanded by her to the Collector for taking decision rather she herself was supposed to decide the matter to adjudge the suitability of the candidates.

In view thereof, the impugned order dated 29.11.2017 is hereby set aside and the matter is remanded back to the Financial Commissioner to take a decision in respect of the appointment of Lambardar in terms of the order passed by the Division Bench of this Court in LPA No.202 of 2016 decided on 10.8.2017.

The parties are directed to appear before the Financial Commissioner Revenue, Punjab on 08.1.2018.

19.12.2017

Vivek

(RAKESH KUMAR JAIN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No