

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

CWP No. 12507 of 2016
Date of decision: 24.09.2018

Surinder Singh

....Petitioner(s)

Versus

The Financial Commissioner, Punjab Civil Secretariat, Chandigarh and
others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr. Harsh Aggarwal, Advocate,
for the petitioner.

Mr. TPS Chawla, DAG, Punjab.

Mr. Sherry K. Singla, Advocate,
for respondent no. 4.

G.S.SANDHAWALIA, J.

The present writ petition has been filed under Articles 226 and 227 of the Constitution of India challenging the order dated 26.04.2016 (Annexure P-19) passed by respondent no. 1-The Financial Commissioner. Thus, restoration of orders dated 18.04.2013 (Annexure P-17) passed by the Divisional Commissioner-respondent no. 2 and 11.05.2012 (Annexure P-16) passed by respondent no. 3-The District Collector appointing the petitioner as Lambardar of village Sidhwan Bet is prayed for.

The Financial Commissioner, vide the impugned order, has directed the Collector to invite fresh applications for the post of Lambardar, which order was initially stayed while issuing notice of motion on 11.07.2016. The reasoning which prevailed with the Financial Commissioner to issue such directions was on account of the protracted litigation inter se the petitioner and the private respondent for over a decade

for the post in question. The relevant factor which is now to be kept in mind is that during the pendency of the proceedings, the private respondent had already been appointed as Lambardar for the village Salempur vide order dated 14.07.2015 (Annexure P-18) and, therefore, counsel for the said respondent could not deny the fact that effectively he no longer remains in the contest for the said post.

As noticed, the petitioner was appointed by the Collector on 23.09.2008 (Annexure P-7) after the applications had been invited on 11.05.2007. Initially, only Ranjit Singh had given application and the present petitioner had filed an application that the requisite proclamation has not been done properly and thereafter, 8 applications were received. The name of the petitioner had been recommended by the Naib Tehsildar and forwarded by the SDM. The Collector had noticed that the petitioner was 45 years of age. He could read Punjabi, Hindi and English and was owner of 5 acres of land apart from one commercial plot. On account of his active participation in common and social works and the fact that he was also the Ex Director of the Land Mortgage Bank and was an educated person having done his diploma from the Animal Husbandry Department and being income tax payee, he was appointed while considering the case of the private respondent Ranjit Singh also and noting that he was not a resident of his village and he was a resident of village Salempura.

The said appointment had been upheld by the Commissioner on 20.02.1999 which had been challenged by the private respondent-Ranjit Singh who had further taken the challenge to the Financial Commissioner, which was interfered with only on the account that the petitioner was working as a Commission Agent and would not be easily available.

Resultantly, remand was ordered on 01.12.2009 (Annexure P-9). The private respondent thereafter filed CWP No. 1195 of 2010, which was allowed on 25.01.2010 (Annexure P-10) that the petitioner therein could not be kept out of the zone of consideration and the order was passed and, therefore, the matter was thrown open again. Since the petitioner had filed a separate writ petition challenging the said order of the Financial Commissioner bearing CWP No. 3706 of 2010, he filed a review application which was disposed of on 16.03.2010 (Annexure P-11) that he would be entitled to urge all contentions in his own writ petition.

Eventually, writ petition filed by the petitioner was dismissed on 22.02.2011 (Annexure P-12) while clarifying that the District Collector could find the petitioner to be eligible and his suitability would also be considered for appointment as Lambardar since it had been contended before this Court that he was ready and willing to give up the business of a Commission Agent. The LPA had also been withdrawn by the petitioner on 07.07.2011 (Annexure P-15).

The Collector, thereafter on 11.05.2012 (Annexure P-16), again appointed the petitioner as Lambardar since it was noticed that he had left the work of the Commission Agent and his license of the commission agency had been cancelled. The said surrendering of license dated 04.03.2011 has also been placed on record as Annexure P-14. The private respondent again took the matter to the Commissioner who dismissed the appeal on 18.04.2013 (Annexure P-17). Thereafter, as noticed, the private respondent has been appointed as Lambardar of village Salempura which was the grouse of the petitioner also that he was not resident of the present village Sidhwan Bet.

However, the said respondent persisted with the revision petition filed before the Financial Commissioner against the second orders of the appointment duly upheld by the Commissioner which has been set aside being perverse on the ground that fresh applications should have been invited.

Keeping in view the development which has taken place inter se and the matter was only being agitated by the private respondent who himself is out of the zone of consideration on account of his appointment in another village, this Court is of the opinion that remanding the matter at this stage again would be an exercise in futility. As noticed, eventually only three persons had remained in the zone of consideration in the first round of the appointment process. Jarnail Singh had never as such agitated for the appointment at any point of time. The battle has always been between the petitioner and the private respondent and once the private respondent is as such no longer in the race, this Court is of the opinion that the matter should be given quiet hiatus at this stage rather than keeping the issue open for times to come as more than a decade has gone by after the petitioner was appointed for the first time.

Resultantly, the present writ petition is allowed and the order of the Financial Commissioner dated 26.04.2016 (Annexure P-19) remanding the matter and directing fresh applications is set aside. Orders dated 11.05.2012 (Annexure P-16) and 18.04.2013 (Annexure P-18) would come back in force whereby the petitioner has been appointed.

shivani
Whether reasoned/speaking
Whether reportable

(G.S. SANDHAWALIA)
JUDGE
Yes/No
Yes/No