

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

Civil Writ Petition No.1580 of 2015 (O&M)

Reserved on: 30.08.2018

Pronounced on : 26.09.2018

Sukhwinderjit Singh

... Petitioner

Versus

State of Punjab and others

... Respondents

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

Present : Mr. Akshay Bhan, Senior Advocate with
Mr. HPS Sandhu, Advocate for the petitioner.

Mr. P.S. Bajwa, Addl. AG, Punjab
for respondents No.1 and 2.

Dr. Anmol Rattan Sidhu, Senior Advocate with
Mr. Daljit Singh, Advocate for respondent No.3.

G.S. Sandhawal, J.

The present writ petition filed under Article 226/227 of the Constitution of India questions the order dated 28.11.2014 (Annexure P-6) passed by respondent No.2-Financial Commissioner (Animal Husbandry) by which while accepting the revision petition filed by the respondent No.3 Piara Singh the order dated 27.04.2010 (Annexure P-1) passed by the District Collector, Hoshiarpur and the order dated 14.03.2013 of the Commissioner (Annexure P-5) were set aside and the case was remanded to the District Collector for passing of fresh orders after verifying the facts about the stay of the respondent in the village and other merits of all the candidates.

The reasoning which prevailed while passing the remand order and setting aside the order of the Collector was that the petitioner was a permanent resident of foreign country and he resides there for a

maximum period and visiting India for a short period, since he is residing abroad with his family and working in the foreign country. The contention of the petitioner that he had visited abroad for few days for domestic work and thereafter had not visited abroad and is a permanent resident of village was not accepted.

Senior counsel for the petitioner has, accordingly, vehemently argued that the order of the Collector was a considered decision which was duly upheld by the Commissioner, Jalandhar on 09.02.2011. Another candidate, namely, Joginder Singh, had also challenged the order of the Collector which had been upheld by this Court by noticing that he was permanent resident, social worker with a sound financial position whose grandfather and great grandfather had been Lamberdars and the petitioner is conversant with the nature of work and taking part in public welfare activities. It has also been noticed that in case petitioner is found absent and not discharging his duties an application would always be filed for dismissal from the said post.

It has also further been submitted that on an earlier occasion also there was an order of remand and the Commissioner had duly considered the matter again in detail and, therefore, the finding of the Financial Commissioner is without any basis. A finding had been recorded by the Commissioner that he had gone abroad for 10 days in the year 2011 and for 4 days in the year 2012, therefore, fresh reconsideration was not required.

Senior counsel appearing for the respondents would also

allege that the chart in the order of the Financial Commissioner would go on to show that the stay in India between the period 2006 to 2010 was nominal and a passport had been issued from the foreign country during the hearing and in such circumstances the order passed by the Financial Commissioner was well reasoned.

A perusal of the writ petition would go on to show that the earlier Lamberdar had expired on 12.09.2009. In pursuance to the proclamation, four applications were received and name of the petitioner was recommended by the Tehsildar, Dasuya and, thereafter, by the Sub-Divisional Magistrate, Dasuya. Keeping in view the comparative merit of the petitioner, Joginder Singh, Piara Singh, the Deputy Commissioner passed a reasoned order in as much as he kept into consideration the age of the petitioner who was 41 years old and done his matriculation and owner of as much as 10 acres 1 kanal 13 marlas of land and owned a petrol pump. The father, grandfather and great grandfather were Lamberdars of the village Gilzian were factors which eventually weighed. The ration card was also kept into consideration for issue of his residence as such, since an argument has been raised that he was a permanent resident of Hague.

Piara Singh's merit was noticed that he was older candidate of 78 years and owner of 1 acre 2 kanal 1 marla of land and Chairman of the Paswak Committee and Vice-Chairman of the Cooperative Society. Joginder Singh contender was also 52 years old and 11th pass and had 6 acres 7 kanals of land in his own name. However, it was noticed that an

FIR dated 25.04.2010 was registered against him and also report dated 11.06.2002. Kuldeep Singh's comparative merit case was also taken into account that he was 54 years old and has only 5 acres of land in his own name. Resultantly, the petitioner was appointed.

The Commissioner while dismissing three appeals on 09.02.2011 (Annexure P-2) upheld the order on the ground that Joginder Singh had two FIR registered against him and there was no proof of Piara Singh that he was 7th Class pass. Kuldeep Singh's appeal being time barred was dismissed and it was noticed that the present petitioner left for abroad when he was about 20 years and he had built his house at Dasuya and his children are studying at Mukerian.

As noticed the writ petition filed by Joginder Singh bearing CWP No.8678 of 2011 was dismissed in limine on 17.05.2011 (Annexure P-3), keeping in view the fact that there were criminal cases against him and in case the petitioner herein was not available, he could always be removed.

The writ petition filed by the private respondent bearing CWP No.13250 of 2011 whether the petitioner was a ordinarily resident of the village, the matter was remanded back to the Commissioner, with the observation that, the Commissioner could consider the issue on the basis of the evidence. By virtue of the remand order, the Commissioner Jalandhar noticed the arguments of the counsels for the petitioners that the affidavit of Kuldeep Kaur who was the step mother of the petitioner had been given that the earlier affidavit was forged and false and the

Voter Identity card issued by Election Commission of India, Driving Licence, PAN Card, Cooperative Kisan Credit Card, Aadhar Card and registration certificate of Car, Electricity Bill, BSNL Telephone Bill, Insurance Policies, Receipts of Donations, Voter slip, Arms Licence, Ration Card etc. were kept in mind. It was also noticed that the petitioner had gone abroad only for two days on 26.02.2012 and come back on 01.03.2012 and in the year 2011 he had gone abroad between 13.04.2011 to 23.04.2011. In such circumstances, it was held that the private respondent had failed to establish that the petitioner was not a permanent resident of the village and only two entries of the passport of going abroad after the appointment of the Lamberdar were there.

The issue, thus, arises that merely because the passport was issued at one point of time at Hague by the Indian Embassy would not as such be a ground for the Financial Commissioner to come to the conclusion that the petitioner was not residing in India and not easily available. The said passport was issued on 03.04.2006. The earlier Lamberdar had expired on 12.09.2009 and limitation to file application was upto 15.10.2009. Merely because the petitioner had been earlier out of India for a considerable period would not be that on the date when the vacancy arose, a disadvantage on account of his earlier stay abroad. Another passport had been issued on 18.11.2015 by the authorities and, therefore, the earlier stay abroad would not be as such a ground so as to remand the matter, once on merits as noticed, the petitioner's candidature was better. The exercise which was to be conducted by the Commissioner

by virtue of the orders of this Court was upon proper consideration of the facts, which has not been properly appreciated by the Financial Commissioner. The order of remand has merely prolonged the litigation. It is not that the passport issued earlier was by another country and it was by the Assistant Consular Officer at the Embassy of India, Hague who had issued the earlier passport. The crucial date as such would be the date of vacancy which was much later and on account of the earlier stay abroad, the petitioner could not be put at a disadvantage. As noticed he is running a business as much as owning a petrol pump at Dasuya and, therefore, has got his roots in the country and on comparative merits he is better placed than the private respondents. The exercise by the Commissioner confirms the fact that he is a permanent resident of the country and, thus, rairly available for the residents of the village.

Resultantly, the order of the Financial Commissioner dated 28.11.2014 (Annexure P-6) remanding the matter is not liable to be sustained and the same is quashed. The order dated 27.04.2010 (Annexure P-1) and the subsequent order of the Commissioner dated 14.03.2013 (Annexure P-5) are upheld, whereby the petitioner was appointed as the Lamberdar of the Village Gilzian, Tehsil Dasuya, District Hoshiarpur.

The writ petition is, accordingly, allowed.

SEPTEMBER 26, 2018

Naveen

Whether speaking/reasoned:

Whether Reportable:

**(G.S. SANDHAWALIA)
JUDGE**

Yes/No

Yes/No