

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

**CWP No.16256 of 2015
Decided on: 20.09.2018**

Paramdeep Singh

....Petitioner

Versus

Financial Commissioner (Revenue) & others

...Respondents

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

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

Mr.T.P.S.Chawla, DAG, Punjab.

None for respondent No.4.

G.S. SANDHAWALIA, J.

Challenge in the present writ petition, filed under Articles 226/227 of the Constitution of India, by the petitioner, is to the order dated 26.05.2015 (Annexure P-5) whereby the Financial Commissioner has remanded the dispute of appointment of Lambardar of Village Hazara, Jalandhar, to the Collector, for filling up the vacancy, afresh. Resultantly, the order dated 23.02.2012 (Annexure P-1) whereby the petitioner had been appointed by the Collector, has been set aside as the Financial Commissioner had taken a view that serious allegations had been levelled against both the candidates.

It is pertinent to notice that the said order is not under challenge by the private-respondent No.4-Amanjot Singh, who otherwise has filed the written statement. The Commissioner, on appeal filed by the private-respondent No.4, had set aside the appointment of the petitioner on 10.01.2014 (Annexure P-3) by holding that preferential consideration had to be given to the private-respondent on account of the hereditary claim. The Commissioner had gone on to hold that education wise and land-

holding wise both the candidates were almost on equal footing and therefore, the belated allegations and counter-allegations did not merit consideration and resultantly, appointed private-respondent No.4. The said view has rightly not been approved by the Financial Commissioner who has gone on to hold that the date on which the person was appointed as Lambardar is relevant for determination of qualification for appointment.

Mr.Harsh Bunker, counsel appearing for the petitioner has submitted that on account of a theft case in FIR No.114 dated 04.08.2013 which was lodged against the petitioner in which he had been placed in column No.2, the investigation process had started and the Financial Commissioner has directed reconsideration. It is submitted that even the summoning order, as such, passed by the Magistrate has been set aside by the Addl.Session Judge, Jalandhar on 11.09.2012 and therefore, nothing survives, as such, on the basis of which, the matter is to be reconsidered by the Collector, especially keeping in view the fact that the order of appointment was dated 23.02.2012 and even the FIR was lodged thereafter and the relevant date would be the date of the vacancy, as such. He has, accordingly, rightly relied upon the Division Bench judgment in **Karam Singh Vs. Financial Commissioner & others 2006 (7) RCR (Civil) 8** wherein it has been held as under:

“4. xxxx xxxx xxxx

In 1994 Punjab Law Journal 473 Inderaj v. Financial Commissioner and others, the Apex Court held that it is the date on which a person is appointed as Lambardar, which is relevant, for such purposes. Respondent No.4 was appointed

on 11.1.2005 and on that date, he was no more a holder of BPL ration card. The fact that the property held by the petitioner was more than the property of respondent No.4 was also not a sufficient ground.”

After going through the case file, this Court is of the opinion that the Collector, as such, had examined the comparative merits of both the parties and at that stage, there was no such disqualification against the petitioner. Keeping in view the comparative merit, as such, to distinguish between them, it was found that petitioner had better educational qualifications having Degrees like Masters of Science-IT and MCA, in comparison to the Graduation Degree of the private-respondent. The petitioner was only 32 years old and had 5 kanals of land in the village apart from 36 kanals in Village Chuharwali and his family owned 37 acres of land. Apart from that he was also paying Income Tax and had taken part in blood donation and was a member of the Jalandhar Greenery Mission and accordingly, he had been appointed as Lambardar. It had been noticed that the private-respondent was issued notice for misuse of electricity and he was having 20 kanals 4 marlas of land in the village whereas the family owned 12 acres of land and he was also the son of the Lambardar, which was the relevant reason, as such, for the Commissioner to interfere with the order of the Collector on 10.01.2014 (Annexure P-3).

Rule 15(a) of the Punjab Land Revenue Rules, 1909 was subject matter of consideration before the Division Bench in **Karnail Singh Vs. State of Haryana 1973 PLJ 676** wherein it was held that such

a hereditary claim would directly or indirectly violate Article 14 of the Constitution of India. This aspect has not been kept in mind by the Commissioner while interfering with the well reasoned order of the Collector. The said view was followed by a Division Bench in **Raja Singh Vs. Commissioner, Faridkot Division, Faridkot & others 2012 (68) RCR (Civil) 180** wherein it was held as under:

“6. Rule 15 of the 1909 Rules provides that regard shall be had amongst other matters to hereditary claims. Section 17(ii) of the 1909 Rules which enacts a similar provision granting precedent to hereditary claims came up for consideration before a Division Bench of this Court in **Karnail Singh Vs. State of Haryana 1973 PLJ 676** and it was held that preference on the ground of hereditary claim would violate Article 14 of the Constitution of India. Rule 15 (a) of the 1909 Rules enacts a similar preference requiring the Collector to consider the hereditary claim of a candidate. A statutory provision that provides preference or precedence to hereditary claims whether directly or indirectly violates the principles of equality enshrined in Article 14 of the Constitution of India, therefore, cannot be enforced much less claimed as a matter of right.”

The Apex Court in **Mahavir Singh Vs. Khiali Ram 2009 (3) SCC 439** held that while exercising jurisdiction under Articles 226 of the Constitution of India, Courts are concerned of the correctness of the decision making process and not the merits of the decision. It was further held that where the finding of the Collector is not perverse and all the relevant factors have been taken into consideration, interference would not be justified, especially where the principles of natural justice have been complied with and the procedures laid down under the Rules, have

also been kept in mind. In the said case, even though the respondent was a person who had experience in the Armed Forces, which aspect had also been noticed by the Collector, but still had not been appointed, was upheld by the Apex Court. The said view was followed by the Division Bench in **Phool Kumar Vs. State of Haryana & others 2010 (2) RCR (Civil) 819**, by restoring the order of the Collector and setting aside the order of the Financial Commissioner and the Single Judge.

In such circumstances, the Commissioner had unnecessarily interfered and gone on to address the merits of the case which was not within his jurisdiction and the reasoning, as such, could not be justified. The Financial Commissioner was well justified in setting aside the said order. However, in view of the fact that an FIR had been lodged at a subsequent stage, the Financial Commissioner was not, as such, correct to set aside the order of the Collector dated 23.02.2012 and to direct the Collector to proceed to fill up the vacancy of Lambardar afresh. It is also further to be noticed that the petitioner had been found innocent, as such, in the First Information Report dated 04.08.2013 which would be clear from the enquiry report dated 06.09.2013 (Annexure P-7), which is the investigation done, wherein it has been found that the petitioner was not present at that time when the theft of bricks from the Panchayat Gali had taken place. The order summoning him by the Magistrate has also been set aside by the Addl.Sessions Judge, Jalandhar on 11.09.2018, which reads as under:

“5. This court is of the considered view that the present petitioner has been summoned to face trial in the present case

on an application filed under Section 319 of Cr.P.C. filed by PW-1 Baljinder Singh, wherein the learned trial court has considered the examination in chief of PW-1 Baljinder Singh while passing the impugned order dated 17.02.2018 on the ground that PW-1 Baljinder Singh has specifically named the present petitioner Paramdeep Singh as the person who is alleged to have illegally raised wall in the public street to encroach the same and has stolen the bricks in his tractor trolley by arranging labourer for the same and the aforesaid petitioner Paramdeep Singh was also named in the complaint submitted to the police by the aforesaid PW-1 Baljinder Singh. However, the perusal of the records of the learned trial court reveals that the present petitioner Paramdeep Singh was found innocent during the course of investigation by the police and his name was kept in column No.2 in the challan as the person against whom no challan was presented, as no offence was found to have been committed by the present petitioner in the present case. Furthermore, this court is of the considered view that the present petitioner was found innocent in the Enquiry conducted by Deputy Superintendent of Police, Adampur which was lateron approved by the SSP Jalandhar (Rural). Furthermore, the perusal of the investigation record reveals that the independent witnesses namely Ex.Sarpanch Balbir Ram, Capt. Kundan Singh, Sarwan Singh have categorically stated in the aforesaid enquiry that the present petitioner Paramdeep Singh went alongwith them on dated 02.08.2013 to the Panchayati Oath Taken Ceremony held at Kartarpur town and returned to their village at about 4.30 PM and the motive for false implication of the aforesaid Paramdeep Singh in the present FIR case is that the aforesaid Paramdeep Singh has been appointed Lambardar of their village Hazara and appeal against his appointment as Lambardar is pending before the court of Ld. Commissioner, Jalandhar and he has been implicated in the present FIR falsely to spoil his aforesaid Lambardar case.

Furthermore, the perusal of the investigation record reveals that the aforesaid DSP Adampur, who is the enquiry officer has summoned the call detail record of the present petitioner Paramdeep Singh of the date in question i.e. 08.01.2013, and as per that, the present petitioner is shown to have been present at Kartarpur on dated 08.01.2013 at the time of occurrence in question and thus, no challan was presented against him. Thus, this court is of the considered view that Ld. Trial court has not taken into consideration the aforesaid oral statements of the aforesaid witnesses namely Ex.Sarpanch Balbir Ram, Capt. Kundan Singh, Sarwan Singh and the aforesaid documentary evidence i.e. call detail record and thus, has committed a grave error of law while relying upon the uncorroborated testimony of PW-1 Baljinder Singh, who is the political adversary of the present petitioner as stated by aforesaid independent witnesses namely Ex.Sarpanch Balbir Ram, Capt. Kundan Singh, Sarwan Singh. Furthermore, this court is of the considered view that the Id. Trial court has recorded the confession of the remaining accused and has passed judgment of conviction and sentence order dated 06.01.2018, whereby the remaining accused were convicted and sentenced to pay the fine of Rs.200/- only on the basis of their respective confessional statements. Furthermore, all the arguments raised by the counsel for the petitioner had already been squarely dealt with as discussed herein before and therefore, there is no need to discuss the same once again for the sake of brevity.

6. In view of reasons discussed herein before, the present revision petition is hereby allowed and the impugned summoning order dated 17.02.2018 is hereby set-aside. Trial Court record alongwith copy of this judgment be sent forthwith to the quarter concerned. Revision file be consigned to the record room.”

Accordingly, in such circumstances, the present writ petition is allowed and the order of the Financial Commissioner dated 26.05.2015 (Annexure P-5), to the extent that the Collector is to proceed to fill up the vacancy of Lambardar afresh, is set aside and resultantly, the order of the Collector dated 23.02.2012 (Annexure P-1) shall come back into force vide which the petitioner had been appointed as Lambardar.

20.09.2018
Sailesh

(G.S. SANDHAWALIA)
JUDGE

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