

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

CWP No.15662 of 2017

Date of decision : 23.01.2018

Vinod Kumar

.....Petitioner

Versus

State of Punjab and others

...Respondents

CORAM : HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present : Mr. Nilesh Bhardwaj, Advocate for the petitioner.

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DAYA CHAUDHARY, J. (Oral)

The prayer in the present petition is for issuance of a writ in the nature of certiorari for quashing of impugned order dated 29.04.2013 (Annexure P-3) passed by the Collector-cum-Deputy Commissioner, Ferozepur (respondent No.3), whereby respondent No.4 Manoj Kumar has been appointed as Lambardar of Ferozepur Cantt., order dated 20.02.2015 (Annexure P-5) passed by the Commissioner, Ferozepur Division, Ferozepur (respondent No.2), whereby the appeal filed by the petitioner has been dismissed as well as order dated 06.09.2016 (Annexure P-7) passed by the Financial Commissioner, Punjab vide which the revision petition filed by the petitioner has been dismissed. A further prayer has also been made for direction to the respondents to appoint the petitioner as Lambardar of revenue estate of Ferozepur Cantt.

Briefly, the facts of the case, as made out in the present petition, are that the Commissioner, Ferozepur Division, Ferozepur gave permission to create a new post of Lambardar for revenue estate of Ferozepur Cantt., Distt. Ferozepur vide order dated 04.03.2009. Thereafter, as per order passed by the Collector-cum-Deputy Commissioner, Ferozepur, it was decided to fill up the vacancy of Lambardar and applications were invited. A *Mushtri Mundai*/proclamation was effected by Halqa Patwari in the area for inviting the applications. Total 16 candidates submitted their applications. After receiving the applications, the concerned police station was directed to submit report with regard to antecedents of all the candidates. Patwari Halqa was also directed to submit Naksha Lambardari. As per the police report, all the candidates were having good character. By considering the respective merit of all candidates, the S.D.M., Ferozepur recommended name of Manoj Kumar (respondent No.4) for the post of Lambardar. Thereafter, vide order dated 29.04.2013, the Collector-cum-Deputy Commissioner, Ferozepur appointed Manoj Kumar (respondent No.4) as Lambardar of Revenue Estate of Ferozepur Cantt. Aggrieved by said order dated 29.04.2013, the petitioner filed an appeal before the Commissioner, Ferozepur Division, Ferozepur but the same was dismissed vide order dated 25.02.2015. Said order was challenged by the petitioner before the Financial Commissioner by way of filing revision petition, which was also dismissed on 06.09.2016.

The petitioner has now approached this Court by way of filing present petition for quashing of aforesaid orders passed by different

authorities, by raising various grounds.

Learned counsel for the petitioner submits that respondent No.4 has been appointed as Lambardar, whereas the petitioner being more educated is meritorious viz-a-viz respondent No.4 but his candidature has not been accepted only on the ground that he is 53 years of age and is running a depot, whereas other factors have not been taken into consideration. Learned counsel further submits that running of a depot or to be a depot-holder is not a disqualification as it is a job of short period and he could have spent much more time in the work of Lambardari. Learned counsel also submits that the factors which are required to be taken into consideration as provided under the Rules have not been taken into consideration while appointing respondent No.4 as Lambardar and rejecting the claim of the petitioner and as such, the orders passed by the Collector, Commissioner and Financial Commissioner are unlawful, illegal and liable to be set aside.

Heard the arguments of learned counsel for the petitioner and have also gone through the impugned orders and other documents on the file.

Facts relating to inviting of applications, recommendation by Sub Divisional Magistrate and appointment of respondent No.4 as Lambardar by District Collector are not disputed. It is also not disputed that the appeal as well as revision filed by the petitioner were dismissed. The petitioner is aggrieved by the action of respondent-authorities while appointing respondent No.4 as Lambardar and rejecting his claim as the

factors, which are necessary to be considered, were not taken into consideration. Name of respondent No.4 was recommended by Sub Divisional Magistrate, Ferozepur. District Collector-cum-Deputy Commissioner, Ferozepur considered the candidature of five candidates who were present. Candidature of Jaswant Kaur and Nirmal Pal was not found to be suitable being in the age group of 64-65. By considering the respective merit of the petitioner and respondent No.4, respondent No.4 was appointed as Lambardar vide order dated 29.04.2013. Said order was challenged by the petitioner before Commissioner, Ferozepur Division, Ferozepur but the appeal was dismissed. The relevant portion of order passed by the Commissioner is reproduced as under:-

“I have considered the arguments advanced by the learned counsel for the parties and have gone thorough the record of the case. The impugned order of the District Collector, Ferozepur, reveals that Smt. Nirmal Pal, appellant and Smt. Jaswant Kaur, appellant are aged about 64/65 years, and as such they will not be able to perform the duties of Lambardar efficiently. Even otherwise, the Govt. retires its employees after the age of 60 years. Though, there is no age limit for the appointment of Lambardar, but both these ladies are not suitable as compared with respondent No.1. Further, the age of Vinod Kumar, appellant is about 53 years, whereas the age of Manoj Kumar, respondent No.1 is about 35 years. Shri Manoj Kumar, respondent No.1 being younger in age can discharge the duties of Lambardar more efficiently as compared with Shri Vinod Kumar, appellant. The name of Manoj Kumar, respondent No.1 has also been recommended by the lower Revenue Officers for appointment as Lambardar. On the other hand, Shri Vinod Kumar, appellant is depot holder and he is required to remain present at his depot for distribution of ration and as such he cannot devote much time to perform the duties of Lambardar. The

District collector, Ferozepur, therefore, vide his order dated 29.04.2013, has rightly appointed Shri Manoj Kumar respondent No.1 as Lambardar of Ferozepur Cantonment. I do not see any illegality or perversity in the impugned order of the District Collector, Ferozepur. I, therefore, dismiss all the three appeals. A copy of this order be placed on each file.”

The petitioner was not considered suitable by taking into consideration his age and also the fact that he is a depot-holder and is required to be present at his depot for distribution of ration. Being busy with that work, he will not be able to spare so much time to perform duties of Lambardar. Only the age factor was also taken into consideration as petitioner is 53 years of age, whereas respondent No.4 is about 35 years of age. Thereafter, the petitioner filed revision before the Financial Commissioner, Punjab which was also dismissed vide order dated 06.09.2016. Being satisfied with the order passed by the Collector as well as the Commissioner and by taking into consideration the age and the findings recorded by the Collector, the revision petition was dismissed. It was mentioned in the order passed by the revisional authority that the petitioner has failed to show any illegality in the relative assessment in merits of the candidates.

The orders passed by the Collector, Commissioner and Financial Commissioner are detailed and well reasoned. No doubt, running a depot is not a disqualification but undoubtedly, some time is required to be devoted for the work, whereas respondent No.4, having no other work to do, can give more attention to perform the duties of Lambardar. Some of the

relevant factors, which are necessary to be taken into consideration are hereditary claims, property in the estate possessed by the candidate to secure recovery of land revenue, the services rendered to the State by the candidate himself or by his family members and his personal influence, character, ability and freedom from indebtedness. Petitioner cannot be said to be on better footings than respondent No.4 as far as hereditary claim and issue of property is concerned. Regarding services rendered to the State, none of the candidates *i.e.* the petitioner as well as respondent No.4 have specified any service rendered by them to the State. Petitioner is 53 years of age, whereas respondent No.4 is 35 years of age. The only difference is of the qualification, as the petitioner is stated to be Graduate, whereas respondent No.4 is 10+2 pass. Moreover, it is a settled law that choice of the Collector is hardly to be interfered with unless some justified and perverse findings are there. It has been held by this Court in case ***Satpal Vs. State of Punjab and others, 2013 (3) RCR (Civil) 251*** that in cases of appointment of Lambardar, the age is one of the valid consideration, as a younger person can perform his duties in a better manner as compared to a person of advance stage. A specific finding has been recorded by all the authorities below while recommending the case of respondent No.4 that being younger in age and having no other work to do, he can perform his duties as Lambardar in a better manner and the petitioner cannot devote much time to perform duties of Lambardar. It has also been held in judgment of Hon'ble Apex court in case ***Mahavir Singh Vs. Khiali Ram 2009(1) RCR (Civil) 757*** that for appointment of Lambardar, age of the

candidate is the relevant factor.

In view of the facts and the law position as discussed above, I find no reason to interfere with the impugned orders and as such, the petition being devoid of any merit, is hereby dismissed.

23.01.2018

sunil yadav

**(DAYA CHAUDHARY)
JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No