

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

**(1) CWP-1925-2016**

Iqbal Singh ....Petitioner

Versus

Financial Commissioner Appeals-I & others ....Respondents

**(2) CWP-3010-2016**

Manjinder Singh ....Petitioner

Versus

Financial Commissioner Appeals, Chandigarh & others ....Respondents

**Decided on: 08.10.2018**

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

Present: Mr.R.S.Chauhan, Advocate  
and Mr.P.K.Suri, Advocate,  
for the petitioner in CWP-1925-2016  
and for respondent No.5 in CWP-3010-2016.

Mr.G.S.Nagra, Advocate,  
for the petitioner in CWP-3010-2016  
and for respondent No.4 in CWP-1925-2016.

Mr.Ayush Sarna, AAG, Punjab.

Mr.Sandeep Jain, Advocate,  
for respondent No.5 in CWP-1925-2016.

**G.S. SANDHAWALIA, J.**

The present judgment shall dispose of two writ petitions, bearing CWP-1925 & 3010-2016, involving common questions of law and facts. However, to dictate orders, facts have been taken from CWP-1925-2016 titled *Iqbal Singh Vs. Financial Commissioner Appeals-I & others*.

The present writ petitions have been filed by Iqbal Singh and Manjinder Singh, respectively, who are aggrieved by the order dated 08.05.2014 (Annexure P-6) whereby the Financial Commissioner has held

that all the candidates in the present case are not eligible for the post of Lambardar of Village Majari Tehsil & District SBS Nagar and therefore, remanded the matter to the Collector, to appoint the Lambardar after conducting the proceedings afresh.

Iqbal Singh also filed a review application, which was dismissed on 06.08.2015 (Annexure P-8) by holding that the petitioner had not been debarred and therefore, the earlier order was upheld on account of that, it was only a remand order. It was also noticed that the petitioner had been acquitted but the stigma remained attached with him and therefore, directions were issued to appoint the Lambardar after conducting the proceedings afresh.

Counsel for the petitioner (in Iqbal Singh's case) has submitted that once there was an acquittal, as such, vide order dated 31.07.2007 (Annexure P-5) in a complaint case, in which the petitioner had been arrayed as accused No.3 and whose presence at the scene of occurrence was not held to be proved and it was held that he was the only candidate for the post of Lambardar in the village and he had been roped in. The order passed on 08.05.2014 (Annexure P-6) was not justified, in the facts and circumstances.

Counsel for the petitioner (in Manjinder Singh's case) argued that if the writ petition of Iqbal Singh was to be allowed, he should also be considered eligible for the post and therefore, the order dated 08.05.2014 passed by the Financial Commissioner was not justified.

A perusal of the paperbooks would go on to show that on account of a vacancy which occurred in June, 2005, for Village Majari, the Collector had initially appointed Kashmir Singh, private-respondent No.5 (in CWP-1925-2016) on the ground that his father had been Lambardar for the last 40 years and he was aware of the duties and responsibilities of the said post. The educational qualifications of other candidates not having been considered, the matter had been taken in appeal by both the petitioner in two separate appeals and the Commissioner had interfered with the order on 10.11.2005 (Annexure P-2) and also noticed that Iqbal Singh had been summoned vide order dated 04.05.2000 by the Judicial Magistrate, 1<sup>st</sup> Class, SBS Nagar and appointed Manjinder Singh, by holding him to be more suitable and meritorious, while noticing that he had land in the village and the incident of conviction was of the year 1996 and the same does not constitute a good reason for ignoring a better educated and eligible candidate. The matter was taken to the Financial Commissioner by the petitioner and Kashmir Singh, who dismissed the revision petitions on 28.10.2010 (Annexure P-3) on the same ground.

Thereafter, the petitioner-Iqbal Singh carried the matter to this Court in CWP-7035-2011 which was allowed on 06.07.2012 (Annexure P-4) and the matter was remanded to the Financial Commissioner, to call for the record of the criminal case pending against the petitioner as well as Manjinder Singh, to see the suitability for the appointment to the post of Lambardar.

It was, in such circumstances, the order was passed on 08.05.2014 (Annexure P-6), whereby the Financial Commissioner came to the conclusion that both Iqbal Singh and Manjinder Singh were involved in criminal cases which was, *prima facie*, a stigma attached and resultantly, noticed that the Collector had wrongly not considered the merits of the candidates and only had considered the hereditary claim. It was further noticed that other factors had to be taken into consideration and remanded the issue, for fresh consideration. Relevant portion of the order reads as under:

“6. After going through the arguments put forth by the counsel for all the parties, record and orders of lower courts, I have reached to the conclusion that in present case the petitioner as well as respondent no.1 both were involved in criminal cases which is *prima facie* a stigma attached to it. Though the petitioner has been acquitted but there is an element of stigma always attached with it. Similarly the respondent no.2 himself admitted that he was convicted in a criminal case but the amount of fine was paid by him but to discharge the duties of the Lambardar one has to be a person of clean image. Both the petitioner as well as respondent no.2 are of not clean image, thus, they are not fit for the post of Lambardari.

8. Further, the respondent no.1 was appointed by the Collector S.B.S.Nagar on the basis of his hereditary claim only. Generally, the choice of the Collector should not be disturbed in case of appointment of Lambardar unless it is suffered from perverse order. In the present case the Collector while appointing the respondent no.1 as Lambardar did not consider the merits of the candidates except the hereditary claim. In today's scenario all the things including education qualification, age, health etc. are important to discharge the

functions of the Lambardar. The Lambardar should be capable to the extent that he should atleast can read punjabi. Thus, all the candidates in the present case are not fit for the post of Lambardar. Accordingly the case is remanded to the Collector S.B.S. Nagar to appoint the Lambardar after conducting the proceedings afresh. Announced. File be consigned to record room.”

As noticed above the review application of the said order has been dismissed, which is not sustainable in the sense that the subsequent Financial Commissioner had come to the conclusion that the petitioner-Iqbal Singh had not been debarred from presenting his case to the Collector which, on the face of it, is against the record. The findings dated 06.08.2015 (Annexure P-8) read as under:

“5. I have heard learned counsel for the petitioner/applicant and perused the orders of the lower court as well as order of predecessor of this court. Though the petitioner/applicant had been acquitted but stigma will always remain attached to it. The order passed by the predecessor of this court is very clear and it is only a remand order in which the Collector is directed to appoint the Lambardar after conducting the proceedings afresh. No prejudice is caused to the petitioner/applicant by the remand order.

6. Further, the petitioner has not been debarred from presenting his case before the Collector. The Collector, being the appointing authority is in perfect position to evaluate the merits and demerits of the candidates. The petitioner is free to produce the documents in his favour before the Collector.

7. Accordingly, the review application is dismissed being devoid of merits. The order dated 08.05.14 passed by the predecessor of this court is upheld.”

In the earlier order dated 08.05.2014, it is very explicit and

clear that both Iqbal Singh and Manjinder Singh are not fit for holding the post of Lambardar and therefore, in review, it was, not, as such, correct on the part of the respondent No.1 to hold that no such prejudice has been caused. The said order cannot be sustained in any manner and therefore, is quashed, to the extent, in favour of Iqbal Singh.

The other factor which is to be taken into consideration is that even on earlier occasion, the Financial Commissioner was not justified in debarring the petitioner-Iqbal Singh by holding that he is not having a clean image. The order of acquittal (Annexure P-5) would clarify that the petitioner has been wrongly involved in the proceedings pertaining to Sections 323, 324, 325, 382, 504, 506, 450, 307, 34 IPC in which he was arrayed as respondent No.3 by Gurmukh Singh, qua incident of the year 1998. He had been involved on account of the fact that he was very thickly associated with accused No.1 & 2 and the servant of Iqbal Singh had also given a fist blow, as such, upon the complainant. Eventually, it is to be noticed that the Trial Court also came to the conclusion that Iqbal Singh was being roped in on account of the matter pending before the Financial Commissioner, which would be the relevant factor and thus, acquitted Iqbal Singh. Relevant portion of the order read as under:

“11. I have given a careful thought to the respective submissions and have also gone through the evidence on the file. First and foremost talking up the case of accused Iqbal Singh, there is no doubt about the fact that although the said Iqbal Singh has been named as an associate of accused no.1 & 2 has been attributed a fist blow on the left side of face of

complainant has been falsely implicated. Whereas in the body of complaint, the complainant has been careful enough to attribute the grievous injury no.3 to accused no.3, it seems that the complainant forgot his own version when he came present for pre-change evidence, wherein, he talks of the first blow at his left side by accused no.1 & 2. In the said statement, no specific injury/role has been attributed to accused no.3. The matter does not end here. Harmail Singh CW-2 Gurnek Singh CW-3 very candidly admit in their further cross examination that they did not see Iqbal Singh accused no.3 at the sport nor Iqbal Singh inflicted any injury on the person of complainant in their presence. Gurnek Singh in fact even expressed ignorance of the time of occurrence and states that he did not see Iqbal Singh at the scene of occurrence. It is also apparent from the cross examination of both these witnesses that Iqbal Singh accused no.3 was a candidate for lambardar of the village and his dispute in this respect with CW-2 Harmail Singh is pending before the FCR, which fact explains the roping in of his name in the present complaint. However, finding no evidence is against the accused Iqbal Singh whose very presence at the scene of occurrence is not proved, Accused Iqbal Singh is acquitted of the charges frame against him.”

This aspect has not been examined at all by the Financial Commissioner while debarring the petitioner-Iqbal Singh, in his order dated 08.05.2014 and therefore, the said order cannot be held to be justified, to that extent.

However, the benefit which the petitioner-Manjinder Singh is staking in CWP-3010-2016, on the same grounds, is not liable to be accepted. In the reply filed by the respondents, it would be clear that the said petitioner is involved in various criminal litigations which would be

sufficient to hold that the order dated 08.05.2014, debarring him, was well justified. The details, as such, would go on to show that Manjinder Singh was accused in FIR No.205 dated 31.07.2009 under Sections 452, 323, 324, 506, 34 IPC, though he was acquitted on 02.02.2013 (Annexure R-4/2). Similarly, he was accused in FIR No.70 dated 31.08.2013 under Sections 307, 341, 325, 324, 323, 506, 148, 149 IPC Police Station Sadar Banga, in which the injured suffered as many as 9 injuries and the petitioner had given a blow with a gandasi at the forehead of Balbir Singh, who eventually was declared hostile and stated that he could not identify the accused and the benefit of acquittal went to Manjinder Singh. Similarly, Manjinder Singh was also arrayed as accused in FIR No.98 dated 03.11.2012 under Sections 18, 278, 435 IPC Police Station Sadar Banga, which led to his acquittal on 11.08.2015 (Annexure R-4/4). In the said case also, the complainant his neighbours did not support the prosecution version in which Manjinder Singh had burnt the paddy crop which had gone out of control and entered into the field of sugarcane of the complainant.

It is, thus, apparent that the petitioner-Manjinder Singh, as such, had rightly been kept out of the zone of consideration for the post of Lambardar, keeping in view the settled principle that the Headman should be free from any stigma of criminal litigation and therefore, keeping in view the above, he does not earn the benefit of consideration. Manjinder Singh also chose not to challenge the order dated 08.05.2014 at the initial stage and only when the review petition of Iqbal Singh was

dismissed on 06.08.2015, he filed CWP-1925-2016 and to get his writ petition tagged with the one filed by Iqbal Singh.

Accordingly, in view of the above discussion, CWP-1925-2016 is partly allowed, to the extent that the petitioner would be entitled to be considered for the proceedings for the post of Lambardar whereas CWP-3010-2016 is dismissed, on account of the findings recorded against him by the Financial Commissioner and the same does not warrant interference by this Court, under the extraordinary writ jurisdiction under Articles 226/227 of the Constitution of India.

08.10.2018  
Sailesh

(G.S. SANDHAWALIA)  
JUDGE

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