

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

**CWP No.19576 of 2018
Date of Decision: 10.09.2018**

Roop Ram	Versus	...Petitioner
State of Haryana and others		...Respondents

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

Present: Mr. Abhimanyu Singh, Advocate
for the petitioner.

G.S. SANDHAWALIA, J. (ORAL)

Challenge in the present writ petition, filed under Articles 226 and 227 of the Constitution of India, is to the findings of the revenue authority whereby the private respondent No.4-Bharat Lal has been appointed as Lambardar from the Scheduled Caste category for village Dubalu, Tehsil Nuh, District Mewat.

The argument raised by the counsel for the petitioner is that his name was recommended by the authorities below and the Collector should have given preference to him especially since his wife is also Sarpanch.

The order as of the District Collector, Mewat dated 23.07.2014 (Annexure P-3) has been upheld by the Financial Commissioner on the ground that there is no perversity or arbitrariness as such in the said order and therefore, interference in the choice of the Collector is not to be done as per the settled proposition of law. The Financial Commissioner also noted that the petitioner is only 10th class pass whereas the respondent is a graduate and more qualified and

therefore, found that he is on higher footing in comparative merit. He found that the Collector had examined all the said facts before appointing the said private respondent. Merely because the authorities below had recommended the name of the petitioner is not a ground as such to set aside the reasoned order passed by the Collector.

A perusal of the same would also go on to show that after balancing the comparative merits of both the candidates and keeping in view the fact that the educational qualifications of the private respondent are better and he is a more landed person having 4 acres of land, order has been passed. The age difference, as such, being nominal between the two candidates would not make much difference and preference was given to the private respondent. The Commissioner has also examined the case from the same angle and found there is no perversity in the order of the Collector.

Reference can be made on the settled principles of law on this aspect by noticing the judgment of the Division Bench in **Jog Dhian Vs. Financial Commissioner, Haryana and others 2005 (1) RCR (Civil) 658**. In the said case, the orders passed by the Commissioner and Financial Commissioner were set aside and that of the Collector was restored by noticing that if the person was appointed after considering the *inter se* merit between the candidates, re-assessment of the merits should not be done. Similar view was taken in **Nachhattar Singh Vs. State of Punjab and others, 2005 (2) PLR 92**, while upholding the order of the Financial Commissioner and setting aside the order of the Commissioner. Relevant portion of the judgment reads as under:

“7. We do not find any force in the arguments raised by the counsel for the petitioner. It is well settled that the

choice of the Collector in the matter of appointment of Lambardar under the Punjab Land Revenue Act, 1887 should not normally be interfered by the Commissioner. Only in exceptional circumstances, where a candidate is ineligible and has been appointed as Lambardar, the interference is required. This is not the present case. In this case, the Collector not only found respondent No.3 more meritorious candidate but he was held to be more suitable as compared to the petitioner as the petitioner had to remain out of the village for some time in a day in connection with his work. The Commissioner in its order dated 27.07.2001 has set aside the order of the Collector while observing that the petitioner is more meritorious than respondent No.3. In our view, the interference by the Commissioner in the order of the Collector on the said ground was not justifiable. Thus, the Financial Commissioner after considering the merits and demerits of the candidates has set aside the order of the Commissioner while holding that respondent No.3 was more meritorious candidate and there as no justification with the Commissioner to set aside the choice of the Collector. We also do not find any force in the contention of the counsel for the petitioner that respondent No.3 was defaulter of the bank. This point has been raised for the first time. We are of the view that we cannot go into this question when this point was never raised before the authorities below.”

The Apex Court in **Mahavir Singh Vs. Khialia Ram & others, 2009 (1) RCR (Civil) 757** held that while exercising jurisdiction under Articles 226 of the Constitution of India, High Courts are concerned of the correctness of the decision making process and not on 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.

Resultantly, there is no perversity in the orders of authorities below and this Court finds that there is no scope for the interference under Articles 226/227 of the Constitution of India.

Accordingly, the present writ petition is dismissed in limine.

10.09.2018
pvd

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No