

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

**CWP No.19967 of 2018
Date of Decision:13.08.2018**

Smt. Sanjogita

...Petitioner

Versus

State of Haryana and others

...Respondents

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

Present: Mr. Anoop Kumar Yadav, Advocate
for the petitioner.

G.S. SANDHAWALIA, J. (ORAL)

The present writ petition has been filed under Articles 226/227 of the Constitution of India. The challenge is to the order dated 18.07.2018 (Annexure P-3) passed by Financial Commissioner, Haryana whereby he set aside the order dated 22.11.2017 (Annexure P-2) of the Commissioner, Gurugram Division, Gurugram and restored the order dated 20.08.2015 (Annexure P-1) passed by the Collector, Mohindergarh at Narnaul whereby respondent No.4 Leela Ram was appointed as Lambardar of village Kherki, Tehsil & District Mahendergarh.

Reasoning which prevailed with the Financial Commissioner, Haryana, was that only on account of age factor the Commissioner had set aside the order dated 20.08.2015 of the Collector. It was accordingly observed that there was no such plea raised that the private respondents as such was incapacitated from discharging the duties of a Lambardar on that account. Resultantly, it was also held that choice of Commissioner in the appointment of the Lambardar needs not to be interfered unless it is against the settled principles of law.

Resultantly, it was held that the order was not justified and additional ground which was kept into mind was that the present petitioner did not belong to the *Patti* of deceased Lambardar for which vacancy was created.

Counsel for the petitioner has vehemently argued that the holding of the land in same *Patti* is not essential condition by placing reliance upon the judgment in **Baljeet Singh Vs. Financial Commissioner, Revenue, Punjab and others, 2013(4) RCR (Civil) 353** to contend in this regard. Similarly, reliance has been placed upon the judgment passed in **Manabhar Hussain Vs. Financial Commissioner, Department of Revenue, Haryana and others, 2013(3) RCR (Civil) 266** to contend that the age of a candidate was a relevant factor in the case of appointment to the post of Lambardar and therefore, younger candidate should have been given preference, which was the case of the petitioner.

A perusal of the record would go on to show that Financial Commissioner, Haryana was justified in coming to the said conclusion as the basic principle for the appointment of the Lambardar had been violated by the Commissioner. It is settled principle that the Collector's choice for making the appointment to such posts should not be interfered with. It is only in case of perversity that the order is liable to be interfered. Reference can be made to the judgment of the Apex Court in **Mahavir Singh Vs. Khiali Ram & others, 2009(1) RCR (Civil) 757** and the Division Bench's judgment of this High Court in **Phool Kumar Vs. State of Haryana and others, 2010 (2) RCR (Civil) 819**, apart from many others.

A perusal of the order of District Collector would go on to

show that from the 7 applications which had been received, vide a detailed order, the Collector examined the merits of all the candidates. Eventually, candidature of Khushi Ram, on account of his illegal activity and being involved in criminal offences, was rejected and it was also noticed that the present petitioner's qualification was higher.

Candidature of private respondent No.4 Leela Ram was noticed that he is 55 years old and has studied upto 10th standard and has a *pacca* house. He had deposited Rs.3 lakhs in Punjab National Bank, Nangal Sirohi and has a Tent House in the village and apart from this, he was also having tractor and combine machine. He was not defaulter of any bank or institute and no case was pending against him and was owner of 4 acres of land. It is also noticed that Khushi Ram, the other candidate was involved in illegal activities and in such circumstances, apart from nothing the fact the present petitioner belonged to another Patti, the appointment of respondent No.4 was done.

The candidature of the petitioner was also similarly examined and noticed that she is 34 years old, has passed 10+1 standard and having 2 kanals 6 marlas of land and also encouraged 5 families for Privar Niyojan. She has deposited Rs.50,000/- in post office, Rs.1,00,000/- in Cooperative Bank, Nangal Sirohi and has also got deposited an amount of Rs.4,10,000/- of the general public to encourage them for Alp Bachat Yojna. Thus, both the positive and negative facts had been recorded by the Collector.

The Commissioner only on account of the fact that the private respondent is aged 58 years and the petitioner is 34 years old and the fact that Khushi Ram and Leela Ram had been levelling allegations

and counter allegations and that the petitioner had good personality and higher qualification, has set aside the order of the Collector and directed that Sanad be issued in favour of the present petitioner-Sanjogita.

The Financial Commissioner, Haryana in such circumstances has rightly interfered with the order and there is no dispute regarding the judgments which have been relied upon by the counsel for the petitioner. The judgment in Baljeet Singh's case (supra) pertains to the case where the respondents had more land and this Court also kept in mind the fact that the Collector's choice is to be accepted while observing that appointee need not to be from the same *Patti* and kept in mind the rule which provides that it is estate which is to be kept in mind and not the *Patti* which is to be kept in mind.

Similarly, the judgment in Manabhar Hussain's case (supra) was a case, where there was a non-speaking order passed by the Collector and there were two criminal cases pending due to which the order of the Financial Commissioner was set aside while upholding the remand order of the Commissioner since incorrect facts had been kept into consideration and therefore, the said judgment as such would not be much help to the petitioner.

However, the fact remains that at ground level the Collector had opted for the private respondent and there was no such perversity in the said order. The Financial Commissioner was justified in setting aside the order of the Commissioner. The experience of the private respondent on account of his age being about 58 years old and his background, as noticed above was the criteria which has prevailed upon the Collector and which had been wrongly interfered with by the Commissioner and

only on the age aspect. The Collector also noticed that in certain works of Lambardari which pertains to field work and in the realm of the security aspects, therefore, a woman candidate might not be safe and also this was one criteria which he has kept in mind.

In such circumstances, the order passed by the Financial Commissioner, Haryana does not suffer from any perversity and does not require any interference by the writ Court, once the land holding of the said respondent was also larger in comparison to the petitioner.

Accordingly, writ petition is dismissed in limine.

13.08.2018
pvd

(G.S. SANDHAWALIA)
JUDGE

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