

IN THE HIGH COURT OF PUNJAB AND HARAYANA AT CHANDIGARH

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CWP No. 25384 of 2016

Date of decision: 26.07.2018

Bhupender

...PETITIONER

VS.

Financial Commissioner, Haryana and others

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Surinder Dagar, Advocate,
for the petitioner.

Mr. Ravi Pratap, Assistant Advocate General, Haryana,
for the State.

Mr. P.R.Yadav, Advocate,
for respondent No. 4.

AUGUSTINE GEORGE MASIH, J.

Challenge in this writ petition is to the order dated 08.08.2016 (Annexure P-3) passed by the Financial Commissioner, Haryana, vide which the revision petition preferred by respondent No. 4-Deepak Sahrawat challenging the order of the District Collector, Mewat dated 03.12.2013 (Annexure P-1) appointing the petitioner as Lambardar and the order dated 20.02.2014 (Annexure P-2) passed by the Commissioner, Gurgaon Division, Gurgaon, whereby the said order was upheld on an appeal preferred by respondent No. 4, were set aside.

It is the contention of the learned counsel for the petitioner that a well-reasoned and considered order passed by the District Collector, Mewat, which has been upheld by the Commissioner, Gurgaon Division, Gurgaon, has been set aside by the revisional authority vide the impugned

order dated 08.08.2016 on the basis of the comparative merit of the parties. He contends that it is a settled preposition of law that the choice of the Collector appointing a Lambardar should not be interfered with lightly and interference is only called for, if some patent illegality or perversity is found in the decision of the Collector. There is no illegality or perversity in the order which would call for interference in the order, as has been passed by the District Collector who had exercised his powers in a reasonable manner after taking into consideration the comparative merit of the candidates. In support of this contention, counsel for the petitioner has placed reliance upon a Division Bench judgment of this Court in **Daya Ram vs. Bhagwan and others**, 2015 (4) RCR (Civil) 929. Reliance has also been placed upon a case titled as **Sukhjinder Pal Singh vs. State of Punjab and others**, 2016 (3) RCR (Civil) 725. His further contention is that the Financial Commissioner could not have exercised his revisional powers to appoint respondent No. 4 in place of the petitioner and should have remanded the case back to the District Collector, Mewat to exercise his fresh opinion on the basis of any illegality or perversity which would have been found in the order passed by the District Collector, Mewat appointing the petitioner as Lambardar of the village. He, therefore, prays that the impugned order dated 08.08.2016 (Annexure P-3) passed by the Financial Commissioner, Haryana, deserves to be set aside and the orders passed by the authorities below be restored.

On the other hand, learned counsel for respondent No. 4 contends that there was an illegality committed by the Collector while treating respondent No. 4 as ineligible on the ground that respondent No. 4 was not eligible for consideration for the post of Lambardar as on the date

of the submission of the application for the said post, no land was in his name. He contends that in the light of the judgment passed by this Court in **Manjeet Singh vs. Financial Commissioner, Punjab**, 2012 (1) LAR 584, where it has been held that the relevant date for comparison of qualifications of the candidates is the date of appointment and not the date of the application for the post of Lambardar, there was not only an illegality committed by the Collector vide order dated 03.12.2013 appointing the petitioner as Lambardar but the Appellate Authority as well had not taken the said aspect into consideration while passing the order dated 20.02.2014, which error and illegality has been rectified by the Financial Commissioner, Haryana vide the impugned order dated 08.08.2016. His submission is that the records were available before the Financial Commissioner, Haryana, who has considered the comparative merit of the petitioner and respondent No. 4 and has taken a decision with regard to the suitability of both the candidates and thereafter, has proceeded to appoint respondent No. 4 as Lambardar instead of the petitioner. Prayer has thus, been made for dismissal of the writ petition.

I have considered the submissions made by the learned counsel for the parties and with their assistance, have gone through the impugned order but do not find any reason for interfering in the present petition.

It is not in dispute and as is apparent from the order dated 03.12.2013 passed by the District Collector, Mewat at Nuh that respondent No. 4-Deepak Sahrawat was found ineligible for appointment to the post of Lambardar merely because on the date of submission of the application by the said respondent, there was no agricultural land in his name whereas as per the release deed dated 04.10.2013, which was executed by his father and

his grandmother, he became the owner of 26 kanals of land, which was prior to the date of decision and appointment of Lambardar. This was a patent illegality committed by the Collector while considering the candidature of respondent No. 4 and holding him ineligible for consideration. The exercise of powers by the Financial Commissioner, Haryana, therefore, is fully justified and cannot be said to be not in accordance with law especially in the light of the judgment of this Court in Manjeet Singh's case (supra), where it has been held that the relevant date for comparison of qualifications of the candidates is the date of appointment and not the date of applications for the post of Lambardar.

As regards the judgment of the Division Bench of this Court in Daya Ram's case (supra), on which the counsel for the petitioner has placed reliance, there cannot be any dispute that the choice of the Collector, which has been upheld by the Commissioner, should not be interfered with until and unless there is a grave illegality or perversity in the order of the Collector appointing a Lambardar but that would not be the case here as respondent No. 4 was illegally declared as ineligible for appointment to the post of Lambardar. The said judgment, therefore, would not be of any help to the petitioner.

As regards the contention of the learned counsel for the petitioner that the Financial Commissioner, Haryana, should have remanded the case of the petitioner to the Collector to exercise his discretion afresh instead of exercising the powers himself by the Financial Commissioner in revision, suffice it would be that in the judgment in Sukhjinder Pal Singh's case (supra), what has been observed is that it is a discretion available with the Financial Commissioner, who could, in the given facts and

circumstances, remand a case to the Collector for fresh decision but here the Financial Commissioner has exercised the said powers and has, on comparative consideration of the merit of both the candidates, found that respondent No. 4 is not only more qualified as he is M.A. pass as compared to the petitioner, who is only 12th pass but is also the grandson of the deceased Lambardar, whose post was being filled, and had the experience of work as Lambardar which added to his merit.

In view of the above, the order dated 08.08.2016 (Annexure P-3) passed by the Financial Commissioner, Haryana, is hereby upheld and no merit is found in the present writ petition which would call for exercise of the discretionary powers of this Court. The writ petition, therefore, stands dismissed.

(AUGUSTINE GEORGE MAISH)
JUDGE

July 26, 2018

pj

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No