

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

CWP No.6101 of 2018

Date of Decision: 13.03.2018

Amrik Singh

....Petitioner

Versus

State of Haryana and others

....Respondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. S.S. Sahu, Advocate
for the petitioner.

DAYA CHAUDHARY, J.

The controversy in the present case relates to the appointment of *Lambardar* under the Backward Class category of Village Khan Mohmand. Vide letter memo No.23-22/A/RA/Code-1/891 dated 09.02.2016, a new post of *Lambardar* of the Backward Class category was created. The process was started to fill up the vacancy. After getting approval from the Deputy Commissioner, Fatehabad, *Mustri Munadi* was conducted in the Village vide Rapat No.225 dated 04.03.2016 and applications were invited. Total five applicants applied. After receiving the applications of said five applicants, Tehsildar, Fatehabad got character verification report from the concerned Station House Officer and after verification of all the applicants, the recommendation was made. All the candidates were asked to produce evidence in support of their claim. On comparative analysis, the name of the petitioner was recommended by the

Tehsildar. His case was also recommended by the Sarpanch of the Village and one candidate, namely, Krishan Kumar withdrew his application in support of the petitioner. The recommendations were sent to Sub Divisional Magistrate (Civil), Fatehabad who found the petitioner to be more meritorious, recommended his case for appointment vide order dated 16.03.2017. Thereafter, all the applicants appeared before the Deputy Commissioner-cum-Collector, Fatehabad on 07.04.2017. The Collector, Fatehabad, by recording the comparative merit of all the applicants, appointed Harjinder Singh as Lambardar by observing that he is younger to other applicants and has passed 10+2 examination. His name was recommended by the Sarpanch and other villagers.

The petitioner filed an appeal against the order of Collector, Fatehabad before the Commissioner, Hisar Division, which was dismissed vide order dated 09.11.2017.

Aggrieved by said order passed by the Commissioner and Collector, Fatehabad, the present writ petition has been filed by raising various grounds.

Learned counsel for the petitioner submits that the petitioner is more meritorious viz a viz respondent No.6 as his case has been recommended by the Tehsildar as well as by the Sub-Divisional Magistrate (Civil), Fatehabad. The respective merits of all the candidates have not been taken into consideration. Respondent no.6-Harjinder Singh has been appointed as *Lambardar* by observing that he is younger to other applicants and has passed 10+2, whereas, the petitioner is having experience being 45 years of age and has taken part in the common works of the Village. His name was recommended by the Sarpanch and almost all the residents of

Village Khan Mohmand. Learned counsel also submits that the Commissioner, Hisar Division, Hisar and Collector, Fatehabad have failed to appreciate the merit of the petitioner and found that respondent No.6 was better educated and is a young man of 28 years of age. The appeal of the petitioner has been rejected without appreciating the merit of the petitioner. The evidence produced by the petitioner in support of his claim has not been taken into consideration. Only by considering the age of respondent No.6, he has been appointed and the claim of the petitioner has been ignored.

Heard the arguments of learned counsel for the petitioner and have also perused all the documents available on the file including the orders passed by the Tehsildar, Sub-Divisional Magistrate (Civil), the Collector as well as the Commissioner.

The facts of the case are not disputed. The relevant portion of the order passed by the Collector, Fatehabad is reproduced as under :-

“ I have carefully perused the case file and carefully heard the arguments of applicants and their respective counsels and perused carefully all the evidence brought on file. After perusing, I came to the conclusion that above said applicant Harjinder Singh is younger to all applicants and young aged 28 years. The applicant Harjinder Singh is young than others. The Sub-ordinate Court have ignored this fact. The applicant-Harjinder Singh is having 28 kanal 14 marla land in his name. He is matric pass out and participates in the programme of Beti Bachao and Beti Padaho. He does social work and having reputation in the village. He is not having unauthorized possession over government and panchayat land, he is not defaulter of any institutions and participates in the social work of

the village. He did not take part in the political party. He takes part seriously in the common/joint programme of the village. He is eligible, therefore, applicant Harjinder Singh s/o Malkiyat Singh while observing more eligible than other applicants, is ordered to be appointed as backward class Lambardar of Village Khan Mohmand against newly created post of Lambardar.”

The order passed by the Commissioner, Hisar Division is reproduced as under :-

“ After hearing both parties and perusing the record, it is found that respondent is better educated and he is also 18 years younger in age. He also has more land. But land is in the name of his father which was not concealed. The land is also not relevant criteria for Backward Class Lambardari. In social work also, the respondent appears to be superior. Nor he has tried to mislead anybody. Further, it is also found that some Mandeep has written a complaint against appellant working as a property dealer and involved in fraud and false criminal litigation. So, even the character of appellant is not beyond doubt.”

It is a settled proposition of law that in case, the order passed by the Collector is based on proper appreciation of evidence produced by the parties and by comparing the respective merits of all the candidates then no interference is required. It can be interfered, in case, the order is based on misrepresentation of facts. Even it has been held in various judgments that in case, two views are possible, then there should not be any interference with the choice made by the Collector as has been held in the judgment of Division Bench of this Court in case ***Phool Kumar vs State of Haryana and others 2010(2) RCR (Civil) 819.***

No doubt, for appointment to the post of *Lambardar*, the age of the candidate is a relevant factor. For appointment of *Lambardar*, the factors which are necessary to be considered are the hereditary claims; the property in the estate possessed by the candidate to secure the recovery of land-revenue; service rendered to the State by himself or by his family and also his personal influence, character, ability and freedom from indebtedness as has been held by Hon'ble the Apex Court in case ***Mahavir Singh vs Khiali Ram and others 2009(3) SCC 439***.

No doubt, a finding recorded by the statutory authority, if found to be perverse, is liable to be interfered with in exercise of its jurisdiction under Article 226 of the Constitution of India.

It is a well settled principle of law that in view of decision in regard to appointment of *Lambardar*, the age of the candidate is a relevant factor. The word 'Lambardar' is defined in Advanced Law Lexicon, 3rd edition 2005, page 2616 as a 'headman of a village or of a patti or section of a village.' It has further been stated that the cultivator who either on his own account, or as the representative of other members of the village, pays the Government dues and is registered in the Collector's roll according to his number: as the representative of the rest he may hold the office by descent or by election.

The post of *Lambardar* is governed by the provisions of the Punjab Land Revenue Act and the Rules framed thereunder. He is not a Government servant and he does not hold a civil post within the meaning of Article 309 of the Constitution of India. He is paid a fixed amount. Earlier his duty was to collect the amount of revenue and he used to get some amount of the revenue collected. Apart from collection of revenue, he does

other functions including rendition of assistance to an investigating officer, in case, the crime is committed in the village.

The District Collector is the appointing authority. He considers the respective merits of all the candidates in detail.

This Court while exercising its jurisdiction under Article 226 of the Constitution of India is basically concerned with the correctness of the decision making process and not the merit of the decision. It has not been found by this Court that the Collector in expressing his opinion as regards comparative merit of the petitioner viz-a-viz respondent No.6 committed an error in his decision making process.

Undisputedly, the principles of natural justice have been complied with and procedure as laid down in the Rule has also been complied with. It is also not correct to say, as has been contended by the counsel that the respective merits of the candidates had not been taken into consideration. The purpose of judicial review is to ensure that the individual receives fair treatment and not to ensure that the authority after according fair treatment reaches, on a matter which it is authorized by law to decide or to draw a conclusion which is correct in the eyes of the Court. Judicial review is not an appeal from a decision but a review of the manner in which the decision has been taken. It is not safe to say that this Court sits in judgment not only on the correctness of the decision making process but also on the correctness of the decision itself.

It is a well settled law that this Court exercising the power under Article 226 of the Constitution of India is not like an appellate authority to consider the dispute. It is to be seen as to whether the impugned order is based on records or whether the authorities have applied their own

mind or not to the relevant facts. There cannot be any doubt or dispute whatsoever that a writ court could interfere with a finding of fact, in case, the same is found to be perverse. The choice of Collector cannot be lightly ignored and not interfered with unless very good reasons exist. The view regarding the weight age is to be given to the recommendations of lower revenue officers. Although the Collector is not bound to accept the recommendations of the lower revenue officers but he has to make up his own mind about the suitability of candidates.

In view of the facts and law position as discussed above, there is no merit in the contentions raised by learned counsel for the petitioner as there is no perversity in the orders as the Collector has considered the age, land holding and contributions towards village community while appointing respondent No.6. Hence, the present petition, being devoid of any merit, is hereby dismissed.

13.03.2018
gurpreet

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No