

C.W.P. No. 9000 of 2018

(1)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P. No. 9000 of 2018

DATE OF DECISION:16.04.2018

Bhupender Singh

.....Petitioner

Versus

State of Haryana and others

.....Respondents

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Chanakya Pandit, Advocate
for the petitioner.

DAYA CHAUDHARY, J.

The prayer in the present petition is for issuance of a writ in the nature of certiorari for quashing of impugned orders dated 18.1.2016 (Annexure P-4) passed by Financial Commissioner, Haryana, order dated 14.9.2012 (Annexure P-2) passed by Commissioner, Rohtak Division, Rohtak and order dated 27.7.2011 (Annexure P-1) passed by Collector, Panipat, whereby, respondent No.4 has been appointed as Lambardar of Village Bijawa, Tehsil Israna, District Panipat while rejecting the claim of the petitioner.

Briefly, the facts of the case as made out in the present petition, are that post of Backward Class Lambardar of Village Bijawa, District Panipat fell vacant on the death of earlier Lambardar, namely, Daryav Singh. After his death, applications were invited for appointing a new Lambardar. The Tehsildar, Israna and SDO (Civil), Panipat after considering respective merits of all the candidates, recommended the name of respondent No.4 (Rishi Pal), who was appointed as Lambardar by the

Collector vide order dated 27.7.2011. Aggrieved by order dated 27.7.2011 passed by Collector, Panipat, the petitioner filed an appeal before the Commissioner, Rohtak Division, Rohtak, which was also dismissed vide order dated 14.9.2012. Order dated 14.9.2012 was challenged by the petitioner by way of filing revision petition before the Financial Commissioner, Haryana, which was also dismissed vide order dated 18.1.2016.

Orders passed by the Collector, Commissioner and Financial Commissioner are subject matter of challenge in the present petition.

Learned counsel for the petitioner submits that respondent No.4 was given preference being son of deceased-Lambardar, whereas, it is a settled law that hereditary preference in appointment to the post of Lambardar is unconstitutional. Learned counsel further submits that learned Collector has recommended the name of respondent No.4 because the petitioner is only 10th pass and respondent No.4 is graduate, whereas, there is no bar in appointing the less educated person as Lambardar of the Village. The respective merits of the candidates have not been taken into consideration as the petitioner is younger in age and is having adequate land in comparison to respondent No.4. The petitioner has also contributed towards social service, whereas, respondent No.4 is running a mobile shop and he hardly gets time for social services. At the end, learned counsel submits that all the authorities have not taken into consideration the merits of the petitioner and only on the basis of hereditary claim, respondent No.4 has been appointed as Lambardar.

Heard the arguments advanced by learned counsel for the petitioner and have also gone through the impugned orders and other

documents available on the file.

The facts of the case are not disputed. Admittedly, name of respondent No.4 was recommended by Tehsildar, Israna and SDO (Civil), Panipat and he was appointed by the Collector, Panipat vide order dated 27.7.2011. Aggrieved by said order dated 27.7.2011 passed by Collector, Panipat, the petitioner filed an appeal before the Commissioner, Rohtak Division, Rohtak, which was also dismissed on 14.9.2012. Said order dated 14.9.2012 was challenged by the petitioner by way of filing revision petition before the Financial Commissioner, Haryana, which was also dismissed vide order dated 18.1.2016.

A perusal of order passed by the Collector clearly shows that initially eleven persons applied for the post, whereas, ultimately only two candidates i.e. petitioner and respondent No.4 were in the race. Respondent No.4 was 49 years of age and was son of deceased-Lambardar, namely, Daryav Singh. He had done his graduation from military and helped the government schemes by depositing ₹35 lacs in small family planning schemes as well as participated in three cases of family planning scheme. He was having 9 canals and 3 marlas of land and 77 villagers of the village gave statements in his favour. On the other hand, the petitioner was 31 years of age and had passed 10th class only. He had deposited ₹15 lacs in small saving schemes and had also participated in two cases of family planning. By considering the respective merits of petitioner as well as respondent No.4 and finding respondent No.4 more suitable and meritorious, the Collector has appointed respondent No.4 as Lambardar of the village. Order passed by the Collector was affirmed by the Commissioner as appeal filed by the petitioner was dismissed. Similarly, the Financial

Commissioner also dismissed the revision filed by the petitioner by holding that respondent No.4 is more qualified and experienced than the petitioner.

Moreover, 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.

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.4 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.4. Hence, the present petition, being devoid of any merit, is hereby dismissed.

April 16, 2018
pooja

(DAYA CHAUDHARY)
JUDGE