

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

LPA No.1341 of 2017(O&M) in
CWP No.17334 of 2015
Date of Decision:8.3.2018

Shingara Singh

..... Appellant

versus

Financial Commissioner (Punjab),
Civil Secretariat, Punjab, Chandigarh & ors.

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE B.S.WALIA

Present: Mr. Malkeet Singh, Advocate for the appellant.

B.S.WALIA, J.

1. Intra-court appeal has been filed by appellant-respondent No.4 against order dated 23.9.2016 in CWP No.17334 of 2015 whereby the writ petition filed by respondent No.4/petitioner was allowed and order dated 19.2.2014 passed by respondent No.2 appointing the appellant-respondent No.4 as Lambardar of Village Dhuleta, Tehsil Phillaur Distt. Jalandhar as also order dated 26.5.2015 passed by respondent No.1 dismissing the appeal preferred by respondent No.4/petitioner were set aside.

2. Brief facts of the case leading to the filing of the intra-court appeal are that respondent No.4/petitioner filed writ petition challenging order dated 26.5.2015 passed by the Financial Commissioner Revenue, Punjab whereby order dated 19.2.2014 (Annexure P-3) passed by the Commissioner, Jalandhar Division, Jalandhar was upheld and the order dated 24.5.2011 (Annexure P-1) passed by the

District Collector was set aside. Admittedly, respondent No.4/petitioner was appointed as Lambardar by the District Collector vide order dated 24.5.2011 (Annexure P-1). Appellant-respondent No.4 challenged the aforementioned order by way of appeal before the Commissioner, Jalandhar Division, Jalandhar who allowed the same and appointed appellant-respondent No.4 as Lambardar.

3. Feeling aggrieved, respondent No.4/petitioner approached the Financial Commissioner by way of an appeal which was dismissed by the Financial Commissioner vide order dated 26.5.2015 (Annexure P-4).

4. While issuing notice of motion, the learned Writ Court stayed the operation of the impugned order. Resultantly, respondent No.4/petitioner continued working as Lambardar during the pendency of the writ petition.

5. The main allegation which weighed with the Commissioner against respondent No.4/petitioner for setting aside his appointment as Lambardar was that he was in illegal occupation on public *rasta*, besides, he had obtained a disability certificate in the year 2009 by showing himself to be 60% handicapped in respect of his lower limbs. The learned Writ Court on the basis of record referred to before it came to the conclusion that allegation of illegal encroachment on land bearing Khasra No.4772 against respondent No.4/petitioner was incorrect and in fact appellant-respondent No.4 had moved a false application only to level baseless allegations so as to succeed in his claim for Lambardari. As regards allegation of false disability certificate, the learned Writ Court came to the conclusion that the same had been rightly issued in favour of respondent No.4/petitioner. On the basis of the same, the learned Writ Court concluded that the Commissioner as well as Financial Commissioner had committed serious error of law while passing respective impugned orders, therefore, the same could

not be upheld. The learned Writ Court further held that the orders passed by the Commissioner and Financial Commissioner did not show any of them to have recorded a finding that the order passed by the District Collector appointing respondent No.4/petitioner as Lambardar was either without jurisdiction or was suffering from any patent illegality or perversity and in view thereof, no jurisdiction vested in them to set aside the well reasoned order passed by the District Collector.

6. In the aforementioned background, the learned Writ Court held that the Commissioner as well as the Financial Commissioner had exceeded their jurisdiction while passing the impugned orders therefore, the same were liable to be set aside.

7. In the light of the aforementioned position, impugned orders dated 19.2.2014 and 26.5.2015 (Annexures P-3 and P-4) passed by the Commissioner, Jalandhar Division, Jalandhar and Financial Commissioner (Revenue), Punjab respectively, were set aside.

8. Learned counsel for the appellant has contended that the order passed by the District Collector was perverse and patently illegal because of not taking into account the fact with respect to the encroachment made by respondent No.4/petitioner on public land. On the one hand respondent No.4/petitioner had taken pension from the Government on the basis of disability while at the same time he had staked his claim for the post of Lambardar by stating that he was perfectly alright therefore, he was of doubtful integrity. Though report from the Panchayat exonerating respondent No.4/petitioner of illegal encroachment was not denied yet it was stated that a favourable report had been procured from the Panchayat because respondent No.4/petitioner was a blue eyed person of the

Sarpanch.

9. We have considered the submissions of learned counsel for the appellant and are of the considered view that in matters of appointment of Lambardar, the choice of District Collector is not to be upset lightly by the higher revenue authorities until and unless the order passed by the District Collector is found to be suffering from patent illegality or perversity. No infirmity has been shown by learned counsel for the appellant with regard to the findings recorded by the learned Writ Court against respondent No.4/petitioner.

10. In the circumstances, we are of the considered view that the order passed by the learned Writ Court setting aside the order of the Commissioner as well as Financial Commissioner dated 19.2.2014 and 26.5.2015 and upholding the order passed by the District Collector (Annexure P-1) does not warrant any interference. Accordingly, the appeal being bereft of merit is dismissed in limine. Consequently, the applications seeking condonation of delay 43 days in filing and 138 days in refiling the appeal are also dismissed.

(RAJESH BINDAL)
JUDGE

(B.S.WALIA)
JUDGE

March 08, 2018

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