

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

LPA No.457 of 2019
Date of Decision :27.02.2019

Rajinder Kumar

.....Appellant

Versus

State of Haryana and others

..... Respondents

**CORAM: HON'BLE MR.JUSTICE KRISHNA MURARI, CHIEF JUSTICE
HON'BLE MR.JUSTICE ARUN PALLI, JUDGE**

Present : Mr. Sanjay Verma, Advocate for the appellant.

ARUN PALLI, J. (Oral)

This is an *intra court* appeal under clause X of the Letters Patent against an order and judgment dated 09.01.2019, rendered by the learned Single Judge vide which the writ petition preferred by Ram Pal-respondent No.4, was allowed and the order dated 28.09.2015 (Annexure P-10), passed by the Financial Commissioner, Haryana-respondent No.1, has since been set aside.

The facts that are required to be noticed are limited.

For appointment of the Office of Lambardar in village Nissing, Tehsil and District Karnal, in the SC category, three candidates: Shamsher Singh, Ram Pal and Rajinder Kumar were in fray. Vide order dated 4.5.2006, Collector Karnal upon evaluating the credentials and comparative merit of the candidates found Ram Pal (respondent No.4), more suitable than for the post of Lambardar. And he was accordingly appointed. Aggrieved by the said decision both Shamsher Singh and Rajinder Kumar

appealed to the Commissioner Rohtak Division, which too were dismissed vide order dated 8.3.2007. Likewise, even the revision petition preferred by the appellant Rajinder Kumar was dismissed by the Financial Commissioner on 18.08.2009. However, upon a writ petition filed by the appellant (CWP No.4764 of 2010) the order dated 18.08.2009, was set aside and the matter was remitted to the Financial Commissioner for re-decision as the fact that the appellant was involved in a criminal cases could not be construed against him as he was eventually acquitted. Secondly, even if, the father and grand-father of the appellant were in un-authorized possession of the Panchayat property that factor could hardly visit the appellant with any adverse consequence unless it was established that the appellant too had benefited therefrom. Even though, vide order dated 16.11.2010, this Court had required the Financial Commissioner to re-decide the matter, but vide order dated 09.05.2011, he instead remanded the same to the Collector Karnal for passing fresh orders. Now, Ram Pal (respondent No.4) approached this Court vide **CWP No.9259 of 2011**, and assailed the order dated 9.5.2011, passed by the Financial Commissioner. And, vide order dated 23.11.2011, the learned Single Judge of this Court set aside the said order and directed to the Financial Commissioner to decide the matter himself. However, it was observed that in the event any additional material or assistance is required as regards the credentials of the respective candidates, the Financial Commissioner would be at liberty to seek a report from the Collector. And, vide order dated 28.09.2015, the Financial Commissioner after obtaining report from the Collector Karnal set aside the appointment of respondent Ram Pal and appointed appellant-Rajinder

Kumar as Lambardar. The said order was assailed by Ram Pal vide a writ petition, referred to above, which has been allowed and the order passed by the Financial Commissioner has since been set aside.

We have heard learned counsel for the appellant and perused the records.

Pursuant to the observation of this Court in its order dated 23.11.2011, the Financial Commissioner required the Collector to furnish a report as regards merits and demerits of the candidates and their candidature. And the Deputy Commissioner-cum-Collector submitted his report dated 16.02.2015. The only aspect that weighed with the Financial Commissioner to set aside the appointment of respondent-Ram Pal as Lambardar and consequently the orders passed by the Collector and Commissioner, Rohtak Division, Rohtak was that appellant was a matriculate whereas respondent-Ram Pal had only studied up to 7th class. Secondly the appellant being 38 years of age was younger to respondent-Ram Pal who was 44 years old. However, upon consideration of the matter and particularly the report dated 16.02.2015, submitted by the Collector the learned Single Judge concluded:-

“What has and was primarily taken into consideration by the Financial Commissioner is the report of the Deputy Commissioner-cum-Collector, Karnal, dated 16.02.2015 (Annexure P-9), which has been reproduced above. A perusal of the above would show that the petitioner is a better candidate as compared to respondent No.4 except for the fact that

the petitioner is 7th class pass and respondent No.4 is matriculate apart from the fact of age, which ultimately makes no difference as both are of middle age, petitioner being 44 years of age, whereas, respondent No.4 being 38 years of age. The other parameters when taken into consideration, petitioner has a march over respondent No.4 so far as cases of family planing scheme and the amount got deposited by motivating people in the small saving schemes. Another factor which weighs in the mind of the present Court is the recommendation of the Gram Panchayat for appointment of the petitioner as Lambardar which shows the will of the people and the acceptance of a candidate which aspect has not been taken into consideration by the Competent Authorities. The other facts by and large are the same.”

Ex facie, as regards the age and qualification there was not any decisive difference between the two candidates. No doubt the age and qualification are the relevant factors for evaluating the candidature of a candidate but age and qualification in isolation of other material factors cannot form basis of selection. Besides this respondent-Ram Pal had effectively assisted in implementation of the family planning scheme and motivated people to make deposits under the small savings scheme and his record in this regard was far more promising than the appellant. Not only

that his candidature was recommended by the Gram Panchayat for appointment as Lambardar, which rather reflected the will of the people and acceptance of the candidature of the respondent-Ram Pal. The plea set up by the appellant as regards his hereditary claim to the office was rightly rejected by the learned Single Judge as that could be of some significance if on other parameters the two candidates were placed identically. Which, as demonstrated above, was not the case.

On being pointedly asked, learned counsel for the appellant could not refer to anything on record to show if the conclusion arrived at by the learned Single Judge were either contrary to the record or suffered from any material illegality.

In the wake of the above, we are dissuaded to interfere with the impugned order and judgment, the appeal being devoid of merit and is accordingly dismissed.

(KRISHNA MURARI)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

27.02.2019

Manoj Bhutani

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No