

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

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CIVIL WRIT PETITION NO.7198 OF 2019

DATE OF DECISION: JULY 16, 2019

Gurdev Singh

.....Petitioner

VERSUS

State of Punjab and others

....Respondents

CORAM:- HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Navjot Singh, Advocate,
for the petitioner.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Petitioner has approached this Court, challenging the order dated 20.05.2014 (Annexure P-3) passed by the District Collector, Kapurthala, vide which respondent No.5, Jasbir Singh son of Daljit Singh, was appointed as Lambardar of Village Bhullarai, Tehsil Phagwara, District Kapurthala. The appeal preferred against the said order by the petitioner stands dismissed by the Commissioner, Jalandhar Division, Jalandhar vide order dated 30.08.2016 (Annexure P-2) and similar has been the result in the revision petition preferred before the Financial Commissioner, who vide order dated 28.05.2018 (Annexure P-1) did not agree with the contentions of the petitioner.

It is the contention of learned counsel for the petitioner that respondent No.5 has criminal antecedents as two FIRs were registered against him. He contends that merely because he has been acquitted by the

criminal Court, would not be enough for not taking that aspect into considering and the stigma attached thereto would continue. He also contends that the Collector has not appreciated this aspect and has simply, on the basis of acquittal, proceeded to appoint respondent No.5 as Lambardar of the village. In support of his contention, he places reliance upon the judgments of this Court in Sukhjinder Pal Singh Vs. State of Punjab and others, 2016 (3) RCR (Civil) 725 and Inder Singh Vs. Financial Commissioner, Haryana & Ors., 2015 (2) Law Herald (P&H) 1348. Apart from that, it is the contention of learned counsel for the petitioner that the petitioner has the experience of working as Lambardar of the village as he had been the Sarbrah Lambardar of the village and, therefore, has a preferential right for appointment to the post of Lambardar. He, thus, contends that the order dated 20.05.2014 passed by the Collector, appointing respondent No.5 as Lambardar of the village, followed by the orders passed by the Appellate Authority as well as the revisional authority cannot sustain and deserve to be set-aside and the petitioner appointed as Lambardar of the village being more meritorious as compared to respondent No.5. It has also been asserted by learned counsel for the petitioner that there has been an FIR (No.26 dated 06.02.2016), which has been registered against respondent No.5 at Police Station Phagwara, District Kapurthala, under Section 3 of the Prevention of Defacement of the Properties Act, 1995, which was in pursuance of the order passed by this Court in a contempt petition i.e. C.O.C.P. No.2695 of 2012. He, thus, contends that the conduct of respondent No.5, till date, is reflected in this FIR and, thus, would not be a fit person to be appointed to handle the responsibility of Lambardar.

I have considered the submissions made by learned counsel for the petitioner and with his assistance have gone through the impugned orders as well as judgments relied upon by him.

As regards the hereditary right of the petitioner, which has been put into play, the same would not be of much help to him as in the light of the fact that the Supreme Court has held it to be not a right which could be enforced. It has further been said that it would be violative of Article 14 of the Constitution of India, however, it has been observed that in case two candidates, who are in the fray are found to be on equal footing, precedence can be given to such a person who is having experience as a sarbrah Lambardar. The said position would not be applicable as far as the petitioner and respondent No.5 are concerned as respondent No.5 is more meritorious.

As regards the other contention of learned counsel for the petitioner that respondent No.5 has a criminal record, the same would not be of much help to the petitioner as the same pertained to FIRs which were registered way back and he has been acquitted by the Court vide orders dated 03.10.1986 and 20.04.1999. As per the Division Bench judgment of this Court i.e. Ram Pal Vs. The District Collector, Karnal and others, 2012 (5) RCR (Civil) 493, merely because a person is an accused in an FIR would not be a ground for holding against him, when he has been acquitted by the Court after trial. Nothing has come on record to indicate that acquittal of respondent No.5 was on technical ground.

Sukhjinder Pal Singh's case (supra) and Inder Singh's case (supra) were based on the peculiar facts and circumstances of the case and nothing comes on principles, which would be contrary to the judgment of

Division Bench of this Court.

As regards the contention of learned counsel for the petitioner that FIR which has been registered on 06.02.2016 (Annexure P-4) against respondent No.5, suffice it to say that the said FIR has come into existence after the appointment of respondent No.5, Jasbir Singh, as Lambardar of the village. The same, therefore, was a non-existent fact at the time of appointment of respondent No.5, which cannot be taken into consideration as far as appointment of respondent No.5 as Lambardar is concerned. The same may be an aspect, which can be looked into by the authorities concerned for taking further action, if required, in accordance with law.

The writ petition, therefore, stands dismissed.

July 16, 2019
khurmi

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No