

LPA No. 1220 of 2019 (O&M)

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

LPA No. 1220 of 2019 (O&M)

Date of decision: 01.07.2019

Surjit Singh

... Appellant

Versus

The Financial Commissioner, Appeals, Punjab, and others

... Respondents

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

Present: Mr. G.S.Nagra, 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 27.5.2019, rendered by the learned Single Judge, vide which the order dated 27.8.2018, passed by the Financial Commissioner appointing appellant as Lambardar, has since been set aside and the matter is remitted to the District Collector for reconsideration and decision afresh.

The facts that are required to be noticed are limited.

The process to fill up a vacancy of Lambardar (Scheduled Caste) for village Amrik Nagri (Bullarie Colony), Tehsil Phagwara, District Kapurthala, was initiated by the authorities. In response, to begin with, 11 candidates had submitted their claims. However, vide order dated 28.11.2013, the District Collector, Kapurthala, after evaluating the relative merits of the candidates in fray, appointed appellant as Lambardar. And, as relevant in context of the lis at hands, candidature of respondent (Pardeep

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Kumar) was rejected, as two FIRs, i.e. FIR No. 234 dated 18.9.2007 under Sections 341/323/324/334 IPC and FIR No. 22, dated 23.2.2005 under Sections 323/324/325/326/341/427/506/148/149 IPC, were registered against him, though subsequently he was acquitted in those cases. Secondly, he was running an Atta Chakki, and was, thus, unable to devote time to perform functions and duties of the office.

Aggrieved by the order passed by the Collector, respondent (Pardeep Kumar) preferred an appeal to the Commissioner, which was accepted, vide order dated 16.8.2016, and the matter was remitted to the District Collector for reconsideration on merits. For, the reasons assigned to disqualify Pardeep Kumar that an FIR was registered against him were erroneous, since he was acquitted in the criminal case. Further, just because he owned an Atta Chakki in the village could hardly be termed as a disqualification for consideration of his claim. Now, it was the appellant (Surjit Singh), who assailed the said order by way of an appeal to the Financial Commissioner, which was allowed, vide order dated 27.8.2018, and the order dated 16.8.2016, was set aside. It was observed that the position of law was settled that choice made by the Collector, after due analysis and evaluation of the relative merits of the candidates, could not be interfered with, unless shown to be perverse. Further, though the Commissioner remitted the matter to the District Collector, but no perversity in his order dated 28.11.2013 was indicated. And, as this Court had observed in various decisions that a candidate with a clear image should be preferred, the appointment of appellant as Lambardar was required to be restored. It was against this order, respondent (Pardeep Kumar) had filed the writ petition, referred to above, wherein the order passed by the Financial

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Commissioner, dated 27.8.2018, has been set aside and the matter has been remitted to the District Collector for reconsideration of the claims of the parties. Thus, this appeal.

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

Ex facie, the District Collector, in reference to the two FIRs registered against respondent (Pardeep Kumar), had observed that even though he was subsequently acquitted in the criminal cases, but registration of FIRs still affected his character. Secondly, he was running an Atta Chakki and thus, would not be able to devote time to public. Significantly, vide order and judgment dated 17.3.2006, passed by the Sub Divisional Judicial Magistrate, Phagwara, in FIR No. 22 dated 23.2.2005, respondent (Pardeep Kumar), along with eight other accused, was acquitted. As regards FIR No. 234, dated 18.9.2007, the specific case set out by the respondent was that neither he was named in the said FIR, nor any challan was ever produced against him. Not just that, even the said matter had since been decided, while acquitting all the accused, vide order and judgment dated 20.12.2008. Thus, neither any case was registered nor pending against Pardeep Kumar when the process to fill up the vacancy of Lambardar was initiated by the authorities. The position of law is settled that candidature of the candidates has to be evaluated considering their merits and demerits prevalent at the time of appointment to the office. Once respondent (Pardeep Kumar) was acquitted, vide order and judgment dated 17.3.2006, registration of FIR No. 22 dated 23.2.2005 lost its relevance and was inconsequential for consideration of his claim. Thus, the observations recorded by the District Collector as also the Financial Commissioner that even though Pardeep

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Kumar was acquitted, yet registration of criminal cases affected his character were erroneous. Likewise, just because respondent (Pardeep Kumar) was alleged to be running an Atta Chakki, it could hardly be termed as a disqualification to compete for selection. It was in this backdrop, learned Single Judge observed that on the basis of these two reasons, respondent (Pardeep Kumar), could not be held ineligible. Further, there cannot be any quarrel with the proposition of law that discretion exercised by the District Collector could not be interfered with, unless shown to be perverse, but as in the present case, the candidature of respondent (Pardeep Kumar) was rejected owing to reasons which were found to be perverse. Therefore, without commenting upon the merits of the candidates, learned Single Judge set aside the order dated 27.8.2018, passed by the Financial Commissioner and remitted the matter to the District Collector for re-consideration and decision afresh. 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 was 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 rendered by the learned Single Judge. The appeal being devoid of merit is accordingly dismissed.

(KRISHNA MURARI)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

July 01, 2019
AK Sharma

Whether speaking / reasoned: YES
Whether Reportable: