IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Writ Petition No.1613 of 2016
Date of Decision: April 26th, 2019

Brahma Parkash

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Bhupinder Singh Bairagi, Advocate
for the petitioner.

Mr. Pradeep Prakash Chahar, Deputy Advocate General, Haryana.

Mr. Sailender Singh, Advocate
for respondent No.4.

AUGUSTINE GEORGE MASIH, J.

Challenge in this writ petition is to the order dated 28.10.2015 (Annexure P-4) passed by the Financial Commissioner, Department of Revenue, Haryana-respondent No.1, whereby the order dated 26.03.2014 (Annexure P-2) passed by the Collector, Rewari, appointing the petitioner as Lambardar of Village Chanduwas, Tehsil Bawal, District Rewari, as also the order dated 28.08.2014 (Annexure P-3) passed by the Commissioner, Gurgaon Division, Gurgaon, dismissing the appeal of respondent No.4, has been set aside and respondent No.4-Sudesh Kumar has been appointed Lambardar of Village Chanduwas.

2. Briefly the facts are that the post of Lambardar of Village Chanduwas, Tehsil Bawal, District Rewari, fell vacant upon the death of the earlier Lambardar. Proclamation was issued in the village on 29.03.2013 inviting applications from the interested persons for appointment to the post of Lambardar. Eight applications were received.

Character verification of all the eight candidates was carried out, where no blemish was found. Four candidates withdrew their candidature in favour of Sudesh Kumar-respondent No.4. Remaining candidates were given opportunity to place on record the relevant documents and they were heard on 08.11.2013 by Assistant Collector 2nd Grade, Bawal. Name of Sudesh Kumar-respondent No.4 was recommended and sent along with the record to Assistant Collector Ist Grade (District Revenue Officer), Rewari. He heard the candidates of Lambardar i.e. Sudesh Kumar-respondent No.4 and Braham Parkash-petitioner on 07.02.2014 and recommended the name of Braham Parkash for appointment as Lambardar.

3. Records along with recommendations were sent to the office of the Collector with a direction to the candidates to appear before the said authority on 21.02.2014. Out of the total four candidates, two of the candidates namely Vijay Singh and Bir Singh did not appear before the Collector and they were ordered to be proceeded against *ex parte*. Braham Parkash and Sudesh Kumar appeared along with their counsel and they were heard. As regards Sudesh Kumar-respondent No.4, he was 58 years of age, a matriculate with a degree of graduation from Indian Army. He is son of the deceased Lambardar and retired from the post of Naib Subedar from Indian Army with appreciation letter from the Chief of the Indian Army for good service. Rest of the details have also been referred to in the order passed by the Collector. As regards the petitioner, he was 40 years of age and asserted himself to be a graduate apart from other various activities carried out by him.

4. Collector proceeded to appoint the petitioner-Braham Parkash

as Lambardar treating him to be higher qualified and younger in age than Sudesh Kumar apart from other factors such as more respectable persons of the village had given statement in his favour and he was an Ex-Sarpanch of the village and was more competent as compared to Sudesh Kumar-respondent No.4. This order was passed on 26.03.2014 (Annexure P-2) by the Collector, Rewari.

5. Appeal preferred against this order by Sudesh Kumar-respondent No.4 was dismissed by the Commissioner, Gurgaon Division, Gurgaon, on 28.08.2014 (Annexure P-3), wherein it was asserted that respondent No.4 was also a graduate, which qualification has been ignored and further that the petitioner has been a defaulter of loans, which he had taken and, therefore, ineligible.

6. Revision preferred by respondent No.4 against these two orders has been allowed by the Financial Commissioner, Haryana, on the ground that the petitioner has been found to be habitual loan defaulter and has also failed in his duties as Sarpanch and, therefore, not fit for appointment as Lambardar, which has crucial responsibilities. The Financial Commissioner has further proceeded to appoint respondent No.4-Sudesh Kumar vide order dated 28.10.2015 (Annexure p-4) keeping in view the fact that he is an ex-serviceman and has experience about Lambardari and has contributed in donation activities and thus a fit candidate for appointment to the post of Lambardar of Village Chanduwas, Tehsil Bawal, District Rewari, leading to the filing of the present writ petition by the petitioner.

7. It is the contention of learned counsel for the petitioner that both the reasons which have been given by the Financial Commissioner,

Haryana, with regard to he being a loan defaulter and has failed in his duties as a Sarpanch, are contrary to the records as both these assertions are not borne out from the records. He asserts that the choice of the Collector was not required to be interfered with as there was no illegality or perversity or irregularity which has been found by the revisional authority calling for interference in the matter of appointment of Lambardar i.e. the petitioner. Referring to the facts with regard to the alleged default on the part of the petitioner, on the basis of the status report dated 20.05.2016, which had been called for by this Court from the District Revenue Officer-cum-Assistant Collector Ist Grade, Rewari, vide order dated 25.01.2016, submits that on the date of his appointment as Lambardar i.e. 26.03.2014, he was not a defaulter of loan as he had cleared all his dues prior to the said date. He has been sanctioned two loans under the KCC Scheme, one amounting to ₹73,000/- on 08.06.2013 and the other amounting to ₹85,000/- on 27.04.2015, which he is repaying on time and, therefore, he cannot be said to be a defaulter. Loan amount which he had taken from State Bank of India, where the petitioner initially was a defaulter, was cleared by him on 12.04.2013 under the Bank Compromise Scheme. Amount with regard to the Rewari Central Cooperative Bank Limited, Rewari, was cleared by him on 03.06.2013. As regards the findings by the Financial Commissioner with regard to he having failed in his duties as Sarpanch, the status report mentions that during his tenure, petitioner-Braham Parkash had performed his duties satisfactorily and nothing adverse was notices against him pertaining to any kind of dues of the Gram Panchayat and he was not a defaulter of any kind of dues with regard to the Panchayat. He, thus, contends that interference by the Financial Commissioner vide order dated 28.10.2015 (Annexure P-4) is without any justification. In support of his contention that the date of consideration for comparison of qualifications is the date of appointment and not the date for applications for the post of Lambardar, he places reliance upon the judgment of the Supreme Court in *Inderaj Versus Financial Commissioner 1994 (3) R.R.R. 562*. Reliance has also been placed upon the judgment of this Court in *Jarnail Singh Versus State of Punjab 2015 (4) Law Herald 3386 and others* to contend that the order of the Collector appointing a particular candidate cannot be interfered with unless said choice of the Collector is found to be perverse, suffers from material irregularities, which is not there in the case of the petitioner, especially in the light of the status report dated 20.05.2016 referred to above. He, therefore, prays that the impugned order dated 28.10.2015 (Annexure P-4) cannot sustain and deserves to be set aside.

8. On the other hand, learned counsel for respondent No.4 submits that the petitioner had applied for the post of Lambardar on 28.03.2013 and in the said application, he has not mentioned himself to be a defaulter, rather he has said that he is not a defaulter of any nationalised, private, cooperative bank or any cooperative society. On the said date, as per the status report also, he was defaulter of State Bank of India and his account has been declared as non-performing assets, which ultimately was closed on the basis of a settlement on 12.04.2013. He, thus, contends that he has given wrong information in the application and, therefore, it cannot be said that he was not a defaulter on the date of submission of application.

He, however, could not put forth anything on record to counter the status report dated 20.05.2016 submitted by the District Revenue Officer-cum-Assistant Collector Ist Grade, Rewari, as regards the satisfactory performance of his duties during his tenure as Sarpanch of the village and that he was not a defaulter of any kind of dues either of the Panchayat or of any bank or cooperative society at the time of his appointment as Lambardar of the village.

9. I have considered the submissions made by the counsel for the parties and with their assistance, have gone through the records of the case.

10. The basic reason for interference by the Financial Commissioner, Haryana, vide order dated 28.10.2015 (Annexure P-4) in the revision petition, which has been preferred by respondent No.4-Sudesh Kumar, was that the petitioner was a habitual loan defaulter and had failed in his duties as Sarpanch and, therefore, not fit for appointment as Lambardar. In case these findings as recorded by the Financial Commissioner, Haryana, were ultimately found to be correct, it could have been concluded that there was perversity and material irregularity committed by the Collector while coming to the conclusion with regard to fitness of the petitioner for appointment as Lambardar.

11. However, keeping in view the status report dated 20.05.2016 submitted by the District Revenue Officer-cum-Assistant Collector Ist Grade, Rewari, in compliance with the order passed by this Court on 25.01.2016, the findings recorded by the Financial Commissioner with regard to the petitioner being a defaulter of loan and failed in his duties as

Sarpanch, cannot be sustained, especially in the light of the judgment of the Supreme Court in *Inderaj's case (supra)*, where it has been held that the relevant date for comparison of qualifications is the date of appointment and not the date of the application for the post of Lambardar. If the debt is cleared before the date of appointment but after the date of application, the said loan/debt would not be a relevant factor to be taken into consideration.

12. Here the date of submission of the application is 28.03.2013 of the petitioner and the account of non-performing assets maintained by the petitioner with the State Bank of India was closed in settlement on 12.04.2013, whereas the date of appointment of the petitioner as Lambardar is 26.03.2014 (Annexure P-2).

13. The affidavit dated 20.05.2016 of the District Revenue Officer-cum-Assistant Collector Ist Grade, Rewari, reads as follows:-

> *"1. That reports of State Bank of lndia, Bawal, Rewari Central Co-operative Bank ltd., Rewari , Sarve Haryana Gramin Bank , Bawal, Syndicate Bank , Bawal , Sarve Haryana Gramin Bank, Tankri through Lead Bank Officer, Rewari and Block Development and Panchayat Officer, Bawal were sought with regard to the loans taken by Sh. Braham Prakash S/o Bir singh R/o Village Chanduwas.*
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> *2. That as per report of the Manager, State Bank of lndia, Bawal, Sh. Braham Prakash S/o Bir singh , R/o Village Chanduwas had taken Agriculture loan amounting Rs. 5.00 lacs (Five lacs only) on 06-0-2008 under KCC & KGC scheme. Sh. Braham Prakash did not adhere financial discipline his account turned into NPA (Non-performing Assest) category on 13-05-2011 and the*

said account was closed on 12-04-2013 under Bank compromise scheme. Interest amounting Rs. 46688/- was also waived off as per scheme.

3. *That as per report of the Manager, Rewari Central Co-operative Bank ltd., Rewari Sh. Braham Prakash S/o Bir singh , R/o Village Chanduwas had taken loan amounting Rs. 48l82/- on 24-02-2004 which remained unpaid upto 03-06-2013 as overdue. Sh. Braham Prakash has deposited the loan amount Rs. 48l82/- and interest Rs48182/- on 03-06-2013He was also sanctioned loan amounting Rs 73,000/- on 08-06-2013, and 85000/- on 27-04-2015 under KCC scheme which he is repaying on time and at present he is not defaultcr of this Bank*

4. *That as per report of the Sarve Haryana Gramin Bank, Bawal Sh. Braham Prakash S/o Bir singh , R/o Village Chanduwas did not take any loan from that Bank*

5. *That as per report of the Sarve Haryana Gramin Bank, Tankri (Bawal) Sh. Braham Prakash S/o Bir singh , R/o Village Chanduwas is neither their loanee and nor defaulter from their Bank.*

6. *That as per the report of the Syndicate Bank ,Bawal Sh. Braham Prakash S/o Bir singh ,R/o Village Chanduwas has not availed any loan from that Branch. He had never been a defaulter.*

7. *That as per report of the Block and Panchayat Officer, Bawal Sh. Braham Prakash has remained the Sarpanch (from April 2005 to April 2010) of Gram Panchayat Chanduwas (Ramsinghpura). During his tenure he has performed his duties satisfactorily and nothing adverse was noticed against him pertaining to any kind of dues of Gram Panchayat. He is not a defaulter of any kind of dues with regard to Panchayat.*

8. *That Sh. Braham Prakash was defaulter of State Bank*

> *of India ,Bawa1 from 13-05-2011 to 12-04-2013 and the Rewari Central Co-operative Bank ltd. ,Rewari from 24-02-2004 to 06-06-2013 and he was not defaulter of the Gram Panchayat during his tenure as Sarpanch."*

14. In the light of the above, it cannot be said that on the date of appointment of the petitioner as Lambardar, he was indebted or was a defaulter. Merely because he had taken some loan, would not be a reason for declaring him disqualified for appointment to the post of Lambardar provided he is regularly making payment of the instalments and is not a defaulter. It is only if he is found to be a defaulter on the date of his appointment that he would be disqualified for appointment, which is not the case in hand as although according to the status report, reproduced above, petitioner has been sanctioned a loan amounting to ₹73,000/- on 08.06.2013 and ₹85,000/- on 27.04.2015 by the Rewari Central Cooperative Bank Limited, Rewari, under the KCC Scheme but the petitioner is repaying the loan on time and at present he is not defaulter of the said bank.

15. As regards the findings of the Financial Commissioner, Haryana, in his order dated 28.10.2015 (Annexure P-4) relating to petitioner having failed in his duties as Sarpanch, status report dated 20.05.2016 reproduced above, especially para 7 thereof indicates that Shri Braham Parkash had remained Sarpanch from April 2005 to April 2010 of Gram Panchayat Chanduwal (Ramsinghpura). During his tenure, he had performed his duties satisfactorily and nothing adverse was noticed against him pertaining to his any kind of dues of Gram Panchayat nor is he defaulter of any dues relatable to the Gram Panchayat. This report has gone

unchallenged by respondent No.4 and, therefore, the findings as returned by the Financial Commissioner in the impugned order cannot be sustained and deserves to be set aside.

16. In view of the above, both the grounds on which appointment of the petitioner has been set aside by the Financial Commissioner vide the impugned order dated 28.10.2015 (Annexure P-4) are unsustainable and the findings on these scores are hereby set aside.

17. The present writ petition is allowed by setting aside the impugned order dated 28.10.20 (Annexure P-4) passed by the Financial Commissioner, Haryana. The effect whereof is that the order dated 26.03.2014 (Annexure P-2) passed by the District Collector, Rewari, appointing the petitioner as Lambardar of Village Chanduwas, Tehsil Bawal, District Rewari, stands upheld.

April 26th, 2019 **(AUGUSTINE GEORGE MASIH)**
Puneet **JUDGE**

Whether speaking/reasoned: Yes

Whether Reportable: Yes