

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

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Civil Writ Petition No.20307 of 2019

Date of Decision: July 25th, 2019

Ishwar Singh

...Petitioner

Versus

The District Collector, Hisar and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Ashok Verma, Advocate
for the petitioner.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Petitioner has approached this Court challenging the order dated 29.08.2017 (Annexure P-1) passed by the District Collector appointing respondent No.5-Shyam Sunder as the Lambardar of Villages Moth Karnail, Garhi Aajima and Dhani Kumharan, Tehsil Narnaund, District Hisar, appeal against which preferred by the petitioner stands dismissed by the Commissioner vide order dated 12.12.2017 (Annexure P-2) and the orders dated 22.03.2018 (Annexure P-4) and 27.09.2018 (Annexure P-4) passed by the Financial Commissioner, Haryana.

2. It is the contention of learned counsel for the petitioner that respondent No.5-Shyam Sunder was an accused in a case which was registered against him under Sections 323, 325 read with Section 34 IPC at Police Station Narnaund, on 25.11.2002. After trial, he had been acquitted on 04.07.2009 but by giving him benefit of doubt. He contends that as there is not a clear acquittal in favour of respondent No.5, the character of the said respondent cannot be said to be beyond blemish and there is always a cloud attached to that. He contends that the District Collector, Hisar, while

claims and the qualifications of the candidates but while passing the actual order of consideration, there is no mention with regard to the comparative merit of the applicants. He contends that there has actually been no consideration with regard to merit of the claim of the petitioner. Assertion has also been made that the name of the petitioner had been recommended by the Assistant Collector and he was also recommended by the Gram Panchayat of Village Garhi Aajima. Although he could not dispute the fact that respondent No.5 was younger in age to him and more qualified but he asserted that if we look into the other aspects i.e. the social work in which the petitioner had been indulging in comparison to respondent No.5 as well as the land owned, petitioner would have a better claim. He, therefore, contends that the impugned orders which have been passed by the authorities, cannot sustain and deserve to be set aside.

3. I have considered the submissions made by learned counsel for the petitioner and with his assistance, have gone through the impugned orders but do not find myself in agreement with any of the contentions which have been raised by him.

4. Firstly, the plea of learned counsel for the petitioner that respondent No.5-Shyam Sunder was an accused in FIR No.320 registered on 25.11.2002 under Sections 323/325 read with Section 34 IPC and his acquittal is based upon the benefit of doubt as per the judgment dated 04.07.2009 and, therefore, his character cannot be said to be above board, would not cut ice in the light of the fact that the offences, for which he was accused, have not been established and in any case, these offences cannot be said to be of such a nature, which would be termed to be having an effect on the date when the appointment of respondent No.5 was

made as a Lambardar i.e. 29.08.2017. After the acquittal also, eight years have passed. There is no doubt about the assertion of the counsel for the petitioner that merely because an acquittal is based upon the benefit of doubt, that would not be taken into consideration but keeping in view the offences involved in the present case, the said aspect would not have much weight.

5. Apart from that, the second contention of learned counsel for the petitioner that his merits have not been compared with that of respondent No.5 by the District Collector, Hisar, while passing order dated 29.08.2017 (Annexure P-1), cannot be accepted in the light of the fact that perusal of the order shows that comparative merits of the candidates have been given although not in tabular form, however, a well reasoned and justifiable order has been passed by the District Collector while considering the respective merits of the candidates when it is mentioned clearly that respondent No.5 is youngest amongst the three candidates, who had applied for appointment to the post of Lambardar being 34 years of age and as the order indicates petitioner is of 47 years of age and similarly respondent No.5 is a graduate i.e. B.A. pass, whereas the petitioner is only 12th pass.

6. The other aspect, which has been projected by the counsel for the petitioner, is depending upon the fact that the petitioner having more land than respondent No.5, therefore, he is more meritorious. In this regard, it may be pointed out that petitioner has 18 kanals of land, whereas respondent No.5 has 16 kanals of land, therefore, there is not much of a difference between them and in any case, ownership of land has lost its relevance now after abolition of land revenue.

7. As regards the social work is concerned, the same also appears to be equally matched to some extent and it cannot be said that respondent No.5 was not involved in social work. Assertion of the counsel for the petitioner that his name had been recommended by Gram Panchayat of Village Garhi Aajima and the subordinate revenue officials, would also not be of much help as that would be one of the considerations which had to be taken into notice by the District Collector but it is not binding and the competent authority has to consider the same and select the most suitable person.

8. Keeping in view the fact that there is nothing adverse against respondent No.5 and he being younger in age and more qualified educationally and there being no negative aspect attributable to him, the choice of the Collector needs to be respected and honoured unless there is perversity found therein.

9. Nothing has been found which would persuade this Court to exercise its writ jurisdiction, especially when there is no perversity, illegality or any violation of the statutory rules/instructions.

10. The writ petition stands dismissed.

July 25th, 2019

Puneet

(AUGUSTINE GEORGE MASIH)

JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: Yes