

IN THE HIGH COURT OF PUNJAB AND HARAYANA AT CHANDIGARH
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CWP-17043-2017

Date of decision: 20.09.2019

KULDIP SINGH

...PETITIONER

VS.

FINANCIAL COMMISSIONER (APPEALS-I), PUNJAB AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. H.S.Brar, Advocate,
for the petitioner.

Mr. T.P.S.Chawla, DAG, Punjab,
for respondents No. 1 to 3.

Mr. Anhad S. Miglani, Advocate,
for respondent No. 4.

AUGUSTINE GEORGE MASIH, J.

Challenge in this writ petition is to the order dated 16.02.2017 (Annexure P-10) passed by the Financial Commissioner (Appeals-I), Punjab, whereby, after the remand of the case by this Court vide order dated 13.05.2014 in CWP No. 22846 of 2011 preferred by the petitioner by setting aside the order dated 10.02.2011 earlier passed for fresh decision, whereby the revision of the petitioner against the order dated 06.10.2005 (Annexure P-6) passed by the Commissioner, Jalandhar Division, Jalandhar, which is also under challenge in the present writ petition ROA No. 76 of 2005 again stands dismissed.

2. Briefly, the facts are that on the death of Banta Singh, who was the Lambardar of Village Majhoor, Tehsil and District Nawanshahar (SBS

Nagar), applications were invited for filling up the said post. Apart from the petitioner-Kuldip Singh, respondent No. 4-Sukhwant Singh and one Gur Sahab Singh applied for the same. Except for the petitioner, no other candidate appeared before the Collector, Nawanshahar and on considering the claim of the petitioner, he was appointed as Lambardar of the village on 03.09.2002 (Annexure P-1).

3. Appeal was preferred by Sukhwant Singh-respondent No. 4 before the Commissioner, wherein it was asserted that he was not informed about the date of hearing before the subordinate revenue authorities or before the Collector with regard to the consideration of his application for appointment to the post of Lambardar, which plea was accepted by the Commissioner (Appeals) Jalandhar Division, Jalandhar vide order dated 24.09.2003 (Annexure P-4) and by setting aside the appointment of the petitioner, remanded the case back to the District Collector, Nawanshahar for passing fresh order after affording an opportunity of hearing to the parties. In pursuance thereto, the Collector, Nawanshahar passed a fresh order dated 18.01.2005 (Annexure P-5) by considering the merits of both the candidates and again appointed the petitioner as Lambardar of the village.

4. Again an appeal was preferred by Sukhwant Singh-respondent No. 4 before the Commissioner, Jalandhar Division, Jalandhar, which appeal was accepted vide order dated 06.10.2005 (Annexure P-6) by concluding that age-wise and educational qualifications-wise, both the candidates are similar and there is no significant difference. Respondent No. 4 was holding more land as compared to the petitioner and was financially more sound and stable than the petitioner. Another aspect,

which was taken into consideration, was that respondent No. 4 had been the member of the Panchayat for three terms and was widely popular and therefore, had acceptability and was wielding influence amongst the villagers. The most important factor, which weighed on the mind of the Commissioner, was that after the passing of the order dated 24.09.2003 (Annexure P-4) by the Commissioner (Appeals) Jalandhar Division, Jalandhar, whereby the appeal of respondent No. 4 was allowed and the appointment of the petitioner as Lambardar was set aside and the case remanded back, petitioner had attested various documents as Lambardar of the village when he had no authority to do so which reflected upon his conduct adversely, for which an FIR has been registered and the trial was in progress then. The said aspect had not been taken into consideration by the Collector while considering the candidature of the petitioner as well as respondent No. 4 prior to appointing the petitioner for the second time as Lambardar of the village.

5. Petitioner assailed this order dated 24.09.2003 (Annexure P-4) by filing an appeal before the Financial Commissioner (Appeals-I), Punjab, which was dismissed by the said authority on 10.02.2011 (Annexure P-7) leading to the challenge by the petitioner of the said order in CWP No. 22846 of 2011, which was decided on 13.05.2014 (Annexure P-8). The operative part of the said order reads as follows:-

“ Perusal of the order passed by the Financial Commissioner (Appeals-I) Punjab shows that there is no clear finding as regards proceedings pursuant to the FIR registered against the petitioner. Whether the investigating agency found the petitioner guilty, if so, what was the result of trial. Another

issue is regarding residence of respondent in *Patti* to which nambardari pertains. In the impugned order, this issue has not been clearly dealt with. Under the circumstance, this Court finds the impugned order unsustainable. Same is hereby set aside. Matter is remitted to same authority for decision afresh after hearing the parties.

Allowed in these terms.”

6. After the remand of the case to the Financial Commissioner, the Financial Commissioner had considered both aspects and passed an order dated 16.02.2017 (Annexure P-10) dismissing the appeal of the petitioner. With reference to the question that the Lambardari belongs to a particular *Patti* and not the whole of the village, as was asserted by the petitioner as he claimed that the deceased Lambardar Banta Singh belonged to *Patti Dherian Hinduan* and, therefore, the post had to be filled from the residents of that very *Patti* and the petitioner belongs to that *Patti* whereas respondent No. 4 belongs to a different *Patti*, the learned Financial Commissioner, on perusal of the records of the District Collector, came to the conclusion that the Lambardari was of the Village Majhoor and not for a particular *Patti*. The application, which has been submitted by the petitioner, was also for the post of Lambardar in Village Majhoor and not for a particular *Patti*. If that be so, it was concluded that the Lambardar being of the village and respondent No. 4 being a resident of the said village, was fully eligible for consideration for appointment to the post of Lambardar.

As regards the registration of the FIR against the petitioner and the effect of the ultimate acquittal of the petitioner, the learned Financial Commissioner has concluded that the petitioner was initially convicted by

the trial Court and it is on an appeal preferred by him on 14.07.2014 that he has been acquitted in the criminal case. The said authority has concluded that keeping in view the fact that the petitioner had attested the documents posing himself as a Lambardar of the village, when he actually was not, he has not only misled/misguided the authorities and the public with regard to his identity but has unauthorizedly attested the documents as Lambardar at the time when he was actually not a Lambardar. As this act was done by the petitioner during the period when his appointment as Lambardar had been set aside by the Commissioner in an appeal and the case had been remanded back to the Collector for fresh decision with regard to the appointment of the Lambardar, on the face of these aspects, the appeal of the petitioner has been dismissed by the Financial Commissioner.

7. Petitioner has now filed the present writ petition challenging the order dated 16.02.2017 (Annexure P-10) passed by the Financial Commissioner, Punjab and the order dated 06.10.2005 (Annexure P-6) passed by the Commissioner, Jalandhar Division, Jalandhar.

8. It is the contention of the learned counsel for the petitioner that the petitioner has already been acquitted in the criminal case and, therefore, the said aspect cannot be taken into consideration by the authorities and in any case, he contends that the FIR, which was registered against the petitioner, was subsequent to the initial date of appointment i.e. 03.09.2002 of the petitioner as Lambardar whereas the conduct of the petitioner which has been considered is alleged to be dated 18.12.2003. He, thus, contends that with the acquittal of the petitioner, the factum of an FIR having been registered against him cannot be taken into consideration. That apart, he asserts that it is an admitted and accepted fact that the petitioner is more

qualified than respondent No. 4 as the petitioner is a Matriculate whereas respondent No. 4 is 9th pass. Age-wise also, the petitioner is younger in age as compared to respondent No. 4. His submission is that the choice of the Collector has to be respected and has to be given due credit which should not be interfered with either by the appellate authority or by the revisional authority, which has been wrongly done in the case in hand as there is no perversity or illegality which can be said to have been found in the order passed by the Collector on 18.01.2005 (Annexure P-5). The appellate authority as well as the revisional authority have misguided themselves in setting aside a well-reasoned order passed by the Collector.

It has also been asserted by the counsel for the petitioner that the deceased Lambardar belonged to *Patti Dherian Hinduan* and, therefore, the appointment of the Lambardar was required to be of the same *Patti* and the petitioner belongs to the same *Patti* whereas respondent No. 4 does not belong to the same *Patti*. He, thus, contends that the impugned orders cannot sustain and deserve to be set aside.

9. On the other hand, counsel for respondent No. 4 submits that the authorities have rightly taken into consideration the conduct and character of the petitioner because the post of a Lambardar is a very responsible post and a person with loose character cannot be appointed to the said post. FIR, which was registered against the petitioner, was under Section 420 IPC, for which he was convicted and sentenced for two years and was to pay a fine of ₹5,000/- vide judgment dated 07.04.2012 passed by the trial Court. He, however, stated that in an appeal preferred, the petitioner has been acquitted on 14.07.2014. He contends that merely because he has been acquitted in the criminal case would not wash off his

wrongful conduct. Involvement in a criminal case is a stigma which sticks on to a person and is a relevant factor which can be taken into consideration for appointment to the post of Lambardar. In support of this contention, reliance has been placed upon a judgment of this Court in **Gurdev Singh vs. Financial Commissioner (Appeals-II), Pb., Chandigarh and others**, 2009 (4) RCR (Civil) 808 as well as the Division Bench judgment of this Court in **Ranjit Singh son of Sh. Ombir Singh vs. Financial Commissioner, Haryana and another**, 2009 (4) RCR (Civil) 350.

As regards the contention of the counsel for the petitioner that the appointment of the Lambardar had to be made from the same *Patti* to which the previous Lambardar belonged, counsel for respondent No. 4 contends that the appointment of the Lambardar was not required to be of a specific *Patti*. Proclamation, which had been issued, was carried out and in the entire village and, therefore, the said plea cannot be accepted. In support of this contention, he has placed reliance upon a judgment of this Court in **Baljeet Singh vs. Financial Commissioner, Revenue, Punjab and others**, 2013 (4) RCR (Civil) 353. He, therefore, prays for dismissal of the writ petition.

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

11. Taking up the second plea of the counsel for the petitioner first that the appointment of the Lambardar had to be made from *Patti Dherian Hinduan*, to which the deceased Lambardar belonged, the same is not sustainable in the light of the fact that the proclamation, which had been issued, was for the Lambardar of the Village Majhoor and not for a

particular *Patti*. This fact has also been ascertained by the Financial Commissioner on perusal of the records of the Collector as is apparent from the order dated 16.02.2017 (Annexure P-10).

12. The second contention, which has been raised by the counsel for the petitioner, is that the criminal case, which has been taken into consideration against the petitioner for denying him the right of appointment, is subsequent to the initial date of his appointment as a Lambardar and, therefore, cannot be made the basis for setting aside his appointment as Lambardar as any subsequent development could be a good ground for removal of the Lambardar and it cannot be taken into consideration for appointment to the post of Lambardar whereas the initial date of appointment by the Collector has to be taken into consideration i.e. 03.09.2002, which is the relevant date on which the candidature of the applicants had to be considered.

The plea, when seen at the first blush, appears to be correct but keeping in view the peculiar facts and circumstances of the present case where the petitioner had posed himself as a Lambardar of the village and attested documents as such, when he actually was not a Lambardar then, the same cannot be accepted.

13. In some of the cases, it has been held that the acquittal in a criminal case would lead to non-taking into consideration of the criminal charges framed against an accused. However, the nature of the acquittal is a relevant factor which also has to be given due weightage and, therefore, it cannot be said that mere acquittal of a person in a criminal case would wash all his ill conduct. Nature of the offence attributed to a person and the reason of acquittal has also to be looked into and would be a relevant factor

to be taken into consideration. Involvement in the criminal case could be stigmatic but it is also not common that because of a personal vendetta people are involved in criminal cases. The relevant factor, therefore, which could be taken into consideration, would be as to whether he had been found to be involved in the case during the investigation leading to presentation of challan in a criminal case and, thereafter, whether charges were framed by the Court or not. That apart, the reasons leading to acquittal of the person can also be relevant factor apart from the allegations and the offence, for which he has been charged. The period, which has gone by from the date of incident to the date of conviction or acquittal, would also be another relevant factor. Thus, it cannot be said that acquittal from a criminal case would *ipso facto* be enough to ignore this fact while considering a person for appointment to the post of Lambardar. More so, when it directly relates to a conduct of the person reflecting upon his character and work which is expected of him to be performed as a Lambardar, which cannot be ignored or overlooked.

14. It is not in dispute that at the relevant time i.e. 18.09.2003 when the petitioner appeared before the Sub-Registrar Nawanshahar and attested some of the registries by proclaiming himself to be the Lambardar, he was not the Lambardar of the village as his appointment as Lambardar had been set aside by the Commissioner (Appeals) Jalandhar Division, Jalandhar vide order dated 24.09.2003 (Annexure P-4). He, therefore, was very much aware of the fact that he was no more Lambardar of the village and was again appointed as Lambardar by the Collector Nawanshahar on 18.01.2005 (Annexure P-5). During the interregnum i.e. from 24.09.2003 to 18.01.2005, the petitioner was not the Lambardar of the village. This conduct of his

cannot be simply overlooked or ignored while he is seeking equitable relief.

15. In exercise of the equitable jurisdiction under Article 226 of the Constitution of India, this Court is not required to interfere in each and every case, especially when the conscious of the Court is shaken because of the conduct of the person who is seeking exercise of this discretionary relief in his favour. More so, when the conduct of the petitioner pricks the conscious of the Court where he is craving to be appointed to a post which is a vital link between the villagers and the administration. The post of Lambardar, which hinges on the cradle of faith, is one of the significant and important post under the Punjab Land Revenue Act and the person holding this post has to perform varied functions which carry huge responsibility. The conduct and character of a Lambardar is the hallmark of the said post for which the petitioner herein, has rendered himself ineligible for the above misconduct.

16. As stated above, keeping in view the conduct of the petitioner, this Court refuses to exercise its equitable jurisdiction in the present case where the petitioner has conducted himself in a manner which is unbecoming of a Lambardar for which post he is vying for.

17. In view of the above, finding no merit in the present writ petition, the same stands dismissed.

September 20, 2019

pj

**(AUGUSTINE GEORGE MASIH)
JUDGE**

Whether speaking/reasoned: Yes/No

Whether Reportable : Yes/No