

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

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Civil Writ Petition No.20354 of 2019
Date of Decision: July 25th, 2019

Jagdish Singh

...Petitioner

Versus

Financial Commissioner (Appeals), Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

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

AUGUSTINE GEORGE MASIH, J. (ORAL)

Petitioner has approached this Court challenging the order dated 13.12.2018 (Annexure P-3) passed by the Financial Commissioner, Punjab, whereby the appeal preferred by respondent No.4-Jasvir Singh challenging the order dated 16.04.2015 (Annexure P-2) passed by Divisional Commissioner, Patiala Division, Patiala, whereby the case was remanded back to the District Collector for reconsideration by him on appointment of Jasvir Singh as Lambardar of Village Khandoor, Tehsil and District Ludhiana, has been accepted setting aside the order dated 16.04.2015 (Annexure P-2) passed by Divisional Commissioner, Patiala Division, Patiala.

2. It is the contention of learned counsel for the petitioner that the Financial Commissioner could not have entertained the appeal which has been preferred by respondent No.4-Jasvir Singh as the same was not maintainable. He contends that the said appeal being not maintainable, the Financial Commissioner could not have decided the same but this contention of the counsel for the petitioner cannot be accepted in the light of the powers conferred upon the Financial Commissioner under Section 118

3. On merit, it is asserted by learned counsel for the petitioner that the comparative merit of the candidates have not been considered by the District Collector, Ludhiana, while appointing respondent No.4-Jasvir Singh as the Lambardar of the village. He contends that the said respondent has been appointed merely on the ground that he is 32 years of age and 10+2 pass, whereas the petitioner is 43 years of age and 7th pass. The hereditary claim of the petitioner has not been considered as he had remained the Sarbarah Lambardar and is the son of the deceased Lambardar. Assertion has also been made and pressed upon by the counsel for the petitioner on Annexures P-4 and P-5, wherein it is asserted that respondent No.4-Jasvir Singh has compromised the matter, wherein he has stated that because of his household condition and personal reasons, he is unable to perform the duties of Lambardar. It is asserted by the counsel, on the basis of the said documents, that respondent No.4 is not interested in taking up the responsibility of the Lambardar and has himself surrendered his claim by asserting therein that he has no objection to the appointment of the petitioner as Lambardar. He contends that an unwilling person should not be appointed as Lambardar. Prayer has thus been made for setting aside the impugned order dated 13.12.2018 (Annexure P-3) passed by the Financial Commissioner.

4. I have considered the submissions made by learned counsel for the petitioner and with his assistance, have gone through the records of the case as well as the impugned orders.

5. As regards the contention of learned counsel for the petitioner that the District Collector, Ludhiana, has not taken into consideration the comparative merit of the candidates, suffice it to say these aspects have

been duly taken into consideration with regard to the respective merit of the candidates. Two basic factors which have gone in favour of respondent No.4-Jasvir Singh are that he is younger in age and educationally more qualified. Petitioner is 43 years of age and is 7th pass, whereas respondent No.4 is 32 years of age and 10+2 pass. Both these aspects are relevant factors which had to be taken into consideration as education plays a crucial role in the present scenario. With the technology coming in, an educated Lambardar would be a better prospect than an uneducated or meagrely educated candidate. There is no aspect which can be pointed out nor has it been pointed out which would indicate that Jasvir Singh is not a suitable candidate for appointment to the post of Lambardar.

6. As regards the hereditary claim of the petitioner is concerned, it is by now well settled by various judgments of this Court as well as that of the Supreme Court that it cannot be claimed as a matter of right but will come into play only when there is a tie between two candidates on merits, it is then that the competent authority may give preference and not otherwise. This claim, in the light of respondent No.4 being more meritorious, cannot be of any help.

7. Documents (Annexures P-4 and P-5) which have been relied upon are which have come in existence after the date of appointment of respondent No.4 and, therefore, cannot be taken into consideration for the present purposes, where challenge is to the appointment of respondent No.4. As is apparent from the order dated 13.12.2018 (Annexure P-3) passed by the Financial Commissioner, Punjab, this argument was duly raised before the Financial Commissioner but has rightly been not considered keeping in

view the fact that assuming these documents were genuine and respondent No.4 intended to state what has been observed in those documents and had been submitted voluntarily, there was no reason why he would not have withdrawn the petition which was pending before the Financial Commissioner. The fact that respondent No.4 contested his claim before the Financial Commissioner belies these two documents (Annexures P- and P-5). The authenticity and veracity of these documents, especially in the light of the fact that it appears to be taken and procured from him under pressure, cannot be ruled out.

8. The order passed by the Financial Commissioner is based upon proper appreciation of the fact and the record which was available, which cannot be faulted with.

9. The writ petition being devoid of merit stands dismissed.

July 25th, 2019
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: Yes