

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

114

Civil Writ Petition No.20953 of 2019
Date of Decision: November 15th, 2019

Sarabjit Kaur

...Petitioner

Versus

Financial Commissioner (Revenue), Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Balbir Singh Saini, Advocate
for the petitioner.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this writ petition is to the order dated 10.12.2018 (Annexure P-4) passed by the Financial Commissioner (Appeals), Punjab, whereby the revision petition preferred by respondent No.4-Ram Lubhaya challenging the order dated 13.12.2016 (Annexure P-2) passed by the Commissioner, Jalandhar Division, Jalandhar, vide which appeal preferred by petitioner was allowed and the case remanded back to the Collector for fresh consideration by setting aside the appointment of Ram Lubhaya, as Lambardar, has been accepted by holding that the order passed by the Commissioner, Jalandhar Division, Jalandhar, is not sustainable in law.

2. It is the contention of learned counsel for the petitioner that the order dated 06.02.2016 (Annexure P-1) passed by the Collector, Jalandhar-respondent No.3 appointing Ram Lubhaya-respondent No.4 as a Scheduled Caste Lambardar of Village Kahna Dhesian, Tehsil Phillaur, District Jalandhar, is not sustainable in the light of the fact that the petitioner is a lady, whose name has been recommended by the Gram Panchayat and has the hereditary right as her father-in-law was the Lambardar of the village. He contends that the Commissioner, on

the candidates, proceeded to set aside the order of the Collector, whereby respondent No.4 was appointed as Lambardar. He contends that the well reasoned order dated 13.12.2016 (Annexure P-2) passed by the Commissioner, Jalandhar Division, Jalandhar, has been set aside by the Financial Commissioner (Appeals), Punjab, vide order dated 10.12.2018 (Annexure P-4) in a cryptic manner without taking into consideration the fact that the petitioner had a hereditary right and she being a lady should have been given preference over respondent No.4. He, thus, prays that the present writ petition be allowed by setting aside the impugned order. Reliance has been placed by the counsel for the petitioner on the Division Bench judgment of this Court in *Gurlal Singh Versus Financial Commissioner (Revenue) Punjab and others 2008 (4) RCR (Civil) 792*, wherein it has been asserted that the Financial Commissioner while exercising the revisional powers can set aside the order if he finds glaring irregularity or illegality in the order and could appoint a candidate on the post of Lambardar, who is more suitable.

3. I have considered the submissions made by the counsel for the petitioner and with his assistance, have gone through the impugned orders as also the order passed by the Commissioner, Jalandhar Division, Jalandhar, which is in favour of the petitioner.

4. It is not in dispute that respondent No.4 is a graduate, whereas the petitioner is only 10+2 pass. Merely because her father-in-law was the deceased Lambardar of the village, she may have a hereditary right but the same cannot be given precedence over the merits of the candidates, as has been settled up to the Hon'ble Supreme Court, wherein it has been held that hereditary right can only be given effect to and put into service where merits

of the candidates are almost the same and are rather identical. It is under these circumstances that additional weightage would be given to the candidates having hereditary right and not otherwise. The hereditary claim as an independent right has been frowned upon by the Court and has been found to be violative of Article 14 of the Constitution of India. Since respondent No.4 is much more qualified than petitioner and the Collector in its order dated 06.02.2016 (Annexure P-1) has considered the comparative merits of the candidates and has found respondent No.4 to be more suitable for appointment to the post of Lambardar being more educated and otherwise physically fit and intelligent, the choice of the Collector should not have been interfered with by the Commissioner.

5. Perusal of the order dated 13.12.2016 (Annexure P-2) would show that nothing can be said to have been found to be illegal or perverse, which could be termed as violative of any of the statutory rules conferring a power of interference upon the Commissioner to set aside the order passed by the Collector. The Financial Commissioner (Appeals), Punjab, in his order dated 10.12.2018 (Annexure P-4) has rightly reiterated the settled preposition of law that the Collector is the appointing authority of the Lambardar and once on consideration of the respective merits of the candidates, found a candidate to be more meritorious as compared to the others, the choice of the Collector should not be interfered with normally unless there is some perversity or illegality in the order so passed. The order, therefore, as passed by the Financial Commissioner (Appeals), Punjab, cannot be faulted with.

6. The judgment on which reliance has been placed by learned counsel for the petitioner would not help the petitioner in any manner as the

Division Bench in its judgment has dealt with the revisional powers of the Financial Commissioner as also the power of the Financial Commissioner to appoint a candidate, who is much more suitable. The Financial Commissioner, on comparative assessment of the respective candidates present before him, has found Ram Lubhaya-respondent No.4 to be more suitable candidate because of his higher qualifications, which cannot be faulted with.

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

November 15th, 2019
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No