

CWP-27380-2015 (O&M)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-27380-2015 (O&M)

Date of Decision: 9th January, 2019

Ram Pal

...Petitioner

Versus

State of Haryana & others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. G.S. Sandhu, Advocate,
for the petitioner.

Mr. Pradeep Prakash Chahar, DAG, Haryana.

Mr. Ashok Verma, Advocate
for respondent No.4.

AUGUSTINE GEORGE MAS IH, J. (ORAL)

CM-9779-CWP-2017

Replication to written statement filed by respondent No.4 is
taken on record, subject to all just exceptions.

Application stands disposed of.

CWP-27380-2015

Petitioner has approached this Court for setting aside the order dated 28.09.2015 (Annexure P-10) passed by the Financial Commissioner, Haryana – respondent No.1, whereby, order dated 04.05.2006 (Annexure P-3) passed by the Collector, Karnal – respondent No.3 and order dated 08.03.2007 (Annexure P-4) passed by the Commissioner, Rohtak Division, Rohtak – respondent No.2 have been set aside.

2. It is the contention of the learned counsel for the petitioner that the qualifications of the petitioner as well as respondent No.2 are by and large same as the petitioner is 7th class pass, whereas, respondent No.4 is matriculate. That apart, petitioner has got seven family planning cases to his credit as compared to that of respondent No.4, who has got only three family planning cases and further, petitioner has got deposited ₹ 2,00,000/- in small saving schemes by motivating other people, whereas, respondent No.4 has only got deposited ₹ 55,000/- in small saving schemes. That apart, he asserts that the Gram Panchayat has recommended the appointment of the petitioner to the post of Lambardar, which shows that the petitioner is the choice of the people and therefore, should have been given precedence over respondent No.4. He asserts that merely because respondent No.4 is matriculate, he has been given appointment over and above the petitioner, which is not acceptable. Prayer has, thus, been made for setting aside the impugned order dated 28.09.2015 (Annexure P-10) passed by the Financial Commissioner, Haryana.

3. On the other hand, learned counsel for respondent No.4 contends that respondent No.4 is better qualified than the petitioner as he is matriculate and therefore, being more educationally qualified, has rightly been given preference. In support of this contention, learned counsel for respondent No.4 has placed reliance upon the judgment of Hon'ble Supreme Court in Mahavir Singh Vs. Khiali Ram & others 2009 (1) R.C.R. (Civil) 757 and judgment of this Court in Harjit Singh Vs. State of Punjab & others 2017 (1) Law Herald 195. He also asserts that respondent No.4 is

younger than the petitioner and therefore, should be preferred over the petitioner. He further states that respondent No.4 has been working with his grand-father and assisting him in performing the duties of Lambardar and therefore, had experience about the working of the post and thus, would have a better right in the light of hereditary claim for appointment to the post of Lambardar. To support this contention, he has placed reliance upon the judgments of this Court in Anand Kumar Vs. State of Haryana & others 2009 (4) R.C.R. (Civil) 844 and Jaibir Singh Vs. State of Haryana & others 2012 (1) L.A.R. 672. He, therefore, contends that the order dated 28.09.2015 (Annexure P-10) passed by the Financial Commissioner, Haryana, does not call for any interference by this Court.

4. 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.

5. By now, it is a settled proposition of law that the choice of the Collector should not be interfered unless the same is found to be perverse. Present is a case which has a checkered history, where parties have been running up and down the revenue authorities and even upto the High Court. When ultimately, this Court, vide order dated 16.11.2010, had allowed the writ petition preferred by respondent No.4, whereby, his candidature was rejected merely on the ground that there had been a criminal case registered against him, although, in which, after trial, he has been acquitted, which reasoning was not accepted by this Court and it was held that once a person has been acquitted after prosecution, the same cannot be taken into

consideration adversely provided the said acquittal is prior to the date of receipt of the application or consideration of the candidature of a Lambardar. Direction was issued to the Financial Commissioner, Haryana, to decide the revision petition afresh.

6. The Financial Commissioner, Haryana, proceeded to remand the case to the Collector, on which, Rampal (petitioner herein) approached this Court by filing CWP No.9259 of 2011, which was decided by this Court vide order dated 23.11.2011 (Annexure P-8) by setting aside the order dated 09.05.2011 with a direction to the Financial Commissioner, Haryana, to decide the case at his own level. Liberty was, however, granted to the Financial Commissioner, Haryana, to seek assistance of the officials or to get a report of the Collector with regard to the respective pros & cons (merits & demerits) of the candidates including some additional material/assistance, which may be required by the Financial Commissioner.

7. This order dated 23.11.2011 (Annexure P-8) was acted upon by the Financial Commissioner, Haryana and he sought a report from the Deputy Commissioner-cum-Collector, Karnal with regard to the comparative merits and demerits of the candidates i.e. petitioner – Ram Pal and respondent No.4 – Rajinder Kumar. The Deputy Commissioner-cum-Collector, Karnal, proceeded to respond to the said communication vide letter dated 16.02.2015 (Annexure P-9). His recommendations/observations were as follows:-

“Ram Pal son of Datu Ram

This candidate is 7th pass matured person.

Age is 44 years. This candidate has got 7 cases under Family planning scheme and have got deposited Rs.2 lacs in Small Saving Schemes by motivating other peoples. This candidate is having clean antecedent. He is not in illegal possession of panchayat or government land. Gram Panchayat also has recommended to appoint this candidate as Lamberdar.

Rajinder Kumar son of Dula Ram

This candidate is matriculate, aged 38 years. This candidate has got 3 cases under Family planning scheme and have got deposited Rs.55,000/- in Small Saving Schemes by encouraging other peoples. Against this candidate, FIR No.111 dated 06.05.1999 under Sections 148, 149, 323 IPC was registered at PS Nissing. He was acquitted by the Court on 05.02.2003.

The report regarding merits and demerits of both the above candidates is being submitted for further necessary action.”

8. It is, on the basis of this material, Financial Commissioner proceeded to assess the candidature of petitioner as well as respondent No.4 and passed the impugned order dated 28.09.2015 (Annexure P-10), whereby, candidature of respondent No.4 was accepted on two grounds, firstly, respondent No.4 was matriculate, whereas, petitioner was 7th class pass and secondly, respondent No.4 was younger in age as compared to the

petitioner. These two considerations weighed on the mind of the Financial Commissioner to approve the candidature of respondent No.4.

9. What has and was primarily taken into consideration by the Financial Commissioner is the report of the Deputy Commissioner-cum-Collector, Karnal, dated 16.02.2015 (Annexure P-9), which has been reproduced above. A perusal of the above would show that the petitioner is a better candidate as compared to respondent No.4 except for the fact that the petitioner is 7th class pass and respondent No.4 is matriculate apart from the fact of age, which ultimately makes no difference as both are of middle age, petitioner being 44 years of age, whereas, respondent No.4 being 38 years of age. The other parameters when taken into consideration, petitioner has a march over respondent No.4 so far as cases of family planning scheme and the amount got deposited by motivating people in the small saving schemes. Another factor which weighs in the mind of the present Court is the recommendation of the Gram Panchayat for appointment of the petitioner as Lambardar which shows the will of the people and the acceptance of a candidate which aspect has not been taken into consideration by the Competent Authorities. The other facts by and large are the same.

10. Learned counsel for respondent No.4 has placed reliance upon the judgments of *Mahavir Singh* and *Harjit Singh* (supra), to contend that a better qualified candidate is to be given precedence over a lessor educated person. That would be relevant in case of there being a major difference between the educational qualifications of the candidates, which apparently

does not appear in the present case. Same is the position with regard to the age as has been pointed out above, both candidates are of middle age. The judgment of *Mahavir Singh's* case (supra), therefore, relied upon by the learned counsel for respondent No.4 with regard to the younger age cannot be made applicable to the facts of the present case.

11. The third aspect which has been pointed out by the learned counsel for respondent No.4 is the hereditary claim of respondent No.4, which also cannot be accepted at the very outset. The said aspect even as per the judgments which have been relied upon by the counsel for respondent No.4 can be taken into consideration only when other aspects of two candidates are identical, who are competing for the post of Lambardar. Here, as has been observed above, petitioner is better suitable and acceptable than respondent No.4.

12. A plea has been taken by learned counsel for respondent No.4 that the Court while exercising its extraordinary jurisdiction under Article 226 should not go into the respective merits of the case and should not interfere in an order which has been passed by the revenue authorities especially the Financial Commissioner and that too, on the direction given by this Court.

13. This contention of the learned counsel for respondent No.4 also cannot be accepted in the light of the fact that if an order, which is found to be apparently and patently not in consonance with the principles, the same is required to be set aside for appointing best candidate for the post of Lambardar and that too, when necessary aspects have been overlooked by

the Financial Commissioner while setting aside the choice of the Collector as well as that of the Commissioner, which should not be ordinarily interfered with. The Court is bound to interfere in such like matters where the Financial Commissioner has ignored the settled principles of law and therefore, this Court has no hesitation to exercise its extraordinary jurisdiction in this regard.

14. In view of the above, the present writ petition is allowed and the impugned order dated 28.09.2015 (Annexure P-10) passed by the Financial Commissioner, Haryana – respondent No.1 is hereby set aside.

9th January, 2019
Harish

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No