

CWP-3284-2015

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-3284-2015

Date of Decision: 23rd January, 2019

Sukhdev Singh

...Petitioner

Versus

The Financial Commissioner, Punjab,
Department of Revenue & others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASI

Present: Mr. A.S. Manaise, Advocate
for the petitioner.

Mr. Charanpreet Singh, AAG Punjab,
for respondents No.1 to 3.

Mr. Hari Om Sharma, Advocate
for respondent No.4.

AUGUSTINE GEORGE MASI, J. (ORAL)

Petitioner has approached this Court praying for quashing of order dated 02.09.2014 (Annexure P-6) passed by the Financial Commissioner, Punjab, Department of Revenue – respondent No.1 and order dated 22.05.2014 (Annexure P-5) passed by the Commissioner, Ferozepur Division, Ferozepur, whereby, appointment of petitioner as Lambardar, has been set aside.

2. It is the contention of the learned counsel for the petitioner that the applications were invited for appointment to the post of Lambardar of village Chak Gulam Rasool Wala, Tehsil Jalalabad District Fazilka, vide

proclamation dated 28.09.2004, in pursuance to which, total nine candidates had applied for the said post. Parties were given adequate opportunities of hearing by the Assistant Collector IInd Grade-cum-Tehsildar, Jalalabad, who submitted report dated 11.07.2007 recommending the names of four candidates for consideration of appointment to the post of Lambardar. The Deputy Commissioner proceeded to consider the four candidates as recommended but rejected the claim of the petitioner simply on the ground that he had made a statement before the Assistant Collector IInd Grade-cum-Tehsildar, Jalalabad, on 11.07.2007 for withdrawal of his candidature for the post of Lambardar, in case Karnail Singh, one of the candidates, is appointed as Lambardar or his application may be considered. Because of this reason, the candidature of the petitioner was not considered on merits and thereafter, the District Collector, Fazilka, proceeded to appoint Sukhdev Singh son of Sarup Singh – respondent No.4, the said appointment was challenged by the petitioner by filing an appeal before the Commissioner, Ferozepur Division, Ferozepur, which was dismissed vide order dated 31.03.2011 (Annexure P-2). Thereafter, a review application was preferred, which was allowed by the Commissioner, Ferozepur Division, Ferozepur, vide order dated 14.06.2012 (Annexure P-2). In pursuance to the said order, petitioner was appointed as Lambardar of the village Chak Gulam Rasool Wala, Tehsil Jalalabad District Fazilka. After the reconsideration by the District Collector, on remand, petitioner was appointed as Lambardar and even the *sanad* was issued in favour of the petitioner. In the meanwhile, respondent No.4 preferred a revision petition before the Financial

Commissioner, Department of Revenue, which revision petition has been allowed by setting aside the order passed by the Commissioner, Ferozepur Division, Ferozepur, in the review petition preferred by the petitioner i.e. 14.06.2012 (Annexure P-3). In pursuance thereto, respondent No.4 has again been appointed as Lambardar of the village.

3. He contends that the orders as passed by the authorities below rejecting the candidature of the petitioner merely on the ground that he had withdrawn his application in favour of one Karnail Singh without taking into consideration the fact that the withdrawal of the application/candidature was conditional and not an absolute withdrawal. His further assertion is that in any case, the claim of the petitioner for appointment to the post of Lambardar, has been forwarded by the Competent Authority and therefore, the District Collector, Fazilka, was bound to accept the claim of the petitioner especially in the light of the fact that said Karnail Singh was not appointed as Lambardar of the village. He, thus, contends that the impugned orders deserve to be set aside and the matter remanded back to the District Collector, Fazilka, for considering the candidature of all the four candidates, whose names have been forwarded to him.

4. On the other hand, learned counsel for respondent No.4 asserts that the orders passed by the authorities, which have been impugned by the petitioner, are in accordance with law, as with the withdrawal of his candidature, he is no more in the fray and therefore, his candidature has rightly been not considered by the District Collector, Fazilka, at the time of consideration of the applications for appointment to the post of Lambardar.

Respondent No.4 has been found to be suitable for the said post as there is nothing against him which would dis-entitle him for appointment to the post of Lambardar. He, thus, contends that the writ petition deserves to be dismissed on this score.

5. 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.

6. Facts as narrated by the learned counsel for the petitioner are not in dispute. The question which requires to be considered and decided by this Court is whether as per the statement of the petitioner dated 11.07.2007 before the Assistant Collector IInd Grade-cum-Tehsildar, Jalalabad, for withdrawal of his candidature has the effect of nullifying his claim for the post of Lambardar or not?

7. The answer has to be seen in context of the statement which has been given by the petitioner. The statement of the petitioner when seen, makes it clear that it is not an absolute withdrawal of the candidature in favour of Karnail Singh, rather, it is subject to he being appointed as Lambardar of the village. Since Karnail Singh was not being appointed as Lambardar of the village on consideration, the candidature of the petitioner was required to be considered on merits. In any case, when four names have been forwarded to the District Collector, Fazilka, for consideration, which included that of the petitioner, the said authority was mandated to consider the claim of all the candidates, who had put in appearance before it. It is an admitted position that the petitioner had appeared before the District

Collector, Fazilka, at the time of consideration of the candidature of all the four recommended candidates. If that be so, the denial of consideration of the petitioner's candidature only on the ground that he had withdrawn his application in favour of Karnail Singh cannot be such a ground especially when it was a conditional withdrawal. The order, therefore, as passed by the District Collector, Fazilka, dated 12.05.2012 (Annexure P-1) cannot sustain and is not in accordance with law. The said order as also the subsequent orders which have been passed by the other revenue authorities are hereby set aside.

8. The matter is remanded back to the District Collector-cum-Deputy Commissioner, Fazilka, for reconsideration of the claim of all four candidates whose names have been forwarded by the Sub Divisional Magistrate-cum-Assistant Collector 1st Grade, Jalalabad, to take a decision with regard to appointment of the Lambardar by considering the candidature of all four applicants on merits.

9. Parties are directed to appear before the District Collector-cum-Deputy Commissioner, Fazilka, on 18.02.2019. Thereafter, the District Collector-cum-Deputy Commissioner, Fazilka, shall issue notices to the other two candidates whose names were also recommended apart from the petitioner and respondent No.4 by the Sub Divisional Magistrate-cum-Assistant Collector 1st Grade, Jalalabad, and take decision on the appointment of Lambardar of village Chak Gulam Rasool Wala, Tehsil Jalalabad District Fazilka, on merits, preferably within a period of three months from the date of appearance before him.

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10. The writ petition stands disposed of with above observations and directions.

23rd January, 2019
Harish

(AUGUSTINE GEORGE MASIH)
JUDGE

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