

CWP-6936-2016

Date of Decision : 02.12.2019

Sewa Singh

...Petitioner

Versus

Financial Commissioner Revenue Punjab and others

...Respondents

CORAM : HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present : Mr. Vishal R. Lamba, Advocate for
Mr. Daldeep Singh, Advocate for the petitioner.

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

Mr. Sherry K. Singla, Advocate
for respondent No.4.

Petitioner has approached this Court challenging the order dated 23.12.2015 (Annexure P-11) passed by the Financial Commissioner, Punjab as well as the order dated 14.06.2012 (Annexure P-10) passed by the Divisional Commissioner, Patiala Division, Patiala appointing respondent No.4 – Harvinder Singh as Lambardar of the village Suron, Tehsil Rajpura, District Patiala.

It is the contention of the learned counsel for the petitioner that the petitioner was appointed as Lambardar of the village Suron by the District Collector, Patiala vide order dated 23.06.2010 (Annexure P-9). This order was passed by the Collector assessing the comparative merit of the petitioner as well as respondent No.4 – Harvinder Singh, taking into consideration the reports of the Revenue Authorities and interacting with

the candidates himself i.e. the petitioner and respondent No.4. He further contends that the Collector found the petitioner to be fairly competent and had an idea about duties and the responsibilities of the village Lambardar. Respondent No.4, on the other hand, was found to be a person who could not even utter a single word in support of his claim. In these circumstances and keeping in view the fact that the father of the petitioner was the former Lambardar of the village, Collector found the petitioner to be more suitable and a better candidate as compared to Harvinder Singh-respondent No.4, leading to the appointment of the petitioner as Lambardar of village Suron, Tehsil Rajpura, District Patiala.

In the appeal, which has been preferred before the Divisional Commissioner, Patiala by respondent No.4, the Commissioner has proceeded to set aside the appointment of the petitioner on the ground that the field officers i.e. Naib Tehsildar and the Sub-Divisional Magistrate have recommended the name of candidate Harvinder Singh and the Collector while passing the order has not disclosed and given the reasons for discarding the recommendations of field officers. Merely, on the basis of the recommendations of the two Revenue Authorities i.e. Naib Tehsildar and Sub-Divisional Magistrate, Harvinder Singh has been appointed as Lambardar. His contention is that the revision petition which was preferred before the Financial Commissioner by the petitioner has also been dismissed on the same ground which is unsustainable as the opinion which has been expressed by the Revenue Authorities are merely recommendary in nature and not binding upon the Collector who ought to have considered various other factors before coming to a conclusion with

regard to suitability and the merit of the candidates for the post of Lambardar. It is on the basis of such assessment that the Collector proceeded to appoint the Lambardar.

His further contention is that the settled proposition of law is that the opinion of the Collector should not be lightly interfered with and has to be given precedence and interference if any is called for only in case of any perversity or illegality while passing the order of appointing a Lambardar by the Collector, which is not position in the case in hand. Prayer has thus been made for setting aside the impugned order and restoring the order of the Collector appointing petitioner as Lambardar of the village.

On the other hand, learned counsel for the respondent asserts that no doubt that the Collector has the primacy to appoint a Lambardar but the Appellate Authority applied its own independent mind and has come to a conclusion that the recommendation as made by the Revenue Authorities i.e. Naib Tehsildar and the Sub-Divisional Magistrate if not to be followed should have been discarded by giving reasons. Merely because the Collector had gone through the recommendation would not be enough for setting aside the order and for overlooking the said recommendations reasons must be assigned. He thus contends that the order as passed by the Commissioner as well as Financial Commissioner upholding the order of the Collector cannot be faulted with and deserve to be upheld.

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.

The settled proposition of law is that the choice of the Collector while appointing a Lambardar of the village has to be given not only the primacy but due weightage should be given to the duty and responsibility of the officer, who gave reasons that he has not only seen the records apart from he being an officer on the ground but also interacted with the candidates who appeared before him at the time of consideration for appointment to the post of the Lambardar. He is therefore the best judge who had not only assessed the intelligence and response of the candidates but the demeanor of the candidates is also observed by the said authority. The Lambardar is not only to be appointed on the basis of the comparative merit of the candidates which is available on the record but his suitability has to be assessed on various aspects and these cannot be specifically assigned and defined. One of the criteria would be interaction with the candidates, as has taken place in the present case, where the Collector has found the petitioner to be an intelligent person having fairly good idea of the duties and responsibilities of the village Lambardar and would respond to the queries which were put to him, whereas Harvinder Singh respondent No.4 was unable to utter a single word in support of his claim. The Lambardar who is to take up the responsibility and duties which are assigned to him in the village which include certain revenue matters as well has therefore ought to be a person with reasonable understanding and confidence to face the authority and

the villagers. The Collector has to not only assess this aspect but also should verify all aspects before arriving at a conclusion that the Lambardar would not only be an influential person but in odd situation the pressure could be withheld by him. Petitioner appeared to be one such candidate who could withstand all the pressures and stand for himself and the principles. The suitability therefore as assessed by the Collector cannot be faulted with.

The reasons for interference as have been mentioned by the Appellate Authority i.e. Divisional Commissioner, Patiala which order has been upheld by the Financial Commissioner is that no reasons have been assigned for not accepting the recommendations of Revenue Authorities by the Collector. This observation of the Financial Commissioner, Punjab as well as the Divisional Commissioner, Patiala are unsustainable as the statute does not require and mandate assigning the reasons for not accepting or discarding the opinion of the Subordinate Authorities. What is required as per the statute is the consideration of the said recommendations. As per the rules, the duty and responsibility for appointment to the post of Lambardar is that of the Collector and, therefore, while coming to a final conclusion with regard to appointment to the post of Lambardar not only the suitability of the candidate is taken into consideration but also various aspects, as have been laid down in the statute itself, which include the opinion and recommendations from the Revenue Authority, Collector then applies its independent mind for coming to a conclusion with regard to competence of a candidate for

holding the responsibility of the post of a Lambardar. The orders, therefore as passed by the Appellate Authority as well as the Revisional Authority are not sustainable and therefore, deserves to be set aside.

In view of the above, the present writ petition is allowed and the order dated 14.06.2012 (Annexure P-10) and order dated 23.12.2015 (Annexure P-11) are hereby set aside and the order dated 23.06.2010 (Annexure P-9) passed by the Collector, Patiala is hereby restored.

(AUGUSTINE GEORGE MASIH)
JUDGE

02.12.2019
Manpreet

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No