

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

CWP-4956-2017

Date of Decision: 21.08.2019

Sukhwinder Singh

... Petitioner

Vs.

Financial Commissioner (Appeals) Punjab and others

... Respondents

CORAM : HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present : Mr. Sandeep Jain, Advocate
for the petitioner.

Mr. Charanpreet Singh, A.A.G. Punjab.

Mr. I.S. Saggu, Advocate
for respondent No.4.

AUGUSTINE GEORGE MASIH, J. (Oral)

The petitioner has approached this Court challenging order dated 22.12.2016 (Annexure P-5) passed by the Financial Commissioner (Appeals) Punjab whereby the order passed by the Commissioner, Rupnagar Division, Rupnagar, dated 15.1.2016 (Annexure P-3) accepting his appeal against the order of the District Collector, Shaheed Bhagat Singh Nagar dated 26.11.2013 (Annexure P-1) has been set aside.

2. It is the contention of the learned counsel for the petitioner that the District Collector, Shaheed Bhagat Singh Nagar-respondent No.3 proceeded to appoint Sarabjit Singh-respondent No.4 as a Lambardar of village Karnana, Tehsil and District S.B.S. Nagar on 26.11.2013. Apart from the petitioner and respondent No.4, there were other candidates also. Appeal was preferred by the petitioner before respondent No.2-Commissioner, Rupnagar Division, Rupnagar, who proceeded to accept his appeal on 15.1.2016 (Annexure P-3). The Commissioner, Rupnagar Division, Rupnagar, after taking into consideration the fact that the

petitioner had more land and had acted twice as Lambardar and thus, was much aware of the working of the Lamberdar with educational qualification almost being the same, appointed the petitioner as Lambardar of the village. He further submits that the Financial Commissioner, Punjab in the order dated 22.12.2016 has not assigned any reason as to why the order of the Commissioner is not sustainable and while interfering with the order of the appellate authority, the Financial Commissioner was required to give reasons which are missing. Apart from this, he contends that the name of the petitioner was recommended by the Assistant Collector Ist Grade as well as the Sub Divisional Magistrate, S.B.S. Nagar. He, thus, contends that the impugned order cannot sustain and deserve to be set aside.

3. On the other hand, learned counsel for respondent No.4 submits that the choice of the Collector has to be honoured and respected. The same cannot be interfered with at the whims and fancies of the revisional and appellate authorities unless there is any apparent illegality or perversity therein. He contends that respondent No.4 is more qualified than the petitioner as respondent No.4 is graduate whereas the petitioner is claiming himself to have passed B.A. Part-II, although, no certificate to this effect has been produced by him in support of this assertion. He further contends that the land of the petitioner, which has been shown to be more than respondent No.4 which has been transferred during the pendency of the application for consideration for appointment to the post of Lambardar. At the initial stage when the application was submitted, petitioner did not have more land as compared to respondent No.4. He further states that in any case, keeping in view the fact that land revenue stands abolished, the ownership of the land does not make any difference as the same is not to be taken into

consideration. His assertion is that nothing has been found against respondent No.4 which would deprive him from the post of Lambardar, therefore, impugned order is fully justified. In support of the order passed by the Financial Commissioner (Appeals) Punjab dated 22.12.2016, he asserts that it has clearly been mentioned in the order of the Financial Commissioner that the opinion and choice of the Collector should be respected and honoured and should not be brushed aside unless, there is any illegality or perversity. He further asserts that there has been mentioned in the order of the Financial Commissioner that the Commissioner has not pointed out any specific illegality in the choice of the Collector while setting aside the appointment of respondent No.4 while appointing the petitioner on the post of Lambardar. On this basis, he contends that writ petition is without any merit and deserves to be dismissed.

4. I have heard learned counsel for the parties with their able assistance have gone through the records of the case as also the impugned orders.

5. It is settled proposition of law that the choice of the Collector is not to be interfered with lightly and the opinion should not be brushed aside unless the same suffers from any apparent perversity and illegality. If two views are possible, then the view taken by the Collector has to be upheld and accepted. It is also settled that the hereditary claim cannot be pressed as a matter of right. It would only come into play in case, on consideration of the respective merits of the candidates when they are found to be at equal footing, then only preference has to be given to the candidate having hereditary claim.

6. With these principles in mind, when the respective merits of the

candidates is assessed, it is apparent that the petitioner is only stated to have passed B.A. Part-II as claimed by him but without any documentary evidence whereas respondent No.4 admittedly is a graduate and therefore, more educated. The petitioner was 42 years of age whereas respondent No.4 was 35 years. Respondent No.4 is, thus, younger. Land holding alone cannot be the deciding factor for appointment of Lambardar as the land revenue stands abolished thus, security of this collected revenue which was the main reason for land holdings has lost its significance.

7. This factor which was asserted to have been in favour of petitioner having gone, the hereditary right cannot be pressed into service as respondent No.4 is younger and more educated and thus, is more meritorious.

8. That apart, choice of Collector was respondent No.4 which has to be given proper weightage as he is the competent authority in the filed and better acquainted to assess the suitability of a candidate. As per the settled principles, as referred above, no interference in the matter is called for.

9. The impugned order dated 22.12.2016 (Annexure P-5) passed by the Financial Commissioner (Appeals)-respondent No.1 being in accordance with law is upheld in the light of the above and the writ petition is dismissed.

(AUGUSTINE GEORGE MASIH)
JUDGE

21.08.2019
rajeev

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No