

CWP-5857-2017

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

CWP-5857-2017

Date of Decision: 3rd December, 2019

Harvinder Singh

...Petitioner

Versus

Financial Commissioner, Punjab & others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Amarbir Singh Salar, Advocate,
for the petitioner.

Mr. T.P.S. Chawla, DAG, Punjab
for respondents No.1 and 2.

Mr. Manish Kumar Singla, Advocate
for respondent No.3.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Petitioner has approached this Court challenging the order dated 08.01.2016 (Annexure P-1) passed by the District Collector, Sangrur – respondent No.2 appointing Jaswant Singh – respondent No.3 as Lambardar of village Sanghreri, Tehsil and District Sangrur and the order dated 16.01.2017 (Annexure P-3) passed by the Financial Commissioner, Punjab – respondent No.1 setting aside the order dated 20.10.2016 (Annexure P-2) passed by the Divisional Commissioner, Patiala, whereby, appeal preferred by the petitioner was allowed and the case was remanded back to the District Collector, Sangrur – respondent No.2 for fresh decision.

2. It is the contention of the learned counsel for the petitioner that

the Divisional Commissioner, Patiala, has, in its order dated 20.10.2016 (Annexure P-2), on assessing the respective merits of the petitioner as well as respondent No.3, come to a conclusion that the petitioner was a better candidate when compared with respondent No.3. It has also been pointed out therein that the petitioner has experience of lambardari work as he has worked as Sarbrah Lambardar when his father was very old and suffering from diseases but this has also not been taken into consideration by the District Collector apart from the factor that the Revenue Authority had recommended the case of the petitioner for appointment to the post of Lambardar. He contends that the order of remand passed by the Divisional Commissioner, Patiala, was a well-reasoned order, which did not call for any interference by the Financial Commissioner, Punjab, in exercise of its appellate jurisdiction. His further contention is that the District Collector, in any case, has to reconsider the matter after appreciating the reasons as to why the case has been remanded back for fresh decision and pass a fresh order. He contends that the non-consideration of experience which the petitioner had gained as a Sarbrah Lambardar, would amount to an illegality on the part of the District Collector, which would render the order appointing respondent No.3 as Lambardar illegal and therefore, rightly interfered with by the Divisional Commissioner, Patiala. Learned counsel for the petitioner has further argued that FIR No.40 dated 22.05.2016, under Sections 307, 323, 447, 427, 148, 149 and 120-B of IPC has been registered at P.S. Sadar Sunam, against respondent No.3, therefore, he is not eligible for appointment to the post of Lambardar. He, therefore, prays for setting

aside the order dated 16.01.2017 (Annexure P-3) passed by the Financial Commissioner, Punjab – respondent No.1.

3. On the other hand, learned counsel for respondent No.3 has asserted that the said respondent has been found to be a more meritorious candidate especially in the light of the fact that he is 10th class pass and holds more land than the petitioner and has been found to be more suitable by the District Collector. He contends that the order, which has been passed by the District Collector is a well-reasoned order, in which he has taken into consideration each and every aspect. It has been mentioned that the factum of the petitioner being the Sarbrah Lambardar would not make much of difference as the said aspect would be applicable in case, other aspects with regard to the two candidates, which were taken into consideration, had been found to be equal, which factor has, admittedly, is not an issue because when the writ petition was filed, petitioner is said to be 54 years of age and respondent No.3 – Jaswant Singh 57 years of age, therefore, they fall within the same age bracket and thus, would not make much of difference. He, thus, contends that the order which has been passed by the District Collector has been rightly accepted by the Financial Commissioner, Punjab, do 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 as well as the impugned orders.

5. Petitioner, no doubt, is claiming himself to be better suited candidate for appointment to the post of Lambardar on the basis of the

experience which he had gained as Sarbrah Lambardar but that alone cannot be a guiding and deciding factor. Although the petitioner as well as respondent no.3 are sons of deceased Lambardar and therefore, are on equal footing as far as hereditary claim is concerned. The age group is also the same. The distinguishing feature is the land which is owned by both of them i.e. respondent No.3 has more land as compared to the petitioner, although the difference is one acre. Respondent No.3 is also on better footing than the petitioner with regard to educational qualification as the petitioner is 5th class pass, whereas, respondent No.3 is 10th class pass. There is no doubt and as has been argued by the counsel for the petitioner that a Lambardar is supposed to be able to read and write Punjabi but a better qualified person will also be at a better footing with the coming into force of various modern technicalities and techniques in the performance of the duties and the computerization aspect as also on-line applications being introduced.

6. The basic principle which has been settled upto the Hon'ble Supreme Court is that the choice of the District Collector should not be interfered with and has to be given precedence and primacy. The only exception which has been carved out in the exercise of powers by the appellate and revisional authorities is only when there is a patent illegality, perversity or arbitrariness. None of these are apparently so. As regards the plea which has been raised by the learned counsel for the petitioner about experience, which the petitioner had gained as Sarbrah Lambardar, cannot be a determinative factor especially when the District Collector has the

advantage of interacting with the candidates which he did so and on assessment of the respective candidates, the opinion which has been carved out and concluded cannot be said to be one which should be called in question especially when respondent No.3 is better qualified for appointment to the post of Lambardar.

7. The plea with regard to the recommendation made by the subordinate revenue authorities of the petitioner, the said aspect, admittedly, as per the order of Divisional Commissioner, Patiala, itself is not binding upon the District Collector because it is only a recommendation which had to be taken into consideration by the said authority i.e. District Collector, who, on consideration, as is apparent from the order dated 08.01.2016 (Annexure P-1), had proceeded to appoint respondent No.3 as Lambardar.

8. With regard to the contention of the learned counsel for the petitioner that an FIR has been registered against respondent No.3, perusal of the same would indicate that firstly, it is dated 22.05.2016 which is subsequent to the date of appointment of respondent No.3 as Lambardar of the village i.e. 08.01.2016 and secondly, the FIR is not only against respondent No.3 but 24 other persons, who have been specifically named and further 20 unknown persons. It has been pointed out by the learned counsel for respondent No.3 that till date, no challan has been presented in the said FIR.

Be that as it may, the fact remains that the FIR which has been registered is dated 22.05.2016, which is subsequent to the date of appointment of respondent No.3 as Lambardar of the village and therefore,

would not be relevant so far as the consideration of eligibility for appointment to the post of Lambardar is concerned, which according to the settled position upto the Hon'ble Supreme Court, is the date on which the appointment is made by the District Collector.

9. In the light of the above, it cannot be said that the order of the District Collector, Sangrur, dated 08.01.2016 (Annexure P-1) and the order of the Financial Commissioner, Punjab, dated 16.01.2017 (Annexure P-3) are in any manner not in accordance with law.

10. Therefore, finding no merit in the present writ petition, the same stands dismissed.

3rd December, 2019
Harish

(AUGUSTINE GEORGE MASIH)
JUDGE

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