

213

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

**LPA No.648 of 2016
Decided on : 31.01.2019.**

* * *

Hari Dev

Appellant

Versus

The Financial Commissioner Revenue (Appeals II), Punjab & others

Respondents

**CORAM : HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE AVNEESH JHINGAN**

Present : Mr. S.S. Hira, Advocate
for the appellant.

Mr. Pankaj Gupta, Addl. A.G., Punjab.

Ms. Neeru Thakur, Advcoate for
Mr. Arun Takhi, Advocate
for respondent No.4.

* * *

AVNEESH JHINGAN, J.

This intra Court appeal has been filed against the order dated 15.03.2016 passed by the learned single Judge whereby the learned single Judge directed that fresh applications be invited within two months to fill up the post of *Lambardar*.

[2] The facts in brief are that respondent No.4 Ram Parkash [hereinafter referred to as 'respondent'] filed a writ petition seeking quashing of order dated 25.10.2013 passed by the Financial Commissioner Revenue (Appeals II), Punjab [for brevity 'Financial Commissioner'], appointing Hari Dev (appellant) as *Lambardar* of

village Thathal.

[3] The proceedings were initiated to fill up the post of *Lambardar* in village Thathal. Applications were invited and six persons including the respondent and appellant applied for the said post. During the pendency of the proceedings, three persons withdrew their applications. Name of one Gurdial Chand was recommended by the Naib Tehsildar but ultimately the respondent was appointed as *Lambardar* vide order dated 28.02.2006 passed by the District Collector, Hoshiarpur. Being aggrieved of the appointment of the respondent as *Lambardar*, Gurdial Chand and the appellant preferred two separate appeals against order dated 28.02.2006. Both the appeals were dismissed vide order dated 05.09.2006.

[4] Further, revision petition was filed by the appellant but in the meantime, Sanad of appointment was issued in favour of the respondent on 28.03.2007. Vide order dated 24.09.2008, the revision petition was accepted and appellant was appointed as *Lambardar* of village Thathal by the Financial Commissioner. The order was challenged by the respondent by filing CWP No.10234 of 2009. This Court vide order dated 09.08.2010, set aside the order dated 24.09.2008 and remanded the matter back to the Financial Commissioner to decide it afresh. In pursuance to remand, vide order dated 18.05.2011, the appellant was again appointed as *Lambardar*. The order was again challenged by the respondent by filing CWP No.22259 of 2011. The order appointing the appellant as *Lambardar* was once again set aside by this Court vide order dated 23.07.2012.

The matter was remitted back to the Financial Commissioner to

decide it on the basis of material on record. Vide order dated 25.10.2013, the appellant was appointed as *Lambardar*. The petitioner filed CWP No.16251 of 2014. The learned single Judge vide impugned order dated 15.03.2016 directed that fresh applications be invited for the post of *Lambardar* and all the orders passed by the Revenue authorities were set aside.

[5] Hence the present Letters Patent Appeal.

[6] Learned counsel for the appellant contended that the learned single Judge has wrongly mentioned that the appellant has crossed the age of 60 years, whereas he is still 54 years old. He argued that the appellant is continuing as *Lambardar* and the learned single Judge erred in ordering that fresh application be invited for the post of *Lambardar*.

[7] It would be expedient to refer to relevant portion of the order passed by learned Single Judge. The operative part of the impugned order is reproduced below:

“I have considered the rival contentions of learned counsel for the parties.

Admittedly, as per the report of Sub Divisional Officer (C), Hoshiarpur, respondent No.4 was running a tailoring shop in village Bassi Gulam Hussain at the relevant time, when his case for the post of Lambardar was considered. So far as the petitioner is concerned, charges have been framed against him in a criminal complaint. This fact has not been denied by the petitioner. Moreover, the petitioner and respondent No.4 have crossed the age of 60 years. In view of above, this Court is of the view that fresh applications be invited for the post of Lambardar. Accordingly, the orders passed by

all the revenue authorities are set aside and the Collector is directed to invite fresh applications within a period of two months from the date of receipt of copy of this order and thereafter proceed in accordance with law.

Disposed of in the aforementioned terms.”

[8] The contentions raised by learned counsel for the appellant lack merit. Admittedly, the proceedings initiated for filling up the post of *Lambardar* of village Thathal in the year 2005 is in long drawn litigation for almost 13 years. In spite of various remands at various stages, every order passed by the authorities has been set aside. In such circumstances, this Court would not go into the merits of the decision but shall be ordinarily concerned with the decision making process.

[9] The Supreme Court in case of ***Mahavir Singh Vs. Khiali Ram and others*** reported as 2009 AIR (SC) 1761, held as under:

*“18. There cannot be any doubt or dispute whatsoever that a writ court could interfere with a finding of fact when the same inter alia is found to be perverse. However, neither any such finding has been arrived at by the High Court nor do we find any and as such the decision of this Court relied upon by Mr. Mahajan in ***Bhagat Ram v. State of Himachal Pradesh*** [(1983) 2 SCC 442] cannot be said to have any application whatsoever in this case. The High Court furthermore failed to take into consideration that while exercising its power of judicial review, it exercises a limited jurisdiction. The court, it is well-settled, is ordinarily concerned with the decision making process and not the merit of the decision.”*

[10] In the present case, under the circumstances, 13 years of

litigation between the parties has rendered it a fit case wherein the interest of public at large be prioritized instead of dealing with the same dispute between the appellant and respondent again and again. It is considered appropriate that the post be filled after inviting fresh applications from the candidates who have become eligible during the intervening period of 13 years.

[11] Needless to add that the appellant can also apply for the post, if he is still eligible, and as such no prejudice is caused to him by the order passed by the learned single Judge.

[12] There is no error in the impugned order. Accordingly, the Letters Patent Appeal is dismissed.

(AJAY KUMAR MITTAL)
JUDGE

(AVNEESH JHINGAN)
JUDGE

January 31st, 2019
pankaj baweja

Whether speaking/reasoned: **Yes / No**

Whether reportable : **Yes / No**