

CWP No. 14753 of 2017

Date of Decision: February 05, 2020

Avtar Singh

.....Petitioner

versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Amandeep Singh Saini, Advocate
for the petitioner

Mr. Vikas Mohan Gupta, Addl. A.G. Punjab

Mr. Sarju Puri, Advocate
for respondent No. 5

Sudhir Mittal, J. (Oral)

The only issue involved in the present writ petition is whether the Collector SBS Nagar was justified in remanding the matter to the SDM Nawanshahar for making fresh recommendation in a Lambardari matter.

2. Initially, the Sub Divisional Magistrate, Nawanshahar, made a recommendation in favour of a particular candidate but the Collector remanded the case for a fresh recommendation. Thereafter, the Sub Divisional Magistrate, Nawanshahar, recommended some other candidate. But again the matter was remanded by learned Collector. On the third occasion, again recommendation was made in favour of the candidate who had been recommended on the second occasion but vide impugned order dated 17.05.2017, the matter has been remanded once again for fresh recommendation.

3. Learned counsel for the petitioner submits that the Collector is not bound by the recommendations of the Sub Divisional Magistrate. The Collector

can evaluate the *inter se* merits of the candidates himself and can appoint a suitable person. Thus, successive remand orders are illegal and a wastage of time.

4. Learned State counsel accepts the propositions.

5. Learned counsel for respondent No. 5 submits that no prejudice is caused by a remand order to either party. In case the Collector finds the recommendations to be erroneous, he would be fully justified in remanding the case for fresh recommendation. Moreover, there is an equally efficacious remedy of appeal and revision available to the petitioner and, thus, the writ petition is not maintainable.

6. The availability of an alternate remedy does not bar writ jurisdiction. The High Court may refuse to exercise its writ jurisdiction in the peculiar facts and circumstances of a case if an alternate remedy is available. It is a self imposed restraint and not a legal bar. Since the writ petition has already been entertained, I see no reason to reject the same on the ground of availability of an alternate remedy.

7. There is no dispute about the fact that the Collector is the appointing authority of a Lambardar. He is entitled to weigh the comparative merits of the candidates and reach a suitable conclusion in accordance with law. Recommendation of the lower revenue staff is only for the purpose of bringing to his notice their comparative merits and demerits. Thus, ordinarily, the Collector has no jurisdiction to remand the case unless and until some procedural infirmity has been brought to his notice and the same is required to be cured. Successive remands are patently illegal.

8. For the aforementioned reasons, the writ petition is allowed and the impugned order dated 17.05.2017 is set aside. Learned Collector SBS Nagar is

directed to appoint a suitable candidate as Lambardar on the basis of his own evaluation and by considering the candidature of the persons who have filed their applications within the time prescribed. The needful be done within a period of three months from the date of receipt of certified copy of this order. Parties are directed to put in appearance before the Collector, SBS Nagar on 20.03.2020.

February 05, 2020

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[SUDHIR MITTAL]
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No