

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

Sr. No.204

CWP No.2134 of 2016

DECIDED ON: January 21, 2020

RAM SINGH

..PETITIONER

VERSUS

STATE OF PUNJAB AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Kanwaljit Singh, Senior Advocate with
Mr. Gautam Sehgal, Advocate,
for the petitioner.

Ms. Sakshi Bakshi, AAG, Punjab.

Mr. Vikas Mehsempuri, Advocate,
for respondent No.4.

SUDHIR MITTAL, J. (ORAL)

In the year 2013, vide order dated 17.07.2013, the Collector appointed respondent No.4 as Lambardar. The petitioner appealed against the said order but the appeal was dismissed vide order dated 03.09.2013. Thereafter, the petitioner sought review of the Appellate order and the review was allowed vide order dated 03.12.2013. The matter was remanded to the Collector to take a fresh decision. Respondent No.4 challenged the aforementioned order dated 03.12.2013 before the learned Financial Commissioner and the learned Financial Commissioner accepted the challenge vide order dated 30.09.2015. Exercise of powers of review by the learned Commissioner was found to be improper and illegal and thus, order dated 03.12.2013 was set aside. This had the effect of dismissal of the appeal filed by the petitioner before the learned Commissioner and accordingly respondent No.4 was appointed as Lambardar and has been continuing as such since then.

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2. Learned Senior counsel for the petitioner submits that the learned Commissioner has acted with material irregularity in the exercise of his jurisdiction. In case the order passed on review was illegal, the learned Financial Commissioner should have examined the comparative merits of the candidates. Having not done so, the petitioner has been deprived of an opportunity to appeal against the order of the learned Commissioner. Moreover, the findings of learned Commissioner that respondent No.4 was more meritorious being more educated cannot stand legal scrutiny as the finding is directly in contravention of a Division Bench judgment of this Court in *Nirbhey Singh vs. Financial Commissioner, Haryana, 2007(4) R.C.R. (Civil) 594*. The learned Commissioner has also failed to take into consideration the fact that respondent No.4 is an accused in an FIR under Sections 323, 324, 506, 341, 148 and 149 IPC. Moreover, proceedings under Order 39 Rule 2(A) of the Code of Civil Procedure have been initiated against him and thus, he is not a person of sound character. These aspects have been completely ignored by the learned Commissioner.

3. Learned counsel for respondent No.4 submits that there is no error in the order of the learned Financial Commissioner. In fact, the learned Financial Commissioner has considered the respective merits as well as he has found the order of the Commissioner dated 03.09.2013 to be illegal. The petitioner is not having a good character as is evident from certificate dated 29.10.2011 issued by the Principal of the school which shows that the petitioner is 6th fail and not 6th pass. The petitioner has thus misrepresented his educational qualification. Proceedings initiated under Order 39 Rule 2(A) have since been dismissed and cancellation of the FIR

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was recommended by the police but the learned trial Court has converted the same into a private complaint.

4. A perusal of para 7 of the impugned order shows that there is a single line observation by the learned Financial Commissioner in respect of order dated 03.09.2013 in which he has said that there was no patent error in the said order. Thus, it is abundantly clear that the respective merits of the parties have not been considered by the learned Financial Commissioner. Having found the exercise of review jurisdiction by the learned Commissioner to be illegal, the learned Financial Commissioner should have undertaken the exercise of examining the respective merits of the parties as only then a finding could have been returned whether the order of the learned Commissioner dated 03.09.2013 was legal or not. It goes without saying that the consideration of the merits and demerits of the parties, should be in accordance with the law laid down by this Court.

5. The writ petition is accordingly allowed and impugned order dated 30.09.2015 (Annexure P-4) passed by the learned Financial Commissioner is set aside. The matter is remanded to the learned Financial Commissioner for a fresh decision in accordance with law.

6. Parties are directed to appear before the learned Financial Commissioner on 02.03.2020 for further proceedings.

January 21, 2020

Ankur

**(SUDHIR MITTAL)
JUDGE**

Whether speaking/reasoned Yes

Whether Reportable Yes