

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CM-2739-2021 in/and
CWP-22734-2020
Date of decision: - 23.02.2021

Dilbag Singh

....Petitioner

Versus

Financial Commissioner, (Appeals) Punjab and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. Ravi Malhotra, Advocate,
for the applicant-petitioner.

(Through Video Conferencing)

HARSIMRAN SINGH SETHI, J. (ORAL)

CM-2739-CWP-2021

Present application has been filed by the applicant-petitioner
for staying the further proceedings before respondent No.3.

Learned counsel for the applicant-petitioner submits that he
does not press the prayer for stay and prays that hearing of the main writ
petition be preponed from 08.04.2021 to today and the main writ petition
be heard.

The prayer of the applicant-petitioner with regard to
preponing the hearing of the main petition is accepted and the hearing of

the main writ petition is preponed from 08.04.2021 to today.

CM is disposed of in above terms.

CWP-22734-2020

In the present writ petition, the challenge is to the order dated 17.02.2020 (Annexure P-5) passed by Financial Commissioner (Appeals), Punjab-respondent No.1, by which, the revision petition filed by respondent No.4 has been accepted and the matter has been remanded back to the District Collector, Jalandhar, District Jalandhar-respondent No.3 for a fresh decision.

The facts leading to the filing of the present writ petition are that a post of Lambardar became available in village Malliwal, Tehsil Shahkot, District Jalandhar on 31.10.2008. The applications were called for the said post and the petitioner along with respondent No.4 and four others applied to be appointed as Lambardar. After evaluating the applications submitted by all the candidates, the name of the petitioner was recommended by the Naib Tehsildar, Shahkot as well as the SDM, Shahkot and the same was forwarded to respondent No.3. Respondent No.3 considered the said recommendation and after going through the merits of all the other candidates as well, appointed the petitioner as a Lambardar of village Malliwal, Tehsil Shahkot, District Jalandhar on 26.11.2009.

Feeling aggrieved against the appointment of the petitioner as Lambardar, respondent No.4 preferred an appeal before the Commissioner, Jalandhar Division, District Jalandhar-respondent No.2.

The objection raised before respondent No.2 was that as per the order passed by the DDPO concerned of the village dated 14.09.2010, petitioner has encroached upon the land belonging to the gram panchayat, hence, petitioner was ineligible to be appointed as Lambardar. Respondent No.2 by the order dated 08.10.2012 (Annexure P-2) remanded the case back to the District Collector, Jalandhar for a fresh decision but allowed the petitioner to continue as Lambardar till the fresh decision is given by the District Collector.

The District Collector, Jalandhar-respondent No.3 again passed an order dated 29.08.2013 (Annexure P-3) upholding the appointment of the petitioner as a Lambardar. While dealing with the question of encroachment, it was recorded by the District Collector, Jalandhar in the order that as per the report submitted by the Naib Tehsildar, Shahkot, Dilbagh Singh son of Mohinder Singh-petitioner is not in an illegal possession of the land belonging to the gram panchayat. Respondent No.4 again preferred an appeal against the said order of District Collector, Jalandhar, before the Commissioner, Jalandhar Division, District Jalandhar-respondent No.2, which appeal was rejected and ultimately a revision petition was filed by respondent No.4 before the Financial Commissioner (Appeals), Punjab-respondent No.1, raising the grievance that once there is an order dated 14.09.2010 by the DDPO, Jalandhar holding the petitioner guilty of encroachment as well as in an illegal possession of the gram panchayat land, nothing has come on record whether the said order was ever set aside by any authority or the

said order was even taken into consideration by the Naib Tehsildar while forwarding the report dated 07.06.2013 to the District Collector, Jalandhar, wherein it was submitted that the petitioner is not in an illegal possession of any land belonging to the gram panchayat, hence, placing reliance by the Collector, Jalandhar Division on the letter of Naib Tehsildar dated 07.06.2013 is misplaced. It was further argued that petitioner herein cannot be treated as an eligible candidate for appointment as Lambardar.

Respondent No.1 by the impugned order dated 17.02.2020 (P-5) has remanded the case back to the District Collector, Jalandhar to ascertain the fact with regard to the order passed by the DDPO, Jalandhar dated 14.09.2010, wherein the petitioner was held in an illegal possession of the gram panchayat land and pass a fresh order.

This order dated 17.02.2020 (P-5), by which the case has been remanded back to the District Collector, Jalandhar by respondent No.1 is impugned in the present writ petition.

I have heard learned counsel for the petitioner at length and have perused the record with his able assistance.

Learned counsel for the petitioner argues that once there is a report given by the Naib Tehsildar dated 07.06.2013, which has been accepted by the District Collector, Jalandhar, it cannot be said that the petitioner is in an illegal possession of any gram panchayat land.

On being asked as to whether, the report given by the Naib Tehsildar dated 07.06.2013, takes into consideration the order passed by

the DDPO, Jalandhar dated 14.09.2010, learned counsel for the petitioner pleads ignorance about the same. It is conceded by the learned counsel for the petitioner that the report of Naib Tehsildar was not on record before respondent No.1 or even before this Court in the present proceedings. Learned counsel for the petitioner fairly concedes that he does not know as to on what basis report of Naib Tehsildar dated 07.06.2013 holds that petitioner is not in unauthorized occupation of Gram Panchayat land. That being so, the order passed by the Financial Commissioner (Appeals), Punjab-respondent No.1, remanding the case back to the District Collector, Jalandhar to adjudge the eligibility of the petitioner to be appointed as a Lambardar of the Gram Panchayat cannot be faulted with. Once, there is an order passed by an authority on 14.09.2010 holding the petitioner to be in an illegal possession of the gram panchayat land as an encroacher, while adjudging the eligibility of the petitioner, the authorities are required to pass a detailed order whether the said order dated 14.09.2010 has ever been set aside by the authorities or has lost its significance in view of any subsequent order passed by higher authorities, due to which reason, the said order cannot be taken into consideration while adjudging the suitability of the petitioner to be appointed as a Lambardar. These findings are missing in the order passed by the Collector, Jalandhar Division as well as that of Commissioner, Jalandhar Division dated 17.02.2020 (P-5) and 29.08.2013 (P-3) respectively.

Learned counsel for the petitioner has not been able to show to this Court during hearing that the report of the Naib Tehsildar dated

11.06.2013 takes into consideration the order passed by the DDPO dated 14.09.2010 in any manner, to hold that the petitioner is not in encroachment of gram panchayat land. Under these circumstances, the remanding of the case back by the Financial Commissioner (Appeals), Punjab, to ascertain the said facts cannot be faulted with.

Learned counsel for the petitioner relies upon a judgment of the Hon'ble Supreme Court in '**Mahavir Singh** Vs. **Khiali Ram and others**, 2009(1) R.C.R. (Civil) 757, to contend that the Financial Commissioner cannot opine about the suitability of a candidate for appointment once a particular candidate has been found suitable for appointment by the competent authority.

The judgment which is being relied upon by learned counsel for the petitioner is not applicable in the present case. The order passed by respondent No.1, which has been impugned, does not decide the suitability of the candidates inter-se the petitioner and respondent No.4. The said order only relates to the eligibility of the petitioner to be appointed as a Lambardar on the ground whether the petitioner is in possession of encroached land of gram panchayat or not, especially in view of the fact that an authority has passed an order as far back as on 14.09.2010 holding the petitioner guilty of encroaching the gram panchayat land.

Learned counsel for the petitioner also cites judgment of this Court passed in '**Phool Kumar** Vs. **State of Haryana and others**', 2010 (2) R.C.R. (Civil) 819, to contend that where there are two views

possible with regard to the suitability of the candidates, still, the choice of the Collector should not be interfered with.

At the cost of repetition, it is again stated that the said judgment is also not applicable in this case because the order impugned does not refer to the suitability of the petitioner for appointment by comparing him with respondent No.4. The order impugned concerns the eligibility of the petitioner to be appointed as a Lambardar for the reason that in case any one has encroached upon a gram panchayat land, he/she is not eligible for appointment as a Lambardar under the rules governing the said appointment. Therefore, the judgment being relied upon by learned counsel for the petitioner is not applicable in the facts and circumstances of this case.

Learned counsel for the petitioner was also given a chance to show that the petitioner has not in any manner encroached the land of the gram panchayat or order dated 14.09.2010 passed by the DDPO, Jalandhar has been set aside by any higher authority or has lost its significance in view of any subsequent proceedings. Learned counsel pleads helplessness to prove the said fact keeping in view the facts on record. That being so, the Financial Commissioner (Appeals), Punjab-respondent No.1, has rightly remanded the case back to the District Collector, Jalandhar to adjudge the factum whether the petitioner is in possession of encroached land keeping in view the order passed by the DDPO dated 14.09.2020 so as to incur the disqualification for appointment as Lambardar.

Keeping in view the above, no ground is made out to interfere with the impugned order dated 17.02.2020 (P-5) and the present writ petition is accordingly dismissed.

February 23, 2021
naresh.k

(HARSIMRAN SINGH SETHI)
JUDGE

Whether reasoned/speaking?	Yes/No
Whether reportable?	Yes/No