

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

LPA-377-2020 (O&M)

DECIDED ON: 7th MARCH, 2022

SAHAB SINGH

.....APPELLANT

VERSUS

FINANCIAL COMMISSIONER, HARYANA AND OTHERS

.....RESPONDENTS

**CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH.
HON'BLE MR. JUSTICE SANDEEP MOUDGIL.**

Present: Mr. Manish Kumar Singla, Advocate
for the appellant.

Ms. Rajni Gupta, Additional Advocate General, Haryana.

Mr. Bhag Singh, Advocate
for respondent No.3.

AUGUSTINE GEORGE MASIH, J (ORAL)

This appeal has been preferred challenging the order dated 27th February, 2020 passed by learned Single Judge in the writ petition, which was preferred by respondent No.3-Naib Singh challenging the order passed by the Commissioner, Ambala Division, Ambala dated 31st March, 2009 and order dated 27th January, 2015 passed by the Financial Commissioner whereby, the Commissioner had appointed the appellant as a Lambardar by setting aside the order dated 13th August, 2008, passed by the Collector appointing respondent No.3 as a Lambardar which order has been upheld by the Financial Commissioner vide impugned orders referred to above.

The learned Single Judge proceeded to accept the writ petition on the ground that the opinion of the Collector should not have been interfered with, by the Commissioner as there was no illegality or perversity which would

entitle the Commissioner to exercise its powers.

The learned Single Judge has further gone to the extent of holding that the question of educational qualification of the appellant being more than that of respondent No.3 had been raised by him for the first time before the writ Court.

It is the contention of the learned counsel for the appellant that the finding recorded by learned Single Judge with regard to the issue of educational qualification asserted to be raised before learned Single Judge for the first time is factually incorrect, as the same is contrary to record. He asserts that out of the grounds which was taken before the Commissioner challenging the order of Collector appointing respondent No.3 as Lambardar, the educational qualification was one of the ground before the said authority. The Commissioner had taken that into consideration as well while considering the case of the appellant and appointing him as Lambardar. The aspect with regard to the qualification was again considered by the Financial Commissioner in the revision petition, which was preferred by respondent No.3. He on this basis, asserts that this finding as recorded by learned Single Judge is not sustainable.

Another aspect which had been projected by learned counsel for the appellant is with regard to his better administrative experience, in this regard reliance has been placed upon the fact that the appellant had been Sarpanch of the village for a reasonably long period of time. He has also been performing the duties of Lambardar since 2009, the date of his appointment as Lambardar by the Commissioner, as also the fact that he was better qualified educationally viz-a-viz respondent No.3 apart from other assertions. He

sustain and deserves to be set aside.

On the other hand learned counsel for respondent No.3 has submitted that the reasoning which has been adopted by learned Single Judge for rejecting the claim of the appellant and accepting that of the petitioner is based upon the settled principle of law that the choice of the Collector should not be interfered with. There is no illegality or perversity as respondent No.3 was appointed after due recommendation by the subordinate authorities which although may not be binding but are persuasive in any case for the authorities to be considered at the relevant time. Respondent No.3 has more land as compare to the appellant and there is nothing which would indicate with regard to his dis-qualification.

Learned counsel for respondent No.3 has also stated that the appellant was involved in a criminal case where an FIR was registered against him on 13th July, 2001 under Section 326 and other Sections wherein, because there was a compromise entered into between the parties, the matter led to the acquittal of the appellant. Another FIR is said to have been registered against the appellant in the year 2010 wherein, he has been convicted on 2nd June, 2017 but has been released on probation by the said Court.

Having considered the submissions made by the counsel for the parties and keeping in view the settled proposition of law, which could not be disputed by the counsel for the parties that the Commissioner does not have the power to appoint a Lambardar, as the Appointing Authority under the statute is the Collector, in case the Commissioner had come to a conclusion that there was perversity in the order passed by the Collector, appointing respondent No.3 as Lambardar, the said authority should have remanded the case to the

appellant cannot be said to be in accordance with law. It may, however, be pointed out here that the relevant date for consideration with regard to the qualification of a candidate as also to the suitability thereof, is to be the date of consideration of the said application by the Appointing Authority i.e. Collector. In this case, therefore, the relevant date for consideration would be 13th August, 2008.

In the light of above, we dispose of the present appeal by observing that the appointment made of the appellant by the Commissioner cannot sustain in law. However, as the appellant is working as Lambardar since the year 2009, he shall continue to perform his duties subject to a final decision to be taken by the Collector with regard to the appointment of the Lambardar.

Parties are directed to appear before the Collector on 30th March, 2022. The Collector shall decide the aspect with regard to the appointment of Lambardar within a period of four weeks from the said date of appearance of the parties.

Disposed off accordingly.

(AUGUSTINE GEORGE MASIH)
JUDGE

7th MARCH, 2022
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(SANDEEP MOUDGIL)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>