

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

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LPA No.919 of 2022 (O&M)

Date of Decision: November 11th, 2022

Roop Singh

...Appellant

Versus

The Financial Commissioner, Punjab and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE VIKRAM AGGARWAL**

Present: Mr. Gaurav Datta and Ms. Srishti Sharma, Advocates
for the appellant.

Mr. Sarwan Singh Sabar, Advocate
for caveator/respondent No.4.

AUGUSTINE GEORGE MASIH, J. (ORAL)

This appeal has been preferred against the judgment dated 13.09.2022 passed by the learned Single Judge vide which the writ petition preferred by the appellant has been dismissed upholding the order dated 25.02.2019 passed by the Financial Commissioner vide which the appointment of the appellant has been set aside and it has been ordered that respondent No.4 i.e. Shingara Singh be appointed as the Lambardar.

2. Contention as has been raised by the counsel for the appellant is that the jurisdiction as far as the Financial Commissioner is concerned relates to setting aside of an order passed by the Collector or the authorities below it on the ground of any perversity, illegality or non-compliance of the statutory provisions. The limited jurisdiction which has been conferred under the statute does not include the power to appoint a candidate as a Lambardar by assessing the comparative merit of the candidate. That jurisdiction is conferred upon the Collector alone. He, therefore, contends that assuming there was some

perversity or illegality in the order passed by the Collector appointing the appellant as the Lambardar, the appropriate direction which could have been given by the Financial Commissioner is to remand the case to the Collector by setting aside the appointment of the appellant and reconsidering the matter in the light of the said perversity pointed out by the Revisional Authority, which has not been done, rather the powers of the Collector have been usurped by the Financial Commissioner while appointing respondent No.4 as the Lambardar in place of the appellant. He, therefore, prays accordingly.

3. Counsel for respondent No.4 contends that the Financial Commissioner, on going through the facts of the case, has returned a positive finding that there was perversity in the order as the ground which has been taken for denying respondent No.4 the consideration for appointment to the post of Collector was that he was working as a Lab Attendant at Mandi Gobindgarh, whereas the fact remains that respondent No.4 was a retired Head Teacher and thereafter had never worked on any post as per his stand. The said fact being so, an illegal factual aspect has been taken note of by the Collector for proceeding to appoint the appellant as a Lambardar. He, therefore, contends that once it has been found that there is perversity in the order passed by the Collector while appointing the appellant, the Financial Commissioner while exercising its revisional powers had the jurisdiction to consider the respective merit of the candidates and appoint the best suited person to be the Lambardar of the village. He on this ground contends that the appeal deserves to be dismissed by upholding the order passed by the Financial Commissioner and the learned Single Judge.

4. We have considered the submissions made by the counsel for the parties.

5. Having examined the statutory provisions and the powers and the jurisdiction conferred upon the authorities with relation to the appointment of the Lambardar, the power of the Appellate Authority as also the Revisional Authority, what turns out is that the appointing authority is the Collector as far as the Lambardar is concerned. The parameters have also been laid down therein and the suitability of a candidate is to be adjudged by the Collector of the District, who is the competent authority by taking into consideration the various factors including the recommendation which have been made by the revenue authorities. The powers, therefore, for appointment of a Lambardar have been conferred upon the Collector alone and not on the Appellate Authority or the Revisional Authority. The power, if any, for setting aside the appointment of the Lambardar is limited to the extent of perversity, illegality or any finding which would be contrary to the facts and obviously violative of principles of natural justice. These aspects when taken into consideration, if found in the order passed by the Collector, the Appellate Authority as well as the Revisional Authority has the jurisdiction and power to set aside such appointment of the Lambardar by the Collector, however, the competent authority for appointing a Lambardar is none other than the Collector. The matter thus has to be remanded back to the Collector for fresh consideration of the candidature of the eligible applicants for the post of Lambardar, who were available at the time of consideration.

6. In the present case, although initially there were four candidates but two of them had withdrawn their candidature leaving the appellant and

respondent No.4 in race for consideration for appointment as Lambardar. The order as has been passed by the Financial Commissioner as also the learned Single Judge to the extent of setting aside the appointment of the appellant on the basis of perversity as has been pointed out by the learned counsel for respondent No.4 cannot be faulted with. The only aspect with regard to the jurisdiction of appointment of Lambardar after setting aside the choice of the Collector being conferred upon the Financial Commissioner, we are not inclined to accept. The appropriate order, therefore, which was required to be passed by the Financial Commissioner on consideration of new facts of the case including the legal aspect was to remand the case back to the Collector for fresh consideration by taking note of the aspect as has been pointed out by the Revisional Authority.

7. In the light of the above, we set aside the order dated 25.02.2019 (Annexure P-3) passed by the Financial Commissioner to the limited extent where appointment of respondent No.4 has been made vis-a-vis the appellant and remand the case to the Collector for fresh decision.

8. It has been pointed out by learned counsel for respondent No.4 that the *sanad* has already been issued in favour of respondent No.4 and he is performing the duties of the Lambardar as of now, which fact is not disputed by the counsel for the appellant.

9. In the light of the above, parties are directed to appear before the Collector, District Fatehgarh Sahib, on 22.11.2022 at 10:00 AM.

10. The District Collector, Fatehgarh Sahib, shall proceed to consider the candidature of the appellant and respondent No.4 and take a

final decision by giving opportunity of hearing to both the parties within a period of four weeks from the date of their appearance.

11. In the meanwhile, respondent No.4 shall continue to perform the duties of the Lambardar. This shall, however, be subject to the final order passed by the Collector.

12. In the light of the decision in the appeal as above, the application for stay i.e. CM No.2199-LPA of 2022 stands disposed of as infructuous.

**(AUGUSTINE GEORGE MASIH)
JUDGE**

November 11th, 2022
Puneet

**(VIKRAM AGGARWAL)
JUDGE**

Whether speaking/reasoned: Yes

Whether Reportable: Yes