

113 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CM-2575-LPA-2022 in/and
LPA-1062-2022
Date of Decision: 30.11.2022.

Hardeep Kumar

.....Appellant

Versus

Financial Commissioner Haryana and others

..... Respondents

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

Present: Mr. Lalit K. Gupta Advocate
for the appellant.

VIKRAM AGGARWAL, J.

CM-2575-LPA-2022

This is an application under Section 5 of the Limitation Act for condonation of delay of 24 days in filing the appeal. The application is supported by an affidavit of the applicant/appellant-Hardeep Kumar.

Heard.

For the reasons mentioned in the application, the same is allowed and the delay of 24 days in filing the appeal is condoned.

LPA-1062-2022

The present appeal challenges the judgment dated 22.09.2022 passed by the learned Single Bench vide which CWP No.21934 of 2022 titled as Hardeep Kumar versus Financial Commissioner, Haryana and others filed by the appellant was dismissed.

By way of the writ petition, the appellant challenged the order dated

16.05.2022 (Annexure P-5) (reference to Annexures hereinafter shall indicate reference to Annexures with the writ petition) passed by respondent No.1, order dated 22.11.2021 (Annexure P-4) passed by respondent No.2 and order dated 04.05.2017 (Annexure P-3) passed by respondent No.3.

On account of the post of Lambardar in village Ambli in District Yamuna Nagar having arisen because of the death of the earlier Lambardar Shri Mangat Ram, three persons i.e. the present appellant and respondents No.4 and 5 applied for the same. Vide order dated 15.03.2017, the Naib Tehsildar of the concerned area recommended the candidature of respondent No.4 for appointment as Lambardar. This recommendation was forwarded by the SDO (Civil) Jagadhari to respondent No.3. Vide order (Annexure P-3) respondent No.3, after considering the matter from all angles including the respective merit of all three candidates and on hearing arguments of counsel representing them, appointed respondent No.4 as Lambardar and sanad Lambardari was issued. In appeal, respondent No.2 upheld the order of respondent No.3 vide order dated 22.11.2021. In revision, respondent No.1 also did not interfere and vide order (Annexure P-5) upheld the order passed by respondent No.2 in appeal and consequently the order passed by respondent No.3 appointing respondent No.4 as Lambardar.

Aggrieved by these orders, the writ petition was filed, which was also dismissed by way of the impugned order leading to the filing of the present Letters Patent Appeal.

Learned counsel for the appellant has submitted that the order passed by respondent No.1 in revision is totally non-speaking and is, therefore, not sustainable. He has submitted that the learned Single Bench did not consider the matter in the correct perspective and erroneously dismissed the writ petition.

Learned counsel has referred to the orders passed by respondent Nos.2 and 3 and

has submitted that the appellant was younger in age to respondent No.4, was more qualified and had more land than him. It has been contended that though these facts were noticed by the authorities, they, for reasons unknown, appointed respondent No.4 as the Lambardar in gross violation of the settled law. It has also been contended that the order passed in revision deserves to be set aside only on the ground of the same being totally non-speaking.

In support of his contentions, learned counsel has relied upon the judgments in the case of *Mahavir Singh Vs. Khiali Ram and others, 2009 (1) R.C.R (Civil) 757, Hargian Vs. Financial Commissioner, Haryana, 1997 (1) R.C.R (Civil) 239, Harbhajan Singh Vs. Financial Commissioner (Revenue) Punjab and others, 2017 (3) R.C.R (Civil) 222, Sadhu Singh and others Vs. Financial Commissioner, Punjab and others, 2018 (3) R.C.R (Civil) 23 and Kabal Singh Vs. State of Punjab and others, 2017 (3) Law Herald 2458.*

We have considered the arguments advanced by learned counsel for the appellant and have gone through the various orders passed by the respondents. The order (Annexure P-3) passed by respondent No.3 is a detailed order. Respondent No.3 noticed the age, educational qualifications, reputation, land holding, activities, character, support from residents of the village and suitability for the post. The arguments addressed by counsel for all three applicants were duly noticed and considered and thereafter, by giving detailed reasons, arrived at the conclusion that for the post of Lambardari of village Ambli, respondent No.4 was more suitable than the other candidates. He, therefore, appointed respondent No.4 as the Lambardar. In appeal, respondent No.2 also examined the matter in detail and upheld the decision of respondent No.3. In revision, respondent No.1, finding no illegality in the decision of the authorities below him, did not interfere. Merely because the order passed by respondent No.1 is not a detailed order does not mean

that there was no application of mind. Since the revisional authority did not find any illegality in the orders impugned before him, he found no reason to disturb the order of respondent No.3. In our view, this order passed by respondent No.1 does not suffer from any illegality or irregularity much less perversity. As discussed above, the orders passed by respondent Nos.2 and 3 are also well reasoned and detailed and do not leave any scope of interference which in any case is limited.

We have gone through the judgments relied upon by learned counsel for the appellant. In the case of *Mahavir Singh versus Khiali Ram (supra)*, the issue of appointment of Lambardar reached the Hon'ble Apex Court. There the District Collector of Hisar had appointed one Mahavir Singh (the appellant before the Hon'ble Apex Court) as the Lambardar finding him to be more meritorious than others. In writ petition, the decision of the District Collector was reversed and Khiali Ram (respondent No.1 before the Hon'ble Apex Court) was appointed as the Lambardar holding that he was more meritorious as also on the ground that Office of Lambardar was not a hereditary office. After examining the law on the subject and noticing that in the appointment of Lambardar, the age of a candidate is a relevant factor and also noticing that in such matters interference is warranted only where the finding of the Collector can be said to be perverse, the Hon'ble Apex Court set aside the judgment of the Hon'ble High Court and upheld the order passed by the Collector, Hisar. While doing so, the Hon'ble Apex Court held that it had not been found by the High Court that the Collector in expressing his opinion as regards the comparative merit of the two candidates had committed an error in his decision making process. He had complied with the principles of natural justice and had also followed the procedure laid down in the rules. Other factors considered by the Collector were also noticed and thereafter, the Hon'ble Apex Court came to the conclusion that the finding of the Collector was not

perverse. In the present case also, the finding of respondent No.3, while appointing respondent No.4 as the Collector is not perverse as has been held in the preceding paragraphs. The judgment of the Hon'ble Apex Court in ***Mahavir Singh's case (supra)***, therefore, does not come to the aid of the appellant. In ***Hargian's case (Supra)***, a Division Bench of this Court set aside the order passed by the Financial Commissioner finding it to be non-speaking. However, in that case the Financial Commissioner had set aside the order passed by the Commissioner whereas in the present case the Financial Commissioner has upheld the order passed by the Commissioner. This judgment would also, therefore, not help the appellant. For the same reasons, the judgments in ***Harbhajan Singh's case (supra)*** and ***Kabal Singh's case (supra)*** are not applicable to the facts of the present case. The judgment in ***Sadhu Singh's case (supra)***, is also not applicable as the same pertains to rejection of mutation and not to the appointment of a Lambardar wherein the order of the Collector can be set aside only on the ground of perversity.

It is now well settled that normally the decision taken by the Collector in matters of appointment of Lambardar should not be interfered with unless it is found that the order is perverse. Reliance in this regard can be placed upon the judgment of the Hon'ble Apex Court in *Mahavir Singh Vs. Khiali Ram and others (supra)* where, while setting aside the judgment of the High Court vide which the decision of the Collector had been set aside, the Hon'ble Apex Court held that a writ court could interfere with a finding of fact when the same was found to be perverse. It was also held that while exercising the power of judicial review, the High Court exercises a limited jurisdiction and that the Court is ordinarily concerned with the decision making process and not the merit of the decision. In coming to this conclusion, the Hon'ble Apex Court placed reliance upon

judgments in the case of Dalpat Abasaheb Solunke v. B.S. Mahajan [(1990)1 SCC 305], H.B. Gandhi, Excise and Taxation Officer-cum-Assessing Authority, Karnal and others v. M/s. Gopi Nath & Sons and others [1992 Supp (1) SCC 312] and State of U.P. v. Committee of Management of S.K.M. Inter College [1995 Supp (2) SCC 535]. This view has been taken by this Court also in a number of cases, one such case being Amrik Singh Vs. Financial Commissioner (Appeals), Punjab & others 2022(4) R.C.R. (Civil) wherein, it was held in the absence of any illegality, perversity or mala fide in the exercise of power by the District Collector, appointment of a Lambardar was not liable to be interfered with.

In view of the aforesaid, we do not find any merit in the present appeal and the same is, therefore, dismissed.

(AUGUSTINE GEORGE MASIH)
JUDGE

(VIKRAM AGGARWAL)
JUDGE

30.11.2022

rekha sharma

Whether speaking/reasoned : *Yes/No.*
Whether reportable : *Yes/No.*