

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

LPA-107-2023

Date of Decision: 06.02.2023

Sukhpal Singh

.....Appellant

Vs.

State of Punjab and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE G.S. SANDHAWALIA
HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN**

Present: Mr. Sukhdeep Singh Bhinder, Advocate,
for the appellant.

Mr. Abhay Pal Singh Gill, D.A.G., Punjab.

G.S.SANDHAWALIA, J. (ORAL)

The present appeal seeks consideration of the order of the learned Single Judge in CWP-16717-2022, who has upheld the order of the Financial Commissioner, dated 19.05.2022 (Annexure P-3) while dismissing the writ petition filed by the petitioner, on 13.01.2023.

The brief facts of the case are that the District Collector, Barnala, vide his order dated 09.11.2017 (Annexure P-1) appointed Rajpal Singh (respondent No. 4 herein) as a '*Lambardar*' of Village Rureke Khurd, Tehsil and District Barnala. However, the Divisional Commissioner, vide his order dated 15.07.2021 (Annexure P-2) set aside the order passed by the District Collector and appointed the present appellant as '*Lambardar*' of the village. Thereafter, the Financial Commissioner, vide his order dated 19.05.2022 (Annexure P-3) set aside the order of the Divisional Commissioner and restored the order passed by the District Collector.

In sum and substance, the learned Single Judge came to the conclusion that it was a settled principle of law that the choice of the District Collector cannot be lightly set aside and therefore, upheld the order of the Financial Commissioner, dated 19.05.2022 (Annexure P-3).

The apparent reasons as such for the Commissioner to exercise his power is apparently on reassessing the suitability of the candidate *inter se* and coming to the conclusion that the present appellant was a better candidate on account of his sports background. The Divisional Commissioner would also aware of the his limited jurisdiction but inspite of that passed the order and accepted the appeal. The relevant portion of the order dated 15.07.2021 (Annexure P-2) reads as under:-

“7.After perusing all the facts of the case, I am of the opinion that the appellant Sukhpal Singh is a better candidate for the post of lambdardar. He is having a good influence in the village as he is a player of Basket Ball and obtained first rank in the district level. He also got second position in district level in Sr. Sec. School Tournaments in Basket Ball. Being a player, he is a role model for the youth and can motivate them to form a curve towards games which is badly needed in today's scenario. I do not find any extra merit in another appellant Jaswinder Singh and respondent Rajpal Singh. I assess the suitability of the appellant Sukhpal Singh.

8. Under the normal circumstances, the choice of District Collector in the matter of appointment of village lambardars is not to be interfered but here, there is a case for intervention as the Collector has over looked some facts of the case. Keeping in view the above discussed facts of the matter, the appeal filed by

*Jaswinder Singh is **dismissed**. However, the appeal filed by Sukhpal Singh is hereby **accepted** and he is ordered to be appointed as lambardar of Village Rurcke Khurd, Tehsil and District Barnala.”*

The reasoning which is given above, apparently allegedly did not find favour of the Financial Commissioner, who rightly set aside the said order by placing reliance on the judgment of a co-ordinate Bench of this Court in **Balram vs. Financial Commissioner (Revenue), Haryana (Punjab and Haryana) (DB)-2012 (3) LAR 125**, while coming to the conclusion that the appointment as such lies within the domain and jurisdiction of the District Collector.

Learned counsel for the appellant has tried to impress and stress upon the fact that there is an encroachment report as such against the said respondent and he was an unauthorised occupation and therefore, he was not liable to be made the '*Lambardar*'.

Learned Single Judge examined this aspect also and noticed that on the demarcation report, there is no signatures of the appointed candidate namely Rajpal Singh and nothing was shown that any notice was issued to Rajpal Singh before conducting the alleged demarcation. It was also noticed that the document could not be said to be a demarcation report as neither any reference has been made to any revenue map/village map/field map, nor any '*pucca*' point has been established. The finding was recorded that in violation of the instructions issued by the Financial Commissioner contained in Part M, Chapter 1, Volume I of Punjab & Haryana HC Rules & Orders, no authenticity can be attached to the said document and the same has been created on 08.09.2022, i.e. after

the order dated 19.05.2022 (Annexure P-3), had already been passed by the Financial Commissioner and it was done only for raising a plea before the Court. It was further observed by the learned Single Judge that no document showing any proceedings initiated or pending against respondent No.4 under any Act, much less any order passed under any Act, showing that respondent No.4 is in illegal possession of Panchayat land, has been referred to or annexed with the petition.

We are in agreement to the finding of the learned Single Judge as apparently at the time when the appointment was done as a '*Lambardar*' on 09.11.2017 (Annexure P-1), no such material was put forth before the Collector as such. The Collector had examined the issue on merits and while comparing the merit of both the persons, come to conclusion that against 03 acres of land, Rajpal Singh (respondent No. 4) has 07 acres of land and both also had passed 10th class and had no any link of any political party. The age of Rajpal Singh was 35 years and also the fact that he had been recommended by the Tehsildar Barnala and the Assistant Collector, Grade-1 (Sub-Divisional Magistrate), Tapa, and the appointment as such had been made. At that point of time, it had not been brought to the notice of the Collector that respondent No. 4 was in illegal possession of the Panchayat land.

Apparently, it was first brought to the notice of the Divisional Commissioner, but even that was not a reason as such as noticed above to set aside the order of the Collector. A perusal of the application given now also would go on to show that after the appointment, the application has been given that the respondent is in the illegal possession of the Panchayat land and on the basis of which the matter was contested.

We do not find any merit in this appeal. It is a settled principle of law that consideration has to be seen at the time of appointment. At that point of time, on merits, respondent No. 4 was appointed by the District Collector. However, the Divisional Commissioner inspite of his limited jurisdiction has set aside that order by giving preference for his personal opinion falling back on the sports background of the appellant and not on account of the fact that there was an illegality in the order of the District Collector, which could be only the ground as such for interference. Therefore, the Financial Commissioner, Revenue, has corrected the said error and hence, the learned Single Judge has rightly upheld the order of the Financial Commissioner and rightly declined not to interfere in the same.

We find no such reason to take a different view.

Consequently, the appeal is dismissed.

(G.S. SANDHAWALIA)
JUDGE

February 06, 2023
nitin

(HARPREET KAUR JEEWAN)
JUDGE

Whether Speaking	Yes
Whether Reportable	No