

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CWP-2962-2023

Date of decision : 15.02.2023

Kanta

... Petitioner

Versus

Financial Commissioner (Appeals), Punjab, Chandigarh and others

... Respondents

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr.Sherry K. Singla, Advocate
for the petitioner.

Mr.Amit Kumar Walia, Advocate
for caveator-respondent no.4.

VIKAS BAHL, J.(ORAL)

This is a civil writ petition under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing of the impugned order dated 08.12.2022 (Annexure P-5) passed by respondent no.1 in ROR no.725 of 2019 whereby the order dated 30.07.2019 (Annexure P-3) passed by respondent no.2 vide which the petitioner was appointed as Lambardar of village Ferozepur Khuthala, Tehsil Malerkotla, District Malerkotla, has been set aside. Further prayer has been made for quashing of the order dated 10.05.2017 (Annexure P-1) passed by respondent no.3 vide which respondent no.4 was appointed as Lambardar by the Collector.

Brief facts of the present case are that sanction was granted by the Divisional Commissioner Patiala Division, Patiala vide letter dated 13.05.2015 for the appointment of the new Lambardar (scheduled caste

category) at village Ferozepur (Kuthala), Tehsil Malerkotla, District Sangrur and for the said purpose, proclamation was got conducted in the village and applications were invited from the eligible candidates and in pursuance of the same, 4 candidates including the present petitioner and respondent no.4, Darshan Singh and Gurmeet Singh had submitted their applications. The Naib Tehsildar, Malerkotla recommended the name of respondent no.4 and forwarded the same to the Tehsildar and the Tehsildar also recommended the name of respondent no.4. Even the Sub Divisional Magistrate, Malerkotla also recommended the name of respondent no.4. The Collector vide order dated 10.05.2017 appointed respondent no.4 as the Lambardar of the village after observing that respondent no.4 was a more suitable candidate and he was a young person of 44 years and that even all the lower revenue officers had recommended his candidature for the post of Lambardar. A comparative chart was also prepared by the Collector from which it is apparent that respondent no.4 was 44 years of age i.e. younger in comparison to the petitioner, who was stated to be 57 year of age. Respondent no.4 was also stated to have been recommended by all the lower revenue officers and recommendation had also been made by five panches, 29 villagers and the Presidents of two societies as per the said chart. Thus, on the aforesaid aspects, respondent no.4 was better placed than the present petitioner. Though, the petitioner is stated to be possessing the degree of B.A., B.Ed., whereas respondent no.4 is 12th pass, however, after considering overall merits and demerits of the candidates, the Collector had found respondent no.4 to be more suitable and had thus, appointed him. The present petitioner had filed an appeal against the said order and the Divisional Commissioner, Patiala Division, Patiala, on reappraisal of the

merits and demerits, had come to the conclusion that it was the present petitioner who had an edge over respondent no.4 and on the basis of the same, had set aside the order of the Collector and had appointed the present petitioner as the Lambardar. Respondent no.4 had then filed a revision petition before the Financial Commissioner and the Financial Commissioner set aside the order of the Commissioner and upheld the order of the Collector appointing respondent no.4 as the Lambardar. While passing the order, the Financial Commissioner had observed that the order passed by the Collector was valid and there was neither any perversity or illegality in the said order, nor there was any procedural defect therein. It was observed that the scope of interference in the choice of the Collector cannot be extended to reappreciating the relative merits of the candidates and the said comparison lies in the domain and jurisdiction of the District Collector. For the said proposition, reliance was placed upon the judgment of Division Bench of this Court in case titled as “***Balram vs. Financial Commissioner (Revenue), Haryana (Punjab and Haryana) (DB)*** reported as ***2012(3) LAR 125***. The Financial Commissioner had further observed that respondent no.4 (petitioner therein) was younger than the petitioner (respondent therein) and had also been supported by five panches, 29 villagers and two Presidents of Sabha for being appointed to the said post and had been recommended by all the lower revenue officers. It was also stated that since respondent no.4 was 12th pass, thus, respondent no.4 could not, in any which way, be considered to be ineligible and since there was no perversity in the order passed by the Collector, thus, the said order of Collector was upheld and the order of the Commissioner was set aside.

Learned counsel for the petitioner has submitted that the orders

of the Collector and the Financial Commissioner deserve to be set aside inasmuch as the order passed by the Collector is not a speaking order and the Collector had not taken into consideration the merits of the present petitioner. It is further submitted that the petitioner is more meritorious as she had completed her degree in B.A., B.Ed., whereas respondent no.4 is 12th pass and the petitioner is the only female candidate and even on the said aspect, it is the petitioner who deserves to be appointed to the post of Lambardar. It is further submitted that after passing of the order of the Commissioner, the Sanad Lambardari was issued in favour of the present petitioner on 02.03.2020 and till the passing of the order dated 08.12.2022, the petitioner was working in the said capacity and thus, keeping in view all the said factors, the orders of the Financial Commissioner and the Collector deserve to be set aside.

Learned counsel for the caveator, on the other hand, has opposed the present petition and has submitted that as per settled law, it is the Collector who is the appointing authority and once the Collector had appointed respondent no.4, until and unless there was some perversity in the order passed by the Collector, the same could not be interfered with by the higher authorities. It is submitted that even a perusal of the order of the Commissioner dated 30.07.2019 would show that it was nowhere found or observed that there was any perversity or illegality in the order passed by the Collector. The Commissioner has reappraised the merits of the candidates. It is submitted that as per settled law, even if two views are possible, the view taken by the Collector is to be respected. It is further submitted that in the present case, even a perusal of the comparative chart tabulated in the order of the Collector would show that respondent no.4 is a

better candidate as compared to the petitioner inasmuch as respondent no.4 was stated to be 44 years of age, whereas the petitioner was stated to be 57 year of age and respondent no.4 had been recommended by five panches, 29 persons of another village and the Presidents of two societies and had also been recommended by the Naib Tehsildar, Tehsildar and Sub Divisional Magistrate. Reliance has been placed upon the judgment of the Hon'ble Supreme Court of India in "***Mahavir Singh vs. Khiali Ram and Ors.***" reported as **2009(3) SCC 439** to contend that the Hon'ble Supreme Court in paragraph 14 of the said judgment had observed that it is a well-settled principle of law that in view of the decisions in regard to the appointment of Lambardar in the State of Punjab, the age of a candidate is a relevant factor. It is submitted that the orders of the Collector and the Financial Commissioner are, thus, legal and valid and has prayed that the present petition be dismissed.

This Court has heard learned counsel for the parties and perused the paper book.

This Court in the case of "***Sukhpal Singh vs. State of Punjab and others***" CWP-16717-2022 decided on 13.01.2023 had upheld the order of the Collector as well as the Financial Commissioner, upholding the order of the Collector, by taking note of settled proposition of law that the choice of the Collector is not to be set aside, unless there is some perversity or illegality in the order of the Collector. The relevant portion of the said judgment is reproduced hereinbelow:-

"This Court has heard learned counsel for the petitioner and perused the paper book.

*A coordinate Bench of this Court in CWP-1318-2008 decided on 11.02.2015 titled as "***Pishora Singh vs. State of Punjab and others***" has held as under:-*

“11. A perusal of the record shows that District Collector after appreciating the comparative merit found the petitioner to be fit and suitable candidate and appointed him as such. In view of law laid down by Hon’ble the Supreme Court of India in the case of **Mahavir Singh Vs. Khiali Ram & others, 2009(3) SCC-439, Lila Ram Vs. Asa Ram, 1995 Lahore Law Times-29** followed by Division Bench of this Court in the case of **Phool Kumar Vs. State of Haryana and others, 2010(2) RCR (Civil) 819**, the choice of the District Collector cannot be lightly set aside. It can only be set aside if there is perversity or illegality in the order of the Collector.

12. In Mahavir Singh's case (supra) the Hon'ble Supreme Court of India has observed that there should be no interference with the choice made by the Collector in the matter of appointment of Lambardar even if two views are possible. It is only the prerogative of the Collector to compare the merits of the candidates for appointment to the post of Lambardar. Therefore, there is no doubt with regard to the proposition of law that choice of the Collector cannot be lightly set aside. The finding of the District Collector has been affirmed by the Commissioner.”

A perusal of the above judgment would show that the reliance was placed upon judgment of the Hon'ble Supreme Court in **Mahavir Singh Vs. Khiali Ram & others**, reported as **2009(3) SCC-439**, as well as other judgments on the proposition in question and it was observed that the choice of the District Collector cannot be lightly set aside and it could be set aside only in case there was some perversity or illegality in the order of the Collector.

The Division Bench of this Court in **CWP-19720-2001** decided on 18.12.2001 titled as “**Sarwan Kumar vs. The Financial Commissioner Appeals-I, Punjab**” reported as **2002(2) RCR (Civil) 520**, has held as under:-

“The Commissioner, Jalandhar Division, Jalandhar did not find any infirmity in the order of the Collector, but on a re-evaluation of the record, he though that the petitioner was a better candidate and only on that ground, he allowed the appeal of

the petitioner and directed his appointment in place of respondent no.3. This, in our considered view, the Commissioner could not have done and, therefore, the order passed by respondent no.1 setting aside the direction given by the Commissioner does not call for interference by this Court under Article 226 of the Constitution of India.

For the reasons mentioned above, the writ petition is dismissed.”

*A perusal of the above judgment would show that in the said case the Commissioner, Jalandhar Division, Jalandhar did not find any infirmity in the order of the Collector but it was on revaluation of the record that he had come to the conclusion that the petitioner therein was a better candidate and had directed to appoint him in place of respondent no.3 therein who had been appointed by the Collector. The Division Bench had then observed that the Commissioner could not have done the same and had thus upheld the order of the Financial Commissioner vide which the order of the Commissioner had been set aside. To similar effect is the judgment of the Division Bench of this Court in **Balram's case** (Supra).*

The settled position of law on the proposition at hand that the choice of the Collector is not to be lightly interfered with unless there is some perversity or illegality in the order, has not been disputed by learned counsel for the petitioner and no law to the contrary has been referred to by the learned counsel for the petitioner.”

In the above said case also, the Collector had appointed respondent no.4 therein as the Lambardar, which had been set aside by the Commissioner, on reconsidering the merits and demerits, by observing that the petitioner therein was a more suitable candidate and had appointed him as the Lambardar. The Financial Commissioner had then in revision set aside the order of the Commissioner on the ground that the order of the Collector did not suffer from any illegality or perversity. The judgment passed by the Court in CWP-16717-2022 has been upheld by the Division Bench of this Court in LPA-107-2023 titled as **“Sukhpal Singh vs. State of**

said judgment is reproduced hereinbelow:-

“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.

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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).

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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.”

In the case at hand, a perusal of the order of the Collector would show that a specific reference has been made in the same to the fact that the Naib Tehsidlar, Tehsildar and SDM had recommended the candidature of respondent no.4 and even a comparative chart was prepared by the Collector, which clearly shows that at that point in time, respondent no.4 was 44 years of age and petitioner was 57 years of age and respondent no.4 had been recommended by 5 panches, 29 villagers and the Presidents of two societies. The Collector had also taken note of the arguments raised by the counsel for all the candidates and had come to the conclusion that respondent no.4 was a more suitable candidate and that he was a young

person and had also been recommended by all the lower revenue officers. Thus, argument of learned counsel for the petitioner to the effect that the order of the Collector is non speaking, is meritless and deserves to be rejected. Further, no perversity or illegality in the said order has been pointed out before this Court and thus, on the said ground alone, the present petition deserves to be dismissed and the orders of the Collector as well as the Financial Commissioner, upholding the order of the Collector, deserve to be upheld. The Commissioner vide order dated 30.07.2019, on reassessment of the comparative merits of the petitioner and respondent no.4, had found that the petitioner had an edge over respondent no.4. No perversity or illegality was found/observed in the order of the Collector by the Commissioner.

This Court has found that the order passed by the Divisional Commissioner, Patiala Division, Patiala is in violation of the settled proposition of law that the order of the Collector should not be interfered with, unless there is some illegality or perversity in the order of the Collector. The Financial Commissioner has rightly set aside the order of the Commissioner and has upheld the order of the Collector after relying upon the aforesaid settled principle of law and after reiterating the facts that the petitioner is younger than respondent no.4 and had also been supported by five panches, 29 villagers and two Presidents of the Sabha for being appointed to the said post and had also been recommended by all the lower revenue officers. A perusal of the comparative chart (at page 19 of the paper book) would show that at the time of passing of the order dated 10.05.2017, respondent no.4 was 44 years of age whereas the present petitioner was 57 year of age and the said aspect has not been disputed before this Court. The

Hon'ble Supreme Court of India in ***Mahavir Singh's*** case (supra) has held as under:-

“14. It is now a well-settled principle of law, keeping in view the decisions in regard to the appointment of Lambardar in the State of Punjab, that age of a candidate is a relevant factor.”

Thus, from the above said facts and circumstances, it is clear that the appointment of respondent no.4 as the Lambardar by the Collector cannot be stated to be perverse or illegal in any manner and thus, the order dated 10.05.2017 cannot be faulted with. The argument of learned counsel for the petitioner to the effect that since the petitioner is only the female candidate, thus, she deserves to be appointed to the post of Lambardar, deserves to be rejected. The present Lambardari is with respect to scheduled caste category, and the relevant rule is Rule 19-B of the Punjab Land Revenue Rules as applicable to Punjab. The said Rule is reproduced hereinbelow:-

“19B Notwithstanding anything to the contrary contained elsewhere in these rules, where the population of Harijans, or members of the Scheduled Castes including Christians, as ascertained at the last preceding census is 100 or more in an estate, there shall be appointed additional headman from amongst the Harijans or members of Scheduled Caste including Christians, subject to the following conditions :-

(i) In appointing the headman, regard shall be had among other matters, to -

(a) services rendered to the State by himself or by his family ;

(b) his personal influence, character, ability and freedom from indebtedness.

(ii) He shall be dismissed when he is sentenced to imprisonment for one year or upwards or to any heavier sentence.

(iii) He may be dismissed when -

(a) criminal proceedings which have been taken against him show that he is unfit to be entrusted any longer with the duties of his office ; or

(b) he is seriously embarrassed by debt ;

- (c) owing to **age** or physical or mental incapacity or absence from the estate, he is unable to discharge the duties of his office ; or*
- (d) there is reason to believe that he has taken part in or concealed illicit distillation, or the smuggling or cocaine, opium or charas ;*
- (e) he takes part in any unconstitutional agitation against the Government or fails to give his active support to the Government in the maintenance of law and order ; or*
- (f) he neglects to discharge his duties or is otherwise shown to be incompetent.*
- (iv) He shall perform all duties prescribed in rule 20 of these rules except those prescribed in clauses (i) to (iv) thereof.*
- (v) He shall not be entitled to any remuneration in the form of pachotra etc.”*

A perusal of the above rule would show that the same does not, in any way, further the said argument of the learned counsel for the petitioner. Even the argument of learned counsel for the petitioner to the effect that the petitioner has worked for the time period ranging between 02.03.2020 to 08.12.2022, would also not persuade this Court in setting aside the order of the Financial Commissioner and the Collector since the said petitioner was the Lambardar for the said period only on account of the order passed by the Divisional Commissioner, Patiala Division, Patiala dated 30.07.2019 and the said order has been rightly set aside by the Financial Commissioner.

Keeping in view the above said facts and circumstances, finding no merit in the present petition, the same is hereby dismissed.

February 15, 2023
Davinder Kumar

(VIKAS BAHL)
JUDGE

Whether speaking / reasoned
Whether reportable

Yes/No
Yes/No