

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(103)

CWP-2012-2020

Date of decision: - 10.01.2023

Mohammad Iqbal

....Petitioner

Versus

Financial Commissioner, Department of Revenue Haryana and
others

.....Respondents

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Nafeesh Ahmed, Advocate,
for the petitioner.

Ms. Upasana Dhawan, AAG, Haryana.

VIKAS BAHL, J. (ORAL)

This writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ of certiorari/mandamus for quashing the impugned order dated 06.05.2013 passed by the Assistant Collector 1st Class, Nuh (Annexure P-2); order dated 16.07.2013 (Annexure P-8), passed by the Collector Mewat, Nuh; order dated 21.08.2014 (Annexure P-12), passed by the Commissioner Gurgaon as well as order dated 22.05.2017 (Annexure P-14) passed by the Financial Commissioner, Haryana, with a further prayer to appoint the petitioner as Lambardar of village Chahalka, Tehsil Tauru, District Nuh (Mewat), Haryana.

The brief facts of the present case are that after the death of grandfather of the petitioner, namely, Hussain Khan, Lambardar of the

village Chahalka, the process for filling up the post of Lambardar was initiated and munadi was conducted. In pursuance of the same, nine persons including the present petitioner as well as respondent No.5-Nishar Ahmed and respondent No.6-Khurshid had filed their applications for the post. One of the candidates, namely, Nafees Ahmed had withdrawn his candidature in favour of respondent No.5-Nishar Ahmed. Certain candidates did not appear before the Assistant Collector, 2nd Grade, Tauru, thus, ex parte proceedings were initiated and only four candidates were ultimately in the running for the post of Lambardar. The said four candidates included the present petitioner, respondents No.5 and 6 and one Jamshed. The Collector, after considering the merits and demerits of the candidates, appointed respondent No.5 as the new Lambardar. While passing order dated 16.07.2013 (Annexure P-8), it was observed that respondent No.5 was the best candidate, inasmuch as, respondent No.5 was a graduate and he possessed the degree of B.A. and had studied Urdu till 12th class and was more educated than the other candidates including the present petitioner, who had only passed class 10th and further, respondent No.4 also owned land measuring 43 kanals and 1 marla and being a social worker, had built a water tank in the high school of village Sundh and had also installed a hand-pump and was given certificates of appreciation by the Aaganwadi Department, Education Department, Animal Husbandry Department, Mining Department and the Agriculture Department. It had also been observed that as many as 23 persons had supported the candidature of respondent No.5 and 34 persons had given separate appreciation certificates in favour

of respondent No.5. In addition to the above, it was also found that respondent No.5 was financially well off and apart from the land measuring 43 kanals and 1 marla owned by him, he also had deposits of Rs.2,16,000/- in small savings account, which was more than the other candidates. The statement of respondent No.5, in which it was mentioned that respondent No.5, in addition to the above, also had two plots of 575 sq. yards in the town of Tauru and a land measuring 304 square yards in Town Punhana and a concrete house and the fact that he was recommended by the Assistant Collector, Grade I, Nuh, vide order dated 06.05.2013 (Annexure P-2), was also taken into consideration. Respondent No.6-Khurshid and the present petitioner challenged the said order of the Collector by filing an appeal before the Commissioner, Gurgaon and the Commissioner, vide order dated 21.08.2014 (P-12) remanded the case back and observed that respondent No.6-Khurshid was a better candidate. Even the Commissioner, Gurgaon did not find the present petitioner to be the best candidate for the post of Lambardar. The Commissioner, Gurgaon, in the said order, had made an observation with respect to respondent No.5 being in illegal possession of panchayat land. Respondent No.5 filed a revision petition against the said order dated 21.08.2014 before the learned Financial Commissioner, Haryana. The learned Financial Commissioner, Haryana, vide order dated 10.07.2017 (P-14), after considering the fact that the Collector had appointed respondent No.5 as a Lambardar of the village and the said order did not suffer from any illegality or perversity, had set aside the order of the Commissioner, Gurgaon and restored the order of the Collector. In the

order dated 10.07.2017, in addition to observing that the choice of the collector is final and is not to be interfered with unless the same suffers from infirmity and perversity, it was also observed that respondent No.5 was a more meritorious candidate as compared to the others. It was observed that respondent No.5 was a graduate, whereas the present petitioner was matric pass and respondent No.5 owned more agricultural land than the present petitioner and he even had more support from the respectable persons in the village. With respect to the alleged illegal possession over panchayat land by respondent No.5, it was observed that the Commissioner, Gurgaon had failed to take into consideration the demarcation report dated 28.05.2013, as per which, respondent No.5 was not in illegal possession of any panchayat land, rather, the family members of the petitioner were found to be in illegal possession of panchayat land.

Present writ petition has been filed in the year 2020, more than two years, after passing of the order passed by the Financial Commissioner, Haryana, dated 10.07.2017 (P-14) and was taken up for hearing for the first time by a Co-ordinate Bench of this Court and the Co-ordinate Bench of this Court, vide order dated 27.01.2020, was pleased to pass the following order: -

“Learned counsel for the petitioner seeks time to justify the delay in filing the writ petition. Delay is apparent from the fact that the impugned order is dated 22.05.2017.

Adjourned to 12.02.2020.

January 27, 2020

**(SUDHIR MITTAL)
JUDGE”**

Learned counsel for the petitioner has not been able to satisfy the Court with respect to the delay in filing the present petition.

Learned counsel for the petitioner has argued that the demarcation report dated 28.05.2013, in which it has been mentioned by the Tehsildar, Nuh that it is the family members of the present petitioner who are in illegal possession of land, is wrong and not in accordance with law. It is further argued that the said demarcation report cannot be taken into consideration and in case the said demarcation report is not taken into consideration, then the petitioner is more meritorious than respondent No.5.

This Court has heard learned counsel for the parties and has gone through 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 thought 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 case titled as **“Balram Vs. Financial Commissioner (Revenue), Haryana and others”**, ***dated 15.11.2012, passed in LPA No.1546 of 2012.***

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.

Moreover, a perusal of the order of the Collector, Nuh (Mewat) would show that the Collector had considered the individual merits of the candidates and after considering the same had come to the conclusion that respondent No.5 was the best candidate and accordingly, appointed him as the Lambardar by observing that respondent No.5 was a graduate and possessed the degree of B.A. and had studied Urdu till Class 12 and was thus, more educated than the other candidates including the present petitioner who was stated to be 10th pass and it was also noted that respondent No.5 was a social worker and had done many acts of social service for the benefit of the village including the building of the water

tank in the high school of village Sundh and the installation of a hand pump and that for his social work, he was issued certificates of appreciation by several departments including Department of the Aaganwadi, Education Department, Animal Husbandry Department, Mining Department and Agriculture Department. It was further found that 23 persons had given a joint statement in support of respondent No.5 and 34 persons had given appreciation certificates in favour of respondent No.5 Nishar Ahmed and that one candidate i.e. Nafish Ahmed had even taken back his candidature in support of respondent No.5, whereas, on the other hand, present petitioner had been supported only by 3 persons. Even on the aspect of financial capabilities, it was found that respondent No.5 owned 43 kanals and 1 marla land and had deposits of Rs.2,16,000/- in a small savings account and also had two plots of land in town Tauru and one concrete house. On the other hand, the case of the present petitioner was that he owned one acre of land and had deposited an amount of Rs.43,000/- in the small savings account. It is thus apparent that from all angles, respondent No.5 was a better candidate and therefore was appointed as the Lambardar by the Collector, in accordance with law. Learned counsel for the petitioner has not been able to point out any perversity or illegality in the said order.

The Commissioner, Gurgaon had illegally set aside the order of the Collector and remanded the matter back to the Collector for deciding the same afresh vide order dated 21.08.2014. Even while remanding the matter back, it was observed by the Commissioner, Gurgaon that respondent No.6 Khurshid was a better candidate. Even the

Commissioner, Gurgaon did not find the present petitioner to be the best candidate for the post of Lambardar. On a pointed query raised by this Court, learned counsel for the petitioner has very fairly submitted that respondent No.6 Khurshid has not challenged the order of the Financial Commissioner, Haryana, vide which the Financial Commissioner, Haryana has set aside the order of the Commissioner, Gurgaon and has upheld the order of the Collector appointing respondent No.5 as the Lambardar. The observation of the Commissioner, Gurgaon in his order dated 21.08.2014 to the effect that respondent No.5 Nishar Ahmed was in illegal possession of panchayat land was found to be factually incorrect by the learned Financial Commissioner, Haryana in the order dated 10.07.2017. The learned Financial Commissioner, Haryana had specifically observed that as per the report submitted by the Tehsildar, Nuh (who was appointed as Local Commissioner on the orders of the Collector) (page 68 of the paper-book), had submitted two reports i.e., reports dated 27.05.2013 and 28.05.2013 (P-6 & P-7 respectively) and as per the said reports, respondent No.5 or his family members were not found to be in illegal possession of the panchayat land and on the other hand, family members of the present petitioner were found to be in illegal possession of the panchayat land. Moreover, no order of any Court has been referred to or produced by the present petitioner before this Court to show that it had been found that respondent No.5 or his family members were in illegal possession of any panchayat land. The learned Financial Commissioner, Haryana had also reiterated the settled proposition of law that the choice of the Collector in appointment of Lambardar is final and

the same cannot be interfered with unless the same suffers from infirmity and perversity and that the order passed by the Collector Mewat did not suffer from any infirmity and perversity and had also observed that respondent No.5 was a better candidate than the present petitioner and had accordingly, upheld the order of the Collector Mewat. The order of the Financial Commissioner, Haryana was passed on 10.07.2017, whereas, the present writ petition had been filed after much delay in the year 2020 and the delay in the filing of the present writ petition has not been explained by the petitioner to the satisfaction of this Court.

Keeping in view the above-said facts and circumstances, this Court is of the view that the orders passed by the Collector, Mewat, dated 16.07.2013 (Annexure P-8) as well as by the learned Financial Commissioner, Haryana dated 10.07.2017 (Annexure P-14) are legal, valid and in accordance with law and thus, do not call for any interference and the present writ petition being meritless deserves to be dismissed and is accordingly, dismissed.

January 10, 2023
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?	Yes
Whether reportable?	Yes