

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

CWP-4893-2022

Date of Decision: 25.08.2023

Swaran Singh

..... Petitioner

Versus

Financial Commissioner (Appeals) Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr.Amarjit Markan, Advocate, for the petitioner.
Mr. Arun William, Assistant Advocate General, Punjab.
Mr. Sherry K.Singla, Advocate, for respondent No.4.

Rajesh Bhardwaj, J.

Prayer in the present petition is for quashing the order dated 11.11.2021 (Annexure P-1) passed by respondent No.1-Financial Commissioner, whereby a well reasoned order dated 29.08.2017 (Annexure P-2) passed by respondent No.2-Commissioner, has been wrongly set aside on a perverse ground that petition has been held guilty for theft of electricity, although the documents on record clearly prove that the FIR was cancelled in view of the compounding fee deposited by the petitioner, as reflected in orders dated 20.05.2017 (Annexure P-5) and 08.07.2017 (Annexure P-6) passed by Presiding Officer, Lok Adalat, Patiala.

Succinctly stated the facts of the case are that on account of death of Amar Singh, Lambardar of village Khairpur Jattan Tehsil Rajpura, post of Lambardar fell vacant and thus, process for the appointment of new Lambardar was initiated. Resultantly, proclamation was carried out and in response to the same, three candidates, namely, Swaran Singh (petitioner), Gurbakhshish Singh and Avtar Singh (respondent No.4) applied for the post. During the pendency of the proceedings, Gurbakhshish Singh

withdrew his application in favour of Swaran Singh (petitioner), thus, only two candidates i.e. the petitioner and respondent No.4 remained in the fray. The Assistant Collector 1st Grade-cum-Sub Divisional Magistrate, Rajpura recommended the name of Avtar Singh for the post of Lambardar and submitted his report to the Collector. On the appreciation of the merits of the candidates, petitioner-Swaran Singh was found to be 34 years of age and 10+2 by qualification and owner of 20 bigha 5 biswa of land, whereas, Avtar Singh was found to be 45 years of age, 10+2 pass and owner of 16 bigha of land. On the comparison of the inter-se merits and the overall facts and circumstances, the Collector appointed Avtar Singh i.e. respondent No.4 to be the Lambardar of the Village vide his order dated 30.03.2016 (Annexure P-4). Aggrieved by the same, the petitioner filed an appeal before the learned Commissioner, Rupnagar Division, Rupnagar. The learned Commissioner on hearing both the sides accepted the appeal filed and thus, set aside the order of the learned Collector and appointed Swaran Singh, i.e. the petitioner to be the Lambardar of the Village vide order dated 29.08.2017 (Annexure P-2). Aggrieved by the view taken by the learned Commissioner, respondent No.4-Avtar Singh filed an appeal under Section 13 of the Punjab Land Revenue Act before the learned Financial Commissioner, who after hearing both the sides, set aside the order passed by the learned Commissioner and thus, accepted the appeal filed by respondent No.4. As a result the order passed by the learned Collector in appointing respondent No.4 Avtar Singh was upheld by the learned Financial Commissioner vide order dated 11.11.2021(Annexure P-1). Aggrieved by the same, the petitioner has approached this Court by way of filing the present petition.

Learned counsel for the petitioner has vehemently contended that in pursuance to the *Mushtari Munadi* conducted in the village, the petitioner applied for the post of Lambardar. He submits that the petitioner was 34 years of age, 10+2 pass and owned 20 bigha 5 biswa of land in the village. He submits that the petitioner was nephew of deceased Lambardar, namely, Amar Singh and thus, he also served as Sarbrah Lambardar of the village from 27.09.2011 to 25.06.2015. He submits that name of the petitioner was recommended by 281 persons including the ex-Sarpanch and Panchs etc. He submits that the petitioner is 13 years younger in age than respondent No.4. It is submitted that the petitioner is much more meritorious on the basis of parameters laid down in Rule 15 of the Punjab Land Revenue Rules, but the learned Collector miserably failed to appreciate the same and thus, illegally appointed respondent No.4 as Lambardar of the Village. He submits that though the petitioner faced prosecution in FIR No.256 dated 20.06.2014, under Section 135 of the Electricity Act, but the offence being compoundable was compounded in Lok Adalat vide order dated 08.07.2017 and thus, the FIR was cancelled. He submits that aggrieved by the order passed by the Collector, the petitioner filed his appeal before the Commissioner, who duly appreciated the evidence on record and the law settled and thus, passed a speaking order by setting aside the order passed by the Collector and thus, rightly appointed the petitioner as the Lambardar of the village vide order dated 29.08.2017. It is further submitted that the appeal filed by respondent No.4 against the order of the Commissioner before the learned Financial Commissioner was illegally accepted by reversing the well reasoned order passed by the Collector and thus, the order is unsustainable in the eyes of law. He submits

that the petitioner is much more meritorious than respondent No.4, however, the learned Collector and Financial Commissioner passed cryptic orders, as no reason has been assigned in ignoring the merits of the petitioner and thus, the order passed by the learned Collector, which is illegally upheld by the Financial Commissioner, is totally perverse and hence, deserves to be set aside by appointing the petitioner as Lambardar of the Village.

Per contra, learned counsel for respondent No.4 has opposed the submissions made by learned counsel for the petitioner. He has submitted that on the comparison of the inter-se merits, the Collector found respondent No.4 to be more suitable and appointed him as a Lambardar of the village. He submits that the petitioner faced prosecution in FIR No.256 dated 20.06.2014, under Section 135 of the Electricity Act, which was compounded on paying compounding fee amounting to Rs.1,21,017/-. He submits that though respondent No.4 also faced prosecution in FIR No.286, dated 24.12.2006 under Sections 61-1/14 of the Punjab Excise Act, but he was acquitted vide judgment dated 07.11.2012 as the prosecution failed to produce the case property under their possession. He submits that proceedings were initiated for Lambardari in the year 2015, whereas, respondent No.4 was acquitted way back in the year 2012 and thus, there was no stigma on respondent No.4. He submits that respondent No.4 remained President of Gurudawara Sahib Committee of the village for 10-12 years and also President of Youth Club and thus, he has earned good reputation in the village. He submits that most of the residents of the village recommended his name for the post of Lambardar. It is submitted that on a thorough analysis of the inter-se merits of both the candidates, learned Collector appointed respondent No.4 as Lambardar of the village, which

was illegally set aside by the learned Commissioner. He submits that as per the settled proposition of law, the order passed by the Collector cannot be interfered with by the Appellate authority unless the same suffers from a patent illegality and there being no patent illegality in the order passed by the Collector, the view taken by the Commissioner is totally unsustainable in the eyes of law, which was duly upheld by the learned Financial Commissioner by setting aside the order of the learned Commissioner and thus, this petition being devoid of any merit deserves to be dismissed.

Heard.

It is evident from the arguments advanced by both the sides that the petitioner was found to be 34 years of age, 10+2 pass and owner of 20 bigha and 5 biswa of land in the village, whereas, respondent No.4 was found to be 47 years of age, 10+2 pass and owner of 16 bigha of land. On comparison of the inter-se merits of the both the petitioner and respondent No.4, the learned Collector found respondent No.4 to be more suitable and meritorious and appointed him as Lambardar of the village. The Commissioner, however, set aside the order of the Collector by observing that Lambardari belongs to Gandhi Patti, whereas, respondent No.4 Avtar Singh does not belong to that Patti. Besides this it was observed that the cases were registered against respondent No.4. However, the appointment of the Lambardar was for village Khairpur Jattan and it is evident from the record, both the petitioner and respondent No.4 belonged to the same village. Besides this, though respondent No.4 was prosecuted in FIR No.286 dated 24.12.2006 under Sections 61-1/14 of the Punjab Excise Act as submitted before this Court, he was acquitted by the trial Court on 07.11.2012 i.e. much prior to the date of appointment for the post of Lambardar. Needless to say that as per the settled proposition of law, the

Collector is the appointing authority for the post of Lambardar and the Collector on the comparison of the inter-se merits found respondent No.4 to be more suitable and hence, he was appointed as the Lambardar of the village. The Commissioner set aside the appointment of respondent No.4, whereas, the learned Financial Commissioner set aside the order of the Commissioner and thus, upheld the order of the Collector.

As per law settled, there is no gainsaying that the choice of the Collector should not be disturbed in a cavalier manner. It is the Collector, who not only appreciates the record of the candidates but also personally interacts with them.

Though it has been argued before this Court that the petitioner remained Sarbrah Lambardar of the village for a period of four years during the life time of his Taya (earlier Lambardar), however, the same has been appreciated by the learned Collector who found respondent No.4 to be more suitable. Hon'ble Division Bench of this Court in **Balwinder Singh vs. State of Punjab and others**, 2013(25) RCR (Civil) 436 and **Satinder Pal Singh vs. Financial Commissioner (Revenue) Punjab and others**, 2014(78) RCR (Civil) 871, has held that even if two views are possible on apprising of merits, one taken by the Collector is to be upheld.

Weighing the facts and circumstance of the case on the anvil of the law settled, this Court does not find any perversity in the conclusion drawn by the Collector, which is duly upheld by the learned Financial Collector and thus, the present petition being devoid of any merit is hereby dismissed.

25.08.2023
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Whether Speaking/Reasoned
Whether Reportable

(RAJESH BHARDWAJ)
JUDGE

: Yes/No
: Yes/No