

132

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

CWP-5382-2023

Date of decision : 16.03.2023

Lakhwinder Singh

...Petitioner

Versus

The Financial Commissioner (Appeal) Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. G.S. Sidhu, Advocate and
Mr. Mohit Kumar, Advocate for the petitioner.

Mr. Ferry Sofat, Addl. A.G. Punjab
for respondent Nos.1 to 3.

VIKAS BAHL, J. (ORAL)

This is a Civil Writ Petition filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing the impugned order dated 25.07.2016 (Annexure P-2) passed by the Commissioner, Jalandhar Division, Jalandhar and order dated 23.05.2022 (Annexure P-3) passed by the Financial Commissioner (Appeals), Punjab.

The brief facts of the present case are that after the death of Lambardar-Inder Singh, the process for the appointment of a new Lambardar of Village Khurmanian, was started and permission to initiate the same was granted to the Sub Divisional Magistrate, Amritsar. In

pursuance of the same, only one applicant i.e., the present petitioner had applied for being appointed to the post of Lambardar and no other candidate had applied for the same. The Collector, Amritsar, vide its order dated 22.07.2014 (Annexure P-1), not having the option of comparing the merits and demerits of the present petitioner with other candidates, had appointed the present petitioner as the Lambardar. One Jaspal Singh-respondent No.4 had filed an appeal before the Commissioner, Jalandhar Division, Jalandhar, challenging the appointment of the petitioner as the Lambardar and had stated that no due munadi was effected in the village and had further stated that even as per the munadi report which was at page 51/52 of the file of lower Court, munadi was carried out on 04.06.2014 and the applications were invited uptill 07.06.2014 and thus, sufficient time was not granted for the submission of applications. It was stated that at least 15 days' time from the date of munadi/proclamation was required to be granted for the same. It was the case of respondent No.4-Jaspal Singh that even the munadi report had been manipulated and in fact, no munadi had been carried out. The Commissioner, Jalandhar Division, Jalandhar, after considering the matter, had observed that there were serious lapses in the conduct of munadi/proclamation in the village and observed that it was settled principle of law that a period of at least 15 days' is to be granted from the date of proclamation in the village for people to apply, whereas, in the present case, even as per the munadi report, same was done on 04.06.2014 and applications were invited up till 07.06.2014 which could

not be considered to be adequate. It was stated that as a result of the same, the persons including, respondent No.4, who were desirous of being appointed to the post of Lambardar, could not apply. It was also observed that the whole proceedings were doubtful inasmuch as a perusal of the lower Court file more so, page 7, would show that the present petitioner had applied on 02.04.2014 i.e. prior to the munadi having been carried out i.e., on 04.06.2014 and accordingly, the Commissioner had set aside the order of the District Collector and remanded the matter to the District Collector to order fresh munadi in the village, calling for fresh applications from willing applicants of the village, after giving at least 15 days' time to submit their applications and then, appoint a suitable candidate after evaluating the comparative merits of all the candidates/applicants. The revision petition filed by the petitioner before the Financial Commissioner was dismissed wherein the Financial Commissioner had also observed that the entire process for appointment of Lambardar seemed to be doubtful as only one candidate had applied and after relying upon various judgments of this Court, had observed that it was in the interest of justice that a wide choice should be available to the authority for the selection to be made and since, the comparative merits of all the candidates were to be seen thus, where only one candidate was present, the same could not be done.

Aggrieved against the orders passed by the Collector, Commissioner and the Financial Commissioner, the present petitioner has filed the present Civil Writ Petition.

Learned counsel for the petitioner has submitted that the order passed by the Collector was dated 22.07.2014 whereas an appeal was instituted by respondent No.4-Jaspal Singh before the Commissioner on 10.05.2015 i.e., beyond the period of limitation and no application for condonation of delay was filed along with the said appeal and thus, the appeal filed by respondent No.4 should have been dismissed by the Commissioner. It is further submitted that once, the petitioner was appointed as the Lambardar by the Collector, then, respondent No.4 would have had knowledge about the said appointment and the said delay was thus, fatal and the impugned orders deserve to be set aside on the said ground alone.

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

It is not in dispute that in pursuance of permission granted for appointment of the new Lambardar, only one person i.e., the present petitioner had applied and since, there were no other candidates thus, question of appraising the comparative merits and demerits of the candidates did not arise. Respondent No.4 had filed an appeal before the Commissioner and the Commissioner had observed that there were serious lapses in the conduct of munadi in the village inasmuch as even as per the munadi report which was available at page 51/52 of the file of lower Court would show that munadi was carried out on 04.06.2014 and the applications were invited uptill 07.06.2014. It was observed that as per settled principles of law, at least a period of 15 days was to be granted

from the date of proclamation/munadi in the village for prospective applicants to apply which has not been done in the present case. It was also observed that there were serious doubts in the entire process inasmuch as the application which was annexed at page 7 of the file of lower Court, which was given by the petitioner, would show that the same was dated 02.04.2014 and was thus, prior to the date of carrying out of munadi i.e., 04.06.2014. The findings, on both the said aspects, were reiterated by the Financial Commissioner. The said findings have not been challenged before this Court and it has not been disputed that even as per the munadi report, munadi was carried out on 04.06.2014 and the applications were called uptill 07.06.2014. No law has been cited/referred to before this Court to show that a period of three days is sufficient period for permitting desirous candidates to apply. Thus, the finding of the Commissioner and the Financial Commissioner to the effect that there is a serious lapse in the period granted for filing of applications, is, in accordance with law and calls for no interference. In the present case, only one person i.e. the present petitioner had applied and on account of the above said procedural defect, other persons, including respondent No.4, who were desirous of applying for being appointed as the Lambardar, could not apply for the same.

Hon'ble the Division Bench of this Court in case titled as **"Hoshiar Singh Vs. Financial Commissioner (Revenue) Punjab, Chandigarh and others"** reported as **2013(3) RCR (Civil) 834** had held as under:-

“xxx xxx

We would like to record that even otherwise, in response to the proclamation, only three persons submitted their applications, out of which, two persons withdrew and the appellant was the only candidate left in the fray for being appointed as Lambardar. In a process of selection, a wide choice must be available to the concerned authority in order to appraise the merits and demerits of competing candidates and to find the best person, for being appointed as Lambardar of the village.

6. *In view of the discussion made hereinabove, finding no merit in this appeal, the same is accordingly dismissed.”*

A perusal of the above-reproduced judgment would show that one of the factors which had been taken into consideration by the Hon'ble Division Bench while dismissing the appeal was that in response to the proclamation, three persons had submitted their applications, out of which, two persons had withdrew the same and appellant therein was the only candidate left in the fray for being appointed as the Lambardar and in a process of selection, a wide choice must be available to the concerned authority in order to appraise the merits and demerits of competing candidates and to find the best person, for being appointed to the post of Lambardar.

A Coordinate Bench of this Court in case titled as “**Sher Singh Vs. Financial Commissioner and others**” reported as **2014(4) RCR (Civil) 406**, had held as under:-

“xxx xxx

Collector accepted the recommendations and

appointed petitioner as Lambardar. Appointment of petitioner was challenged by respondent No.4 before the Commissioner, Patiala Division who accepted the appeal and directed that fresh proclamation be issued for inviting applications from eligible persons for appointment to the post of Lambardar. Operative part of the order reads as under:-

“I find that the allegation leveled by the present appellant regarding that only those persons had deposed in favour of present respondent, who had signed the proclamation notice issued by Patwari appears to be true. The perusal of the record shows that the statements of eight persons have been recorded in favour of respondent by AC IInd Grade on 22.8.2005. One more proclamation notice was placed on file having rapat No.622 dated 26.5.2005. But why this was not issued and why it was not signed by any of the person, is not indicated. As stated above, in my opinion, it is necessary to ensure the credibility of the system while making proclamation in the village to fill up the vacancy of Lambardar. So far as the merits of the appointed candidate is concerned, I would not like to go into the details of the same as in my opinion the proclamation made in the village was not proper. Although it can be argued that the present appellant has no locusstandi to file an appeal as he had not applied in time but as indicated above if the same persons have deposed in favour of the respondent, who had signed the proclamation notice, it gives a sufficient ground for suspicion about the procedure followed in making the proclamation in village for inviting the applications for the above post. In view of this, appeal

filed against the order dated 27.12.2005 of the District Collector, Patiala is hereby accepted. A fresh proclamation be made in the village as per the procedure for inviting applications for the above post from eligible persons. The present respondent, if desire, can also file his application for the above post.”

*Aforesaid order was unsuccessfully challenged before the Financial Commissioner, Punjab. Aggrieved, present petition has been filed. Petitioner has relied upon judgment delivered by this court in **Bhag Singh vs. Financial Commissioner (Reveue), Haryana, 2001 (1) R.C.R. (Civil) 9**. I am, however, of the view that said judgment can be of no help to the petitioner. In the instant case, serious defect has been found with the proclamation process. Wider choice was, thus, not available to the authority at the time of selection.*

Xxx xxx

xxx xxx

*It is evident that in the absence of proper proclamation, number of applications would be less leaving narrow choice for the Collector to appoint a suitable person. After process for filling up post of this nature is initiated, due proclamation is necessary. (See **Hoshiar Singh vs. Financial Commissioner (Revenue), Punjab and others, 2013 (3) R.C.R. (Civil) 834**. In case residents of the village are oblivious of the fact that process for filling up the vacant post of Lambardar has been initiated, they cannot be expected to apply for the post. In such circumstances, appointment would be vitiated.”*

In the abovesaid case also, defects were found in

proclamation and it was observed that on account of the same, wider choice was not available with the authorities at the time of selection and the Civil Writ Petition was accordingly dismissed. LPA filed against the said order dated 15.05.2014 titled as “***Sher Singh Vs. Financial Commissioner and others***”, had been dismissed by the Hon'ble LPA Bench vide its order dated 31.08.2015, observing that since, the matter had been remanded, no prejudice would be caused to the appellant therein because after fresh proclamation, even he could again apply for being appointed as the Lambardar of the village.

Keeping in view the abovesaid facts and circumstances and the judgments, this Court is of the view that orders passed by the Commissioner and the Financial Commissioner remanding the matter to the Collector with the directions to carry out a fresh munadi in the village by giving at least 15 days' time for submission of applications and thereafter, to pass a fresh order for appointment of a suitable candidate, are, in accordance with law and no prejudice would be caused to the petitioner as it would be open to him to apply after fresh munadi is conducted.

The argument of learned counsel for the petitioner to the effect that there was a delay on behalf of respondent No.4 in filing the appeal before the Commissioner, is meritless and hence, rejected inasmuch as once it has been found that no due munadi was conducted and the villagers were not informed about the said proceedings thus, respondent No.4 could have only filed the appeal after having gained

knowledge of the said order and after having applied for a copy of the order and other documents. No material has been produced with the writ petition to show that respondent No.4 had any prior knowledge of the said proceedings and the order passed by the Collector and argument raised by the petitioner is based on presumption and conjecture. At any rate, the orders passed by the Commissioner and the Financial Commissioner granting opportunity to all the persons concerned to apply for the post of Lambardar are legal and in accordance with law and deserve to be upheld.

Keeping in view the abovesaid facts and circumstances, the present Civil Writ Petition is dismissed.

16.03.2023*Pawan***(VIKAS BAHL)
JUDGE****Whether speaking/reasoned:- Yes/No****Whether reportable:- Yes/No**