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

CWP-11133-2022(O&M)

Date of decision : 20.10.2023

Joga Singh

.....Petitioner

versus

Financial Commissioner Punjab and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Vikas Singh, Advocate
for the petitioner.

Ms. Akshita Chauhan, DAG, Punjab.

Mr. Rohit Sapehiya, Advocate with
Mr. Balam Singh, Advocate
for respondent No.4.

RAJESH BHARDWAJ, J.

Petitioner has approached this Court praying for quashing of order dated 08.11.2021 (Annexure P-4) passed by respondent No.2 whereby he set aside the orders of the Commissioner and the Collector appointing the petitioner as Namberdar and appointed respondent No.4 Jatinder Singh and Namberdar of Village Dhaliwal, Tehsil Nakodar, District Jalandhar.

Adumbrated facts of the case are that on the death of Balvir Singh, Schedule Caste Namberdar of Village Dhaliwal, Tehsil Nakodar, District Jalandhar on 08.10.2013, the process for the appointment of new Lambardar was initiated and thus, the applications were invited from the interested candidates. In pursuance to the same, total 11 applications were received within the stipulated time. The character verification of the candidates in the fray was conducted. On the appreciation of the merits,

petitioner was found to be 37 years of age and matric by qualification. He was found to be the son of deceased Lambardar. On the other hand, respondent No.4 namely, Jatinder Singh was found to be 28 years of age and 10+2 by qualification. On evaluation of their *inter se* merits, learned Collector found the petitioner to be more suitable and thus, he was appointed as SC Lambardar of the Village Dhaliwal, Tehsil Nakodar, District Jalandhar vide his order dated 15.12.2014. Aggrieved by the same, two different appeals were filed, one by Gurpreet Singh and another by respondent No.4-Jatinder Singh before the Commissioner, Jalandhar Division, Jalandhar. Learned Commissioner heard all the parties and finding no merit in the appeal filed, both the appeals were dismissed vide order dated 02.03.2016. Aggrieved by the same, respondent No.4 filed revision petition under Section 16 of Punjab Revenue Act, 1887 before the Financial Commissioner. Learned Financial Commissioner heard both the sides and perused the record. On hearing, he accepted the revision petition filed by respondent No.4. As a result, he set aside the order passed by the Collector dated 15.12.2014 and order dated 02.03.2016 passed by the Commissioner and appointed respondent No.4 as Lambardar of the Village vide his order dated 08.11.2021. Hence, aggrieved by the same, petitioner is before this Court by way of filing the present petition.

Learned counsel for the petitioner has vehemently contended that as evident from the record, on the death of earlier Lambardar who was father of petitioner, the applications were invited and thus, 11 applications were received. He has submitted that finding the petitioner to be more meritorious among all the candidates, he was appointed by the Collector vide his order dated 15.12.2014. He submits that the petitioner being son of earlier Lambardar had an experience of working on the post of Lambardar.

It is submitted that the appeal filed by respondent No.4 was dismissed by the Commissioner and thus, the order passed by the Collector was duly upheld. He submits that learned Financial Commissioner has fallen in error in setting aside the well reasoned order passed by the Collector which was duly upheld by the Commissioner and thus, has illegally set aside the appointment of the petitioner. He submits that though the petitioner faced the trial in FIR No.120 dated 25.06.2000 however, trial Court acquitted the petitioner vide order dated 08.07.2002. He has submitted that once the petitioner is acquitted by the trial Court, there lies no stigma against him. It is submitted that as per law settled, order passed by the Collector cannot be interfered in a cavalier manner. He submits that learned Financial Commissioner has not only set aside the well reasoned order passed by the Collector and the Commissioner but also appointed respondent No.4 as Lambardar of the Village which is totally unsustainable in the eyes of law. He submits that the impugned order being unsustainable in the eyes of law deserves to be set aside.

Per contra, learned counsel for respondent No.4 has vehemently opposed the submissions made by counsel for the petitioner. He submits that after receiving the applications from the candidates, name of answering respondent was recommended by Tehsildar, Nakodar for appointed as Lambardar of the Village. He submits that respondent No.4 is younger than the petitioner and more qualified as well. He submits that respondent No.4 has an unblemished record whereas petitioner has faced the criminal case. It is submitted that even though the petitioner is acquitted by the trial Court however, the stigma still lies on the petitioner. He submits that the order passed by the Collector suffers from patent illegality and thus, learned Financial Commissioner has rightly set aside

the same by appointing respondent No.4 as Lambardar of the Village. He has submitted that after the appointment of petitioner, he has left India and is residing abroad. This Court directed the State to file the status report to that effect and the status report by way of affidavit of Mr. Kanwaljit Singh, PCS, Sub Divisional Magistrate, Nakodar, District Jalandhar has been filed wherein it has been submitted that the petitioner has gone abroad and during this period, the District Collector vide order dated 17.04.2023 appointed his brother Kuldip Singh son of Balvir Singh as Sarbrah Lambardar to perform the duties of the Lambardar in Village Dhaliwal, Tehsil Nakodar, District Jalandhar. He has submitted that petitioner Joga Singh went abroad on 20.04.2023 and has not yet returned. He submits that the petition being devoid of any merits deserves to be dismissed.

Learned State counsel has opposed the contentions raised by learned counsel for the petitioner.

I have heard counsel for the parties and perused the record.

Evidently, out of 11 candidates, the Collector appointed petitioner finding him more suitable as Lambardar of the Village. Thereafter, two appeals filed by Gurpreet Singh and respondent No.4, were dismissed by the Commissioner vide order dated 02.03.2016. However, learned Financial Commissioner finding merits in the revision, *set aside* the impugned orders and appointed respondent No.4 as Lambardar of the Village. It was found that petitioner was involved in FIR No.120 dated 26.05.2000. Though he was acquitted by the trial Court on 08.07.2002, however, no finding regarding the same was given by the Collector. There is no gainsaying that the order passed by the Collector cannot be interfered in a cavalier manner, unless there is a patent illegality or perversity. In the case in hand, there is nothing on record to show that respondent was ever

involved in any criminal case whereas, the petitioner has faced a criminal prosecution even though he was acquitted later on.

In the judgments titled as Vijay Kumar Vs. State of Punjab and others, 2018(1) Law Herald 516 and Gurdev Singh Vs. Financial Commissioner, Punjab and others, 2021(1) Law Herald 870 it has been held that every appointing authority is supposed/required to select candidates having clean antecedents and image and has to be all more cautious and vigilant while selecting candidates for public offices.

Learned Financial Commissioner has not only set aside the orders passed by the Collector and Commissioner but he appointed respondent No.4 as Lambardar of the Village. The issue pertaining to the appointment made by Appellate/Revisional Court is pending adjudication before the Larger Bench. Thus, the order passed by the learned Financial Commissioner to the extent of appointing respondent No.4 as Lambardar is unsustainable in the eyes of law and the same is *set aside* to that effect.

Resultantly, the order dated 08.11.2021 (Annexure P-4) is set aside to the extent of appointing respondent No.4 and the case is remanded back to the Collector for decision afresh preferably within three months from the date of receipt of certified copy of this order.

Petition is disposed of accordingly.

20.10.2023
m. sharma

(RAJESH BHARDWAJ)
JUDGE

Whether speaking/reasoned

:

Yes/No

Whether reportable

:

Yes/No