

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CWP-11534-2019(O&M)

Date of decision : 21.03.2023

Manpreet Singh

... Petitioner

Versus

Financial Commissioner (Appeals), Punjab and others

... Respondents

CORAM: HON'BLE MR.JUSTICE VIKAS BAHLPresent: Mr.Jatinderpal Singh, Advocate
for the petitioner.Mr.Yadwinder S. Bhangu, AAG, Punjab
for respondents no.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, order or direction in the nature of certiorari for quashing the order dated 11.02.2019 passed by the Financial Commissioner (Appeals) Punjab in ROA no.45 of 2017 and ROA no.55 of 2017 whereby the Financial Commissioner has dismissed the appeals filed by the petitioner. A further prayer has been made for setting aside the order dated 18.05.2017 (Annexure P-4) passed by respondent no.2 vide which the Commissioner, Ferozepur Division, Ferozepur while accepting the appeals of respondents no.4 and 5 remanded the case for appointment of Lambadar of village Sukhna Ablu, Tehsil Gidderbaha, District Sri Muktsar Sahib, for a fresh decision. A prayer has been made in the writ petition for upholding the order dated 05.05.2016 (Annexure P-2) passed by the District Collector, Sri Muktsar Sahib, appointing the petitioner as Lambardar.

Learned counsel for the petitioner has submitted that in the present case, the Collector, vide order dated 05.05.2016 after comparing the merits of the petitioner and respondents no.4 and 5, had appointed the present petitioner as Lambardar of the village. It is submitted that he took into consideration the fact that the petitioner was 28 years of age and was younger than respondent no.4 Parkash Singh, who was 51 years of age and respondent no.5 Gurdeep Singh, who was 53 years of age at the date of passing of said order. It is further submitted that the petitioner was found to be the most qualified candidate inasmuch as he was 10+2 pass whereas respondent no.4 was 5th class pass and respondent no.5 was 4th class pass. It is argued that the Collector had also taken into consideration the fact that the Naib Tehsildar, Tehsildar as well as the SDM had recommended the name of the petitioner and the petitioner also knew how to read and write in Punjabi and his character was good and on the date of passing of said order, he owned 17 kanals 13 marlas of land. It is submitted that against the said order, two appeals were filed by respondents no.4 and 5 before the Commissioner, Ferozepur Division, Ferozepur and the Commissioner, without giving finding of any perversity or illegality in the order of the Collector, merely by observing that respondents no.4 and 5 had better merits, set aside the order of the Collector and remanded the case to the Collector. It is further submitted that the primary consideration that weighed with the Commissioner was the hereditary claim of respondents no.4 and 5 inasmuch as, respondent no.4 was the son of the deceased Lambardar Jaswant Singh and respondent no.5 was also the son of the deceased Lambardar Jaswant Singh. It is stated that against the said remand order, the petitioner had filed two revision petitions, which were dismissed. It has

ex-parte in the proceedings before the Financial Commissioner and for the same, reference has been made to para 7 of the order of the Financial Commissioner. It is argued that a perusal of para 8 (page 73 of the paper book) would show that the primary reason for upholding the order of remand passed by the Commissioner was the factum of hereditary claim of respondents no.4 and 5. Learned counsel for the petitioner has submitted that aggrieved against the order of the Commissioner and the Financial Commissioner, the petitioner has filed the present writ petition and in the same, notice was motion was issued and on 30.09.2019, a Coordinate Bench of this Court had noticed the fact that although, notice was issued to respondent no.5 but he had refused to accept said notice and he was served through affixation. It is submitted that respondent no.5 is apparently not interested in contesting the matter as he was proceeded against ex-parte before the Financial Commissioner also and inspite of pendency of the present case for a period of more than three years, respondent no.5 has not appeared before this Court to contest the present case. It is further submitted that respondent no.4 has died and is, thus, out of the zone of consideration. It is stated that LRs of respondent no.4 were impleaded. It is further stated that before the death of respondent no.4, Mr. Gurpal Singh Sandhu, Advocate had appeared on his behalf but after his demise, nobody has appeared on his behalf inspite of the fact that the application for bringing on record the LRs of respondent no.4 was allowed and on 23.05.2022, a Coordinate Bench of this Court had noticed that service was complete and yet, none had appeared on behalf of the private respondents. Learned counsel for the petitioner has further pointed out that vide order dated 23.05.2022, Coordinate Bench of this Court had ordered that process for appointment of new Lambardar shall remain stayed during the pendency of

the present writ petition.

On merits, learned counsel for the petitioner has raised the following arguments:-

i) It has been argued that the Collector is the appointing authority and unless the order of the Collector is perverse or illegal, the same should not be interfered with by the Commissioner or the Financial Commissioner. The judgment of this Court passed in **CWP-16717-2022** titled as “**Sukhpal Singh vs. State of Punjab and others**” on 13.01.2023 has been referred to substantiate the same.

ii) It has been submitted that there were three contesting candidates in the present case. Apart from the petitioner, Parkash Singh and Gurdeep Singh were the other two candidates. Parkash Singh has died and Gurdeep Singh was proceeded against ex-parte before the Financial Commissioner and has also been proceeded against ex-parte before this Court and thus, present petitioner remains as the only contesting candidate.

iii) Learned counsel for the petitioner has argued that the primary reason i.e., hereditary claim, given for remanding the matter by the Commissioner and the Financial Commissioner is absolutely illegal and against the law and in the said regard, the petitioner has cited judgment of Hon’ble Division Bench in case titled as “**Karnail Singh vs. State of Haryana and others**” reported as **1974 PLR 67**.

iv) Learned counsel for the petitioner has also submitted that one of the factors which has been mentioned in the impugned

order is that the petitioner was not owner of the land on the date of the application and had subsequently become the owner of the land on the date of appointment. With respect to the same, learned counsel for the petitioner has relied upon a judgment of Hon'ble Division Bench of this Court passed in LPA no. 2330 of 2017 in CWP no.12257 of 2015 decided on 17.4.2018 titled as "***Bachhiter Singh vs. State of Haryana and others***" to contend that it is the date of appointment which is to be seen and not the date of filing of the application. It is submitted that SLP filed against the same was dismissed on 02.12.2019.

v) It is stated that the petitioner was the youngest candidate and also more educated and thus, reliance has been placed upon the judgment of the Hon'ble Supreme Court in ***Mahavir Singh vs. Khiali Ram & others*** reported as ***2009(3) SCC 439*** as well as judgment of a Coordinate Bench of this Court in ***Om Parkash vs. State of Haryana and others*** reported as ***2015(1) P.L.J. 507***. It is submitted that in view of the same, the impugned orders passed by the Commissioner and the Financial Commissioner deserve to be set aside and order of the Collector deserves to be upheld.

Learned State counsel, on the other hand, has submitted that the Commissioner and the Financial Commissioner have, after taking into consideration hereditary claim of respondents no.4 and 5, remanded the matter to the Collector and no prejudice would be caused to the petitioner in case he participates in the process for fresh appointment of Lambardar.

None has appeared on behalf of the private respondents to

contest the present case.

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

It is not in dispute that the Collector, vide order dated 05.05.2016, appointed the present petitioner as the Lambardar. Before passing the said order, merits and demerits of all the three candidates i.e., the petitioner and respondent no.4 Parkash Singh and respondent no.5 Gurdeep Singh were taken into consideration. The Collector found the present petitioner to be a more suitable candidate and for the same, had taken into consideration the fact that the petitioner was 28 years of age and was the youngest of all the three candidates inasmuch as respondent no.5 was 53 years of age and respondent no.4 was 51 years of age. The Collector had also taken into consideration the fact that the petitioner was more educated and as he was 10+2 pass in comparison to respondent no.4 who was 5th class pass and respondent no.5 who was 4th class pass. The Naib Tehsildar, Tehsildar as well as the SDM, had also recommended the petitioner to be appointed as the Lambardar. It was also noticed that the petitioner could read and write Punjabi and had good character and was not a defaulter of any bank or society. The Commissioner as well as the Financial Commissioner had, set aside the order of the Collector and had remanded the matter by primarily observing that respondents no.4 and 5 had better merits inasmuch as both respondents no.4 and 5 had hereditary claim in their favour as they were the sons of the deceased lambardar Jaswant Singh. It was also observed that the petitioner did not have ownership of the land on the date of filing of the application and that land measuring 17 kanals 13 marlas was transferred in his name after the last date of submitting the application but prior to the passing of order of the Collector and after taking

into consideration the said aspects, the order of the District Collector was set aside. The orders of the Commissioner as well as Financial Commissioner are illegal and against law and deserve to be set aside on the following grounds:-

i) It is settled law that the appointing authority in the case of Lambardar is the Collector and the Commissioner or the Financial Commissioner could interfere in the said order only if it is found to be perverse or illegal. This Court, in the case of ***Sukhpal Singh*** (supra), had upheld the order of the Collector as well as of 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 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 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 upon reconsidering the merits and demerits of the candidates and by observing that the petitioner therein was a more suitable candidate, had appointed him as the Lambardar. The Financial Commissioner had, 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 Hon’ble Division Bench of this Court in **LPA-107-2023** titled as **“Sukhpal Singh vs. State of Punjab and others”** decided on **06.02.2023**. Relevant portion of the 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, it cannot be said that the order of the Collector appointing the petitioner, who was the youngest candidate and more educated and was also recommended by the Naib Tehsildar, Tehsildar and Sub Divisional Magistrate, was illegal or perverse. Thus, on the said ground alone, the orders of the Commissioner and the Financial Commissioner deserve to be set aside.

ii) It is not in dispute that the petitioner at the time of appointment was 28 years of age whereas Parkash Singh-respondent no.4 was 51 years of age and Gurdeep Singh-respondent no.5 was 53 years of age and thus, the present petitioner was the youngest. 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.”

It is also not in dispute that the petitioner is the most

educated candidate inasmuch as the petitioner is 10+2 pass whereas respondent no.4 was 5th class pass and respondent no.5 was 4th class pass. Coordinate Bench of this Court in ***Om Parkash's*** case (supra) held that a more educated person is a more suitable candidate. Relevant portion of the said judgment is reproduced hereinbelow:-

“xxx xxx xxx

11. Besides this, Ramphal has been appointed by the Collector. It is a settled principle of law that the choice of the Collector cannot be lightly set aside. It can only be set aside if there is perversity or illegality in the impugned order of the Collector. This view of mine is supported by the 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***. In ***Mahavir Singh's*** case (supra) the 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.

12. Against the settled law, choice of the Collector has been wrongly upset by the Commissioner and Financial Commissioner without recording any finding of perversity in this regard. Therefore, the impugned orders passed by Commissioner and Financial Commissioner are illegal, arbitrary and against the settled principles of law.

13. So far as plea of learned senior counsel for Rajbir that he is acting as Lambardar of the village for about 15 years, therefore, writ petitions be dismissed is concerned, same cannot be accepted as any benefit derived during the pendency of the writ petition cannot be taken into consideration.

14. So far as contention of the learned counsel for Om Parkah that he is having 15 acres of land whereas Ramphal

and Rajbir are having seven acres of land is concerned, it can be one of the factors, whereas cumulative effect of the overall comparative merits has to be taken into consideration. However, in the present era better educational qualification is necessary as everything is to be done in writing, therefore, more educated person is the more suitable person for the appointment.

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17. In view of above, CWP No.5725 of 2000 is allowed. Impugned order dated 02.11.1998 (Annexure P-2) passed by Commissioner, Hisar, and order dated 20.10.1999 (Annexure P-3) passed by Financial Commissioner, Haryana are set aside and order dated 04.06.1997 (Annexure P-1) passed by Collector, Hisar, is restored.”

iii) Respondent no.4 Parkash has died and thus, he is out of the zone of consideration. Moreover, learned counsel had appeared for respondent no.4 prior to his death but no one has appeared thereafter inspite of the fact that legal representatives of respondent no.4 were impleaded and were duly served. Respondent no.5 Gurdeep Singh was proceeded against ex-parte before the Financial Commissioner as is apparent from para 7 of the order passed by the Financial Commissioner (page 72 of the paper book) and said Gurdeep Singh was also proceeded against ex-parte vide order dated 30.09.2019 passed by a Coordinate Bench of this Court and inspite of the pendency of present writ petition since the last 3 years, no one appeared on behalf of respondent no.5 and even today, nobody has appeared on behalf of respondent no.5.

iv) The observation made by the Commissioner to the effect that the petitioner did not have land on the date of the application and had become owner of 17 kanals and 13 marlas

of land after the last date for submission of the application for lambardari but before passing of the order of the Collector and the said point was a demerit against the petitioner, is absolutely illegal and against law. The Hon'ble Division Bench of this Court in ***Bachhiter Singh's*** case (supra) had held as under:-

“3. Plea before the Writ Court was that the order of the Financial Commissioner was patently illegal in view of the decision of Hon'ble the Supreme Court in the case of Inderaj versus Financial Commissioner and others, AIR 1994 SC 753 wherein it has been laid down that qualification of a candidate possessing land was required to be seen at the time of appointment and not at the time of filing the application. In the circumstances, it was contended that although respondent No.4-petitioner was not having land till the last date of filing application but when the Halqa Patwari produced naksha lambardari, at that time, respondent No.4-petitioner was having land in his name and it was in the aforementioned background that the matter was considered by the Revenue Authorities who recommended respondent No.4-petitioner's name to the Collector for appointment as Lambardar.

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9. In the light of the position as noted above, the decision of Hon'ble the Supreme Court rendered in Inderaj Singh's case (supra) is squarely applicable and the order of the Financial Commissioner holding otherwise is not the correct position in law. The Writ Court correctly set aside order dated 31.3.2015 (Annexure P-3) passed by the Financial Commissioner as requirement of a candidate of possessing land is to be seen at the time of appointment and not at the time of filing the application.

10. Accordingly, finding no merit in the appeal, the same is dismissed in limine.”

A perusal of the above judgment would show that the Hon'ble Division Bench, after taking into consideration the law laid down by the Hon'ble Supreme Court in ***Inderraj vs. Financial Commissioner and others*** reported as ***AIR 1994 SC***

753, held that it is the time of appointment and not the time of filing of the application which is the relevant date to consider the requirement of the candidate to possess the land. The SLP no.34055/2018 filed against the said order of the Hon'ble Division Bench has been dismissed vide order dated 02.12.2019 and the said order has been upheld.

v) The observation of the Commissioner and the Financial Commissioner to the effect that since respondents no.4 and 5 have a hereditary claim, thus, they have a higher merit, is also perverse and illegal, moreso, in the circumstances where the petitioner is younger and is more qualified than respondents no.4 and 5. The Hon'ble Division Bench in ***Karnail Singh vs. The State of Hayrana etc.*** reported as ***1974 PLR 67*** set aside Rule 17(ii) of the Punjab Land Revenue Rules as applicable to the Haryana which provided that the nearest eligible heir, according to the rule of primogeniture, shall be appointed unless some social custom of succession to the office is distinctly proved but subject to exceptions as mentioned in Rule 17(ii) and the Hon'ble Division Bench had in the said regard observed as under:-

“.....Shri Naubat Singh, the learned District Attorney for the State of Haryana, has argued that in actual practice other qualifications are also taken into consideration and the appointments are not made in all cases on the grounds only of heredity. Practice apart, Rule 17(ii) may seem to attach too much importance to the claim of heredity and the selection of the successor is sought to be confined to a male lineal descendant or the nearest collateral. Rule 17(ii) may seem to make discrimination or distinction on the ground of heredity or family connections. This rule may, therefore, appear to be violative of the fundamental rights guaranteed

*by Articles 14, 15 and 16 of the Constitution of India. Reference could in this connection be made to the Supreme Court rulings in **Gazula Dasaratha Rama Rao v. State of Andhra Pradesh and others**, AIR 1961 Supreme Court 564, and **The State of Assam and others v. Kanak Chandra Dutta**, AIR 1967 Supreme Court 884. Shri Naubat Singh has cited before us a Divisional Bench ruling of the Madras High Court in **Rishikesavan Naidu v. S. Srinivasa Reddiar**, AIR 1965 Madras 178, but the facts in that case were altogether different. The person who had been selected to the hereditary office in that case had no other rival in the field. He would have been selected un-opposed independently of his family connections that heredity was no disqualification for being selected to a particular post or appointment.*

5. For reasons given above, we declare sub-rule (ii) of Land Revenue Rule 17 to be ultra vires and unconstitutional. The appointments under this sub-rule of respondent No. 4 in Civil Writ No. 1048 of 1967, respondent No. 3 in Civil Writ No. 696 of 1970 and respondent No. 4 in Civil Writ No. 666 of 1970 is quashed and the State Government is directed to make fresh appointments after considering the claims of all the contesting candidates. The three writ petitions are allowed but we make no order as to costs.

Petitions allowed.”

Hon’ble Division Bench in LPA no.83 of 2013 titled as **“Navetej Singh vs. Commissioner, Faridkot Division, Faridkot and others”** decided on 17.01.2013 reported as **2013 SCC OnLine P&H 1175** had observed that the plea of the appellant therein with respect to his hereditary claim was misconceived as the right to hereditary claim had been held to be violative of Articles 14 and 16 of the Constitution of India and for the same the Hon’ble Division Bench placed reliance upon the judgment passed in **Karnail Singh’s** case (supra). SLP no.CC5137/2014 had been filed against the said judgment and the same was dismissed by the Hon’ble Supreme Court both on the aspect of delay as well as on merits vide order

“*Bhagwan Singh vs. Financial Commissioner, Appeals-I, Punjab Chandigarh and others*” reported as *(2008) 4 RCR (Civil) 862* had, after comparing the Rules as applicable to Punjab with the Rules as applicable to Haryana, came to the conclusion that the law laid down by the Hon’ble Division Bench in *Karnail Singh’s* case (supra) would also apply to cases pertaining to the State of Punjab.

Keeping in view the above said facts and circumstances, the present writ petition is allowed and the order passed by the Commissioner dated 18.05.2017 (Annexure P-4) and the order passed by the Financial Commissioner dated 11.02.2019 (Annexure P-6) are set aside and the order passed by the Collector dated 05.05.2016 (Annexure P-2) appointing the petitioner as the Lambardar is upheld.

Pending miscellaneous applications, if any, shall stand disposed of in view of the abovesaid order.

March 21, 2023 <i>Davinder Kumar</i>	(VIKAS BAHL) JUDGE	
Whether speaking / reasoned		Yes/No
Whether reportable		Yes/No