

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

CWP No.11574 of 2016

Date of decision : 01.09.2023

Dal Chand

..... Petitioner

Versus

The State of Haryana and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Gopal Sharma, Advocate
for the petitioner.

Mr. Rajneesh Chadwal, AAG, Haryana.

Mr. Vishal Gupta, Advocate
for respondent No.4.

RAJESH BHARDWAJ, J.

Present writ petition has been filed for issuance of a writ in the nature of certiorari for quashing the impugned order dated 27.04.2016 (Annexure P-4) passed by learned Financial Commissioner whereby the well reasoned order dated 04.09.2012 (Annexure P-1) passed by learned District Collector, Rewari and order dated 24.04.2014 (Annexure P-3) passed by learned Commissioner, Gurgaon Division, Gurgaon have been set aside and respondent No.4 has been appointed as Lambardar of the village after removal of the petitioner from the post of Lambardar. Further prayer has been made for staying the operation of impugned order dated 27.04.2016 (Annexure P-4) of learned Financial Commissioner.

Brief facts of the case are that on the death of Lambardar, namely, Mam Chand (Backward category) on 10.02.2010, the post of Lambardar in village Rajiyaki, Tehsil and District Rewari fell vacant. For filling up the post, process for appointment of new Lambardar was initiated and applications from the eligible candidates were invited. Resultantly, six applications were received from the candidates, namely, Sunder Lal son of Mam Chand, Dharam Pal son of Sukhdev, Dal Chand son of Mool Chand (petitioner), Rajender son of Yad Ram (respondent No.4), Dharam Pal son of Hoshiar and Ram Niwas son of Maman Singh. In pursuance to the same, their character verification was got done and their *interse* merits were appreciated. On appreciation of the same, the petitioner was found to be 64 years of age and he was 10+2 pass. So far as respondent No.4 is concerned, he was found to be 52 years of age and he was matric pass. The Collector on complete analysis on the merits, finally appointed the petitioner, namely, Dal Chand as Lambardar (Backward category) of the village RajiyaKi vide his order dated 04.09.2012. Sanad Lambardari was issued to the petitioner by the District Collector on 28.12.2012. Aggrieved by the order passed by the District Collector, respondent No.4 filed an appeal under Section 13 of the Punjab Land Revenue Act 1887 (for short 'the Act') before the Commissioner. The Commissioner, after hearing both the sides, finding no perversity in the order passed by the Collector, dismissed the appeal filed by the respondent No.4 vide his order dated 24.04.2014. Aggrieved by the same, respondent No.4 filed the revision petition under Section 16 of the Act before the learned Financial Commissioner. The

learned Financial Commissioner, after hearing both the sides, appointed respondent No.4 as Lambardar vide impugned order dated 27.04.2016. Hence, the petitioner is before this Court by way of filing the present petition.

Learned counsel for the petitioner has vehemently contended that on comparing the *interse* merits of both the petitioner as well as respondent No.4, the District Collector found the petitioner to be more suitable and thus, he was rightly appointed as the Lambardar of village Rajiya ki. He submits that the appeal filed by respondent No.4 was also dismissed by the learned Commissioner vide his order dated 24.04.2014. However, learned Financial Commissioner by passing the totally cryptic order, set aside the well reasoned order passed by both the Courts below i.e. by the Collector and by the Commissioner. He submits that the order passed by the learned Financial Commissioner has assigned no reason which would show any perversity in the order passed by the Collector, which was duly upheld by the Commissioner. He further submits that the only ground taken by the learned Financial Commissioner was that respondent No.4 was younger in age and he belongs to the family of Lambardar and has the knowledge. He submits that learned Financial Commissioner has miserably failed in appreciating that as per the law settled, the choice of the Collector cannot be interfered with in a casual manner, unless and until the same is suffering from patent illegality. However, in the present case, the Collector found the petitioner to be more meritorious and thus, he was rightly appointed as Lambardar. He submits

that respondent No.4 is not even residing in the village, thus, the petitioner was rightly been appointed as Lambardar of the village Rajiya ki. He relies upon the decision passed by this Court in “***Daya Ram vs. Bhagwan and others***”, 2015(4) RCR (Civil) 929, which is totally applicable in the facts and circumstances of the present case. He has submitted that learned Financial Commissioner could not even interfere with the well reasoned order passed by both the Courts below and thus, the view taken by learned Financial Commissioner is totally unsustainable in the eyes of law. He further submits that the impugned order being against the comprehension of law, deserves to be set aside by upholding the order passed by the Collector which is duly affirmed by the learned Appellate Court.

Per contra, learned counsel for respondent No.4 has opposed the submissions made by learned counsel for the petitioner. He submits that the Sarpanch, Gram Panchayat, Rajiya ki has also issued a report dated 05.11.2016 wherein it was stated that the respondent is very much living in the village. He further submits that respondent No.4 is 14 years younger than the petitioner. He submits that the learned Collector as well as learned Commissioner had totally overlooked the evidence on record and thus, has wrongly appointed the petitioner to be the Lambardar of village.

I have heard learned counsel for both the parties and perused the material on record.

After hearing learned counsel for both the parties and perusing the material on record, it is apparent that on the death of Lambardar, namely, Mam Chand (Backward category) on 10.02.2010 in village Rajiya

ki, the post of Lambardar fell vacant. In pursuance to the same, process for appointment of new Lambardar was initiated and applications from the eligible candidates were invited. As a result, six applications were received. Their character verification was conducted and *interse* merits were appreciated. On appreciation of the same, the petitioner was found to be 64 years of age and he was 10+2 pass. Besides this, respondent No.4 was found to be 52 years of age and was matric pass. After analyzing the merits of the candidates, the Collector finally appointed the petitioner-Dal Chand as the Lambardar (Backward category) of village Rajiya Ki vide order dated 04.09.2012. Sanad Lambardari was also issued to the petitioner by the District Collector on 28.12.2012. The appeal filed by respondent No.4 was dismissed by the Commissioner vide his order dated 24.04.2014. However, the learned Financial Commissioner set aside both the orders of the Collector as well as the Commissioner in the revision petition filed by respondent No.4. Learned Financial Commissioner has observed in the impugned order that respondent was younger in age; belongs to the Lambardar family and he has the experience for performing the duties of Lambardar.

As per settled proposition of law by the Hon'ble Supreme Court in the judgment titled as ***Mahavir Singh Vs. Khiali Ram***, 2009(1) **RCR(Civil) 757**, a candidate who is younger in age should have been given the preference.

This Court in “***Sukhjinder Pal Singh Vs. State of Punjab and others***”, 2016(3)R.C.R.(Civil)725, while dealing with the same question has held as under:-

14. It is pertinent to mention here that the appointment of Lambardar is primarily the prerogative and administrative act of the District Collector. The selection made by him is normally not to be undone unless and until it is shown that the same suffers from gross irregularity, perversity or there is some patent error in the appointment.”

It is the settled principle of law that the Choice of the Collector should not be normally disturbed unless some grave discrepancy is observed in the appointment. The judgment relied upon by learned counsel for the petitioner passed in ***Daya Ram’s case (supra)*** is fully applicable in the present case. Perusal of the impugned order passed by learned Financial Commissioner would show that no cogent reasons have been assigned by the learned Financial Commissioner in setting aside both the orders passed by the Collector and the Commissioner.

This Court in “Lal Singh vs. Financial Commissioner (Appeals) and others”, CWP No.14821 of 2019 has held as under:

“Admittedly, the petitioner has been serving as Serberah Lambardar and also has 32 bighas of land. The hereditary claim is no more right which can be claimed as an aspect in itself and being a Serberah Lambardar would give him obviously more experience over a candidate who has not performed the said duties but inspite of his experience, however being Serberah Lambardar the said benefit cannot be claimed for the purpose of preferential right for

consideration of appointment in case the other factors are if not identical/similar here.”

However, in the considered opinion of this Court, the view taken by learned Financial Commissioner suffers from patent illegality and thus, the impugned order dated 27.04.2016 passed by the learned Financial Commissioner is totally contrary to the law settled and being perverse is hereby set aside. The orders passed by the learned Collector dated 04.09.2012 and the learned Commissioner dated 24.04.2014 are upheld. Resultantly, the present petition stands allowed in the abovesaid terms.

01.09.2023

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(RAJESH BHARDWAJ)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No