

**210 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****CWP-14260-2016****Date of decision : 04.08.2023****Harminder Singh****.....Petitioner****versus****State of Punjab and others****..... Respondents****CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ***********Present :-** Mr. Dhirinder Chopra, Advocate
for the petitioner.Mr. Arun William, AAG, Punjab
for respondents No.1 to 4.Mr. Navinderjit Singh Dandiwal, Advocate
for respondent No.5.*********RAJESH BHARDWAJ, J.**

Prayer in the present petition is for quashing the order dated 12.12.2011 passed by the Collector, Moga in File No.52-Lambardari; order dated 29.05.2012 passed by the Commissioner, Ferozepur Division, Ferozepur in Appeal No.Lamb-8 of 2012 and order dated 19.01.2016 passed by the Financial Commissioner (Revenue), Punjab in ROR No.258 of 2013.

It has been submitted by learned counsel for the petitioner that after the death of Arjan Singh son of Chanan Singh, resident of Village Dagru, Tehsil and District Moga on 21.03.2002, sanction for the post of appointment of Lambardar was accorded on 29.12.2010. The process of appointment was initiated and *mustri munadi* was carried out. In pursuant to the same, various candidates applied for appointment. The scrutiny of the candidature of all the candidates was conducted and it was found that candidate Jagraj Singh, respondent No.5 was 40 years of age and he had deposited the defaulted amount of the cooperative society. An

FIR No.94 dated 20.07.2005 under Sections 325, 323, 148, 149 of IPC was registered against him at Police Station Sadar Moga. However, in that case the compromise was arrived at between the parties. Candidate Harminder Singh i.e the petitioner was 30 years of age and he was 10+2 qualified. He could read and write Punjabi and English. On comparison of all the *inter se* merits, name of Harminder Singh i.e. the petitioner was recommended by Sub Divisional Magistrate, Moga for the appointment to the post of Lambardar. Learned District Collector however, on analysis of all the candidates in fray and the recommendation reports etc., found Jagraj Singh i.e. respondent No.5 as most suitable candidate and thus, appointed him as Lambardar vide his order dated 12.12.2011. This decision of the District Collector was challenged by the petitioner-Harminder Singh and respondent No.6-Harjit Singh by way of filing their independent appeals before the Commissioner, Ferozepur. Learned Commissioner on hearing the parties and perusing the record dismissed the same vide his order dated 29.05.2012 and thus, upheld the order of the Collector dated 12.12.2011. Aggrieved by the same, petitioner filed the revision petition under Section 16 of the Punjab Land Revenue Act before learned Financial Commissioner (Revenue), Punjab Chandigarh. However, learned Financial Commissioner finding no merit in the petition dismissed the same vide his order dated 19.01.2016 and thus, upheld the orders of the Collector and that of the Commissioner.

Learned counsel for the petitioner has vehemently contended that the merits of all the candidates in fray were specific enough and as the petitioner was 30 years of age and 10+2, so he was the youngest and more qualified than respondent No.5. He further submits that admittedly

the FIR No.94 dated 20.07.2005 under Sections 325, 323, 148, 149 of IPC was registered against the respondent No.5. He submits that even if the same was finally resulted in the compromise, the candidature of the petitioner could not have been ignored as the petitioner had no criminal antecedents whatsoever. He submits that as per the 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* said that the candidate who is younger in age should have been given the preference but the learned Collector failed to appreciate the same. He submits that the Appellate Authority also failed to appreciate that there was no discussion by Collector regarding the prosecution of the respondent in the FIR and thus, decision of the Collector was totally perverse which learned Commissioner failed to appreciate and thus, illegally declined the appeal filed by the petitioner. He submits that the revision was filed by the petitioner before the Financial Commissioner but learned Financial Commissioner also fallen in error by not appreciating the fact and circumstances of the case and law settled and thus, illegally dismissed the revision vide impugned order dated 19.01.2016. He submits that all the impugned orders dated 12.12.2011, 29.05.2012 and 19.01.2016 suffer from patent illegality and perversity and thus, the petition deserves to be dismissed and petitioner deserves to be appointed as Lambardar.

Learned counsel for respondent No.5 on the other hand has opposed the submissions made by counsel for the petitioner. He submits that though there was an FIR against respondent No.5 but he was duly acquitted by the trial Court in the same and thus, learned Collector has rightly appointed him as Lambardar. He further submits that the petitioner

was younger in age whereas respondent No.5 being elder to him had more experience thus, the impugned orders passed by the Collector and by the Appellate and Revisional Authority suffer from no infirmity and being legal deserve to be upheld. He submits that as per the settled proposition of law, choice of the Collector cannot be interfered with in a casual manner and thus, petition being devoid of any merits deserves to be dismissed.

Heard.

Evidently, after the death of Arjan Singh, ten applications were received for the post of Lambardar. Out of which, 07 candidates withdrew their applications and there candidates namely, Harminder Singh (petitioner), Jagraj Singh (respondent No.5) and Harjit Singh (respondent No.6) were left and on scrutiny of their qualification etc., learned Sub Divisional Magistrate recommended the name of Harminder Singh-petitioner whereas learned District Collector on appreciating the complete candidature of all the candidates and on comparing their *inter se* merits, found Jagraj Singh, respondent No.5 most suitable. The appeals filed by the petitioner and respondent No.6 were dismissed and thereafter, the revision filed was also declined.

From the facts and circumstances of the case, it is apparent that the petitioner was younger in age and was more qualified. As per the character verification, there was nothing adverse found against the petitioner however, admittedly, the FIR No.94 dated 20.07.2005 under Sections 325, 323, 148, 149 of IPC was found to have been registered against the respondents. Though as submitted before this Court, respondent No.5 was acquitted in the same, however, the prosecution of

respondent No.5 was required to be taken into account at the time of scrutiny of the candidature of all the candidates which is not reflected from the record. There is no gainsaying that the choice of Collector cannot be interfered in a cavalier manner if it does not suffer from any perversity. However, the prosecution of the respondent in the FIR is an admitted fact and the same has not been dealt with by respondent-authorities while arriving at the final decision. The petitioner was also younger in age and the Hon'ble Supreme Court in *Mahavir Singh's case (supra)* has held that if the *inter se* merits of the candidates are otherwise at par then the candidate younger in age should be preferred. A perusal of the impugned orders would show that the respondents-authorities have failed to appreciate these settled propositions of law while appointing respondent No.5 as Lambardar. In the considered opinion of this Court to meet the ends of justice, the matter is required to be relooked and the merits of all the three candidates i.e. petitioner and respondents No.5 and 6 is required to be evaluated in view of the law settled. Hence this Court finds impugned order of the Collector dated 12.12.2011 and subsequent orders of Commissioner dated 29.05.2012 and Financial Commissioner dated 19.01.2016 suffer from perversity and resultantly, the same are *set aside* by remanding the case to the Collector for deciding the case afresh. The Collector would take the decision expeditiously preferably within two months from the receipt of certified copy of this order. Disposed of accordingly.

04.08.2023
m. sharma

(RAJESH BHARDWAJ)
JUDGE

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