

110

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

CWP-16717-2022

Date of decision : 13.01.2023

Sukhpal Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Birinder Pal, Advocate for
Mr. S.S. Bhinder, 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, order or direction especially in the nature of certiorari quashing the order dated 19.05.2022 (Annexure P-3), whereby, respondent No.4 has been appointed as Lambardar of Village Rureke, Tehsil and District Barnala.

The brief facts of the present case are that on the death of Jagraj Singh on 10.10.2016, Lambardar of Village Rureke Kalan, Tehsil Tapa, District Barnala, applications were invited from the interested persons and in pursuance of the same, four persons had applied, including the present petitioner and respondent No.4-Rajpal Singh. After due scrutiny, the

Assistant Collector, First Grade, Tapa had recommended the name of respondent No.4-Rajpal Singh to Sub Divisional Magistrate, Tapa for being appointed as Lambardar. The Sub Divisional Magistrate, Tapa vide its report dated 30.10.2017, agreed with the report of Tehsildar and also recommended the name of Rajpal Singh-respondent No.4 to be appointed as Lambardar. The Collector, after taking into consideration the comparative merits and demerits of the candidates, appointed respondent No.4-Rajpal Singh as the Lambardar vide order dated 09.11.2017 (Annexure P-1). The facts that Rajpal Singh was 10th pass, was 35 years of age and was healthy and had seven acres of land and that he bore a good moral character and was a law abiding citizen and was recommended by both the Tehsildar as well as Sub Divisional Magistrate, were taken into consideration while appointing respondent No.4 as the Lambardar. Two appeals were filed i.e. by the present petitioner and Jaswinder Singh, respectively before the Divisional Commissioner, Patiala, Division Patiala and the said Commissioner, after reconsidering the merits of the candidates, had observed that the present petitioner was more suitable and thus, had appointed the present petitioner as the Lambardar. Respondent No.4 then filed a revision petition before the Financial Commissioner, Punjab and the Financial Commissioner, Punjab, vide its order dated 19.05.2022, had allowed the said revision petition and observed that the Commissioner had not pointed out any material defect in the order of District Collector and the choice of the Collector is not to be disturbed unless and until it suffers from any material perversity or illegality. It was observed in this regard that the scope of interfering in the choice of the Collector cannot be extended to re-appreciating of the relative

merits of the candidates. It was also observed that the Collector being an appointing authority, had rightly appointed respondent No.4 as Lambardar of the Village, after considering the inter se merits of the candidates. Reliance had also been placed upon the judgment passed by the Division Bench of this Court in case titled as **Balram Vs. Financial Commissioner (Revenue), Haryana (Punjab and Haryana) (DB)** reported as **2012(3) LAR 125**, on the proposition that if the choice of the Collector does not suffer from any perversity or illegality, the same should be deemed to be final.

Challenging the order dated 19.05.2022 (Annexure P-3) passed by the Financial Commissioner (Appeals), Punjab, the present Civil Writ Petition has been filed.

Learned counsel for the petitioner has submitted that respondent No.4 is in illegal possession of Panchayat land and for the same, has made reference to Annexure P-8 which is stated to be a lay out and encroachment plan dated 08.09.2022. It is argued on the basis of the said document that respondent No.4 is proved to be in illegal possession of the Panchayat land, thus, he does not deserve to be appointed as Lambardar.

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 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.

A perusal of order dated 09.11.2017 (Annexure P-1) passed by the District Collector would show that the Collector, after taking into consideration the merits and demerits of both the candidates, had come to the conclusion that respondent No.4 was more meritorious and had accordingly, appointed him as the Lambardar. The fact that Assistant Collector, Ist Grade, Tapa, as well as the Sub Divisional Magistrate, Tapa, had recommended respondent No.4-Rajpal Singh to be appointed as the

Lambardar, was also taken into consideration. It was also considered that respondent No.4 was 10th pass and was 35 years of age and was healthy and had 7 acres of land and bore good moral character. A perusal of order of the Collector would also show that the petitioner owned three acres of land in comparison to 7 acres of land owned by respondent No.4. The petitioner has not been able to show that the order passed by the Collector is perverse, illegal or contrary to law, in any manner. Thus, as per the settled law, the order of the Collector and the order of Financial Commissioner, upholding the said order, deserve to be upheld.

The argument of learned counsel for the petitioner to the effect that on the basis of Annexure P-8, it comes forth that respondent No.4 is in the illegal possession and thus, his appointment deserves to be set aside, is meritless and is rejected on the following grounds:-

- 1) No argument to the said effect was raised by the petitioner before the Collector.
- 2) Even, the Commissioner, vide his order dated 15.07.2021, which has been passed in favour of the petitioner, has given no finding to the effect that respondent No.4 is in illegal possession of any land. Reference, in this regard, may be made to para 7 of the said order.
- 3) Reliance sought to be placed upon Annexure P-8 is completely misconceived. The said document is dated 08.09.2022 and admittedly, was not even placed before the authorities. A perusal of the same would show that there are no signatures of respondent No.4 on the same which suggests that respondent No.4 was not even present at the time of conducting the said alleged demarcation.

Nothing has been shown to show that any notice was issued to respondent No.4 before conducting the alleged demarcation. The said document cannot even be stated to be a demarcation report as neither any reference has been made to any revenue map/village map/field map, nor any pucca point has been established, much less with the consent of the parties. Same is in violation of the Financial Commissioner instructions contained in Part M, Chapter 1, Volume I of Punjab & Haryana HC Rules & Orders. No authenticity is attached to the said document. Apparently, the said document has been created on 08.09.2022 i.e. after the order dated 19.05.2022 had already been passed by the Financial Commissioner and the same has been done only for raising a plea before this Court.

- 4) No document showing any proceedings initiated or pending against respondent No.4 under any Act, much less any order passed under any Act, showing that respondent No.4 is in illegal possession of Panchayat land, has been referred to or annexed with the petition.

Keeping in view the abovesaid facts and circumstances, the order dated 19.05.2022 (Annexure P-3) passed by the Financial Commissioner is upheld and the present Civil Writ Petition is dismissed being devoid of merits.

13.01.2023

Pawan

**(VIKAS BAHL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No