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

CWP-18108-2022 (O&M)
Date of decision : 30.01.2023

Davinder Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. P.K.S. Phoolka, Advocate for the petitioner.

Mr. Ferry Sofat, Addl. A.G. Punjab
for respondent Nos.1 to 4.

VIKAS BAHL, J. (ORAL)

This is a Civil Writ Petition filed under Articles 226/227 of the Constitution of India for issuance of an appropriate writ, order or direction in the nature of certiorari for quashing the order dated 26.05.2022 (Annexure P-6) passed by respondent No.2, whereby, the appeals filed by the petitioner have been dismissed while upholding the order dated 05.09.2018 (Annexure P-4) passed by the Commissioner Faridkot, Division Faridkot remanding the case to the Deputy Commissioner-Cum-Collector, Bathinda for fresh decision, in the interest of justice.

Brief facts of the present case are that on the death of Jalour Singh, Lambardar (General category) of Village Killi Nihal Singh Wala, on 28.01.2015, the Naib Tehsildar had initiated the proceedings for filling up

the vacant post by conducting proclamation in Village Killi Nihal Singh Wala, seeking applications of interested persons for the appointment to the post of lambardar. In pursuance of the same, 14 candidates moved their applications, out of which, 10 candidates had withdrawn their candidature and ultimately, only four candidates i.e., the present petitioner, Sukhdeep Singh (respondent No.6), Sukhdarshan Singh @ Darshan Singh (respondent No.5) and one Balvir Singh remained. The petitioner as well as respondent Nos.5 and 6 had appeared before the Tehsildar, Bathinda and respondent No.6 did not appear before the SDM Bathinda. The Collector, vide order dated 18.05.2017, had appointed the present petitioner to the post of lambardar of the village and while doing so, did not consider the candidature of respondent No.6-Sukhdeep Singh who had moved an application dated 18.05.2017 for being heard in the matter. The said application was, however, summarily dismissed. It was the case of respondent No.6 that he held a degree of MBA (Masters of Business Administration) whereas, the petitioner had only passed 12th class and that he was owner of the land measuring 12.5 acres in comparison to the petitioner who, was owner of three and a half acres of land. The said Sukhdeep Singh (respondent No.6) as well as Sukhdarshan Singh @ Darshan Singh (respondent No.5) filed two appeals before the Commissioner, Faridkot, Division Faridkot, challenging the order of Collector dated 18.05.2017. The Commissioner, had allowed the said appeals and set aside the order of the Collector and remanded the matter back to the District Collector, Bathinda with a direction to give fresh hearing to all the three candidates i.e., the petitioner, respondent Nos.5 and

6 and after considering their merits and demerits, appoint the best candidate as Lambardar. While doing so, the Commissioner, had taken into consideration the fact that respondent No.6-Sukhdeep Singh was a degree holder (MBA) and could read and write in Punjabi and English and is owner of 12.5 acres of land and that, ex-parte proceedings were conducted against the said respondent No.6 by the SDM, Bathinda without any justification and the averments made in his application filed before the Collector dated 18.05.2017, to the effect that the said respondent No.6 was having higher academic qualifications and was the owner of more land than the other candidates, were not duly considered by the District Collector, Bathinda in accordance with law. It was further observed that even the candidature of respondent No.5-Sukhdarshan Singh @ Darshan Singh was not duly considered and that both respondent Nos.5 and 6 had claimed that Davinder Singh (petitioner) belonged to a Scheduled Caste inasmuch as he had been adopted by one Ram Singh son of Hazura Singh who belonged to a Scheduled Caste and since, the post available for the present lambardar was of general category, thus, only the persons falling under the general category were required to be considered. The present petitioner had filed two ROAs before the Financial Commissioner, Punjab, Chandigarh which were dismissed. The Financial Commissioner had observed that the Collector, without giving equal opportunity to all the candidates, had decided the case and that inter se merits of the candidates had not been considered in detail. It was observed that the order of the Commissioner, remanding the matter back, was in accordance with law and that on account of the said order, all the parties would get an opportunity to present their case before the

Collector. Reliance was placed upon the judgment of this Court in **Manabhar Hussain Vs. Financial Commissioner, Haryana** reported as **2013(3) RCR (Civil) 266**, to the effect that when the order passed by the Collector suffers from any patent illegality or perversity, the higher revenue authorities would be well within their jurisdiction to upset the order passed by the District Collector.

Learned counsel for the petitioner has submitted that petitioner has been appointed as the lambardar by the District Collector, Bathinda vide order dated 18.05.2017 after taking into consideration the merits and demerits of the petitioner and respondent No.5-Sukhdarshan Singh @ Darshan Singh. It is further submitted that the candidature of respondent No.6-Sukhdeep Singh has rightly not been taken into consideration as respondent No.6-Sukhdeep Singh had although, filed an application for lambardari and had appeared before the Naib Tehsildar but had not appeared before the Sub Divisional Magistrate, Bathinda. It is stated that the Collector is the appointing authority and thus, the order of the Collector should not be interfered with by the Commissioner and the Financial Commissioner unless there is perversity or illegality in the same.

Learned counsel for the petitioner has further submitted that as far as the observations to the effect that the present petitioner belonged to the Scheduled Caste as he had been adopted by Ram Singh and Manjit Kaur who belonged to a Scheduled Caste are concerned, the same are irrelevant inasmuch as, a declaration has been granted in favour of the petitioner that the adoption deed dated 26.06.1995 is illegal, null and void. It is submitted that the impugned orders passed by the Commissioner as well as the

Financial Commissioner deserve to be set aside and the order appointing the present petitioner as the lambardar, deserves to be upheld.

This Court has heard learned counsel for the parties and has perused the paperbook.

It is not in dispute that respondent No.6-Sukhdeep Singh had filed an application for appointment to the post of Lambardar. Out of 14 candidates, 10 candidates had withdrawn their applications for the appointment as lambardar and only the petitioner, alongwith Sukhdeep Singh (respondent No.6), Sukhdarshan Singh @ Darshan Singh (respondent No.5) and one Balvir Singh were left. It is also not in dispute that respondent No.6 alongwith petitioner and respondent No.5, had appeared before the Naib Tehsildar and that respondent No.6 had also moved an application dated 18.05.2017 before the Collector for consideration of his candidature. Vide order dated 12.10.2022, a Coordinate Bench of this Court had directed the petitioner to place on record the said application. In pursuance of the said order, learned counsel for the petitioner had moved an application bearing No.CM-1336-CWP-2023 for placing on record the said application filed by respondent No.6 as Annexure P-8. A perusal of the said application would show that respondent No.6 is stated to be a degree holder of MBA (Masters of Business Administration) and is thus, more qualified than the present petitioner who has only passed 12th class. Respondent No.6 has far more land holding than the present petitioner. It is not in dispute that respondent No.6-Sukhdeep Singh had even appeared before the Collector but his candidature was not considered solely on the ground that he had not appeared before the Sub Divisional Magistrate. The Commissioner,

Faridkot, Division Faridkot, had observed that the application of respondent No.6, who is more qualified and can also read and write in Punjabi and English and also has more land holding than the petitioner and has nothing adverse against him according to the police report, was not considered and should have been considered by the Collector. The Financial Commissioner had also observed that the Collector, Bathinda had not given an equal opportunity to all the candidates for appointment to the post of lambardari and had thus, upheld the order of the Commissioner as by virtue of the order of the Commissioner, equal opportunity had been granted to all the candidates to present their case before the Collector who, after considering the same would appoint the Lambardar.

This Court has found no perversity or illegality in the orders passed by the Commissioner and the Financial Commissioner, giving equal opportunity to all the candidates to put forth their case for the appointment to the post of lambardar. Respondent No.6 is prima facie a strong candidate for being appointed to the post of Lambardar and thus, non-consideration of his candidature more so, when he had applied for the same within the stipulated time and had appeared before the Naib Tehsildar and also before the Collector, is illegal and against the law. A perusal of the application dated 18.05.2017 (Annexure P-8) would show that it had been stated by respondent No.6 that he could not appear before the SDM on account of an injury suffered by him. Moreover, learned counsel for the petitioner has not been able to refer to any judgment or provisions of law to show that in case, a candidate applies for being appointed as Lambardar and appears before the Naib Tehsildar and also before the Collector, who is the appointing

authority, then his candidature would be disqualified solely on the ground that he was not able to appear before the Sub Divisional Magistrate.

Keeping in view the abovesaid facts and circumstances, this Court is of the view that the order dated 05.09.2018 passed by the Commissioner, Faridkot Division, Faridkot and order dated 26.05.2022 passed by the Financial Commissioner (Appeals) Punjab, Chandigarh, are legal and have been passed in accordance with law and the present Civil Writ Petition being sans merit, deserves to be dismissed and is accordingly, dismissed.

It is, however, clarified that the observations made in the present Civil Writ Petition have only been made with respect to the question of legality of the orders passed by the Commissioner and the Financial Commissioner and respondent No.4 would consider the candidature of all the candidates independently and in accordance with law.

It would be open to all the candidates to present their merits before the Collector and also to highlight the demerits of the other candidates before the Collector.

All the pending miscellaneous applications, if any, shall stand disposed of in view of the abovesaid judgment.

30.01.2023

Pawan

**(VIKAS BAHL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No