

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

CWP-20346-2017

Reserved on: 21.07.2023

Pronounced on: 28.07.2023

Vinod Kumar

..... Petitioner

Versus

Financial Commissioner Haryana and another Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Ashish Yadav, Advocate, for the petitioner.

Ms. Upasana Dhawan, Assistant Advocate General, Haryana.

Mr. J.P. Sharma, Advocate, for respondent No.2.

Rajesh Bhardwaj, J.

Petitioner has approached this Court praying for quashing of order dated 02.08.2017 (Annexure P-7) passed by learned Financial Commissioner and the order dated 26.05.2016 (Annexure P-4) passed by learned Commissioner, Gurugaon whereby, well reasoned orders dated 28.10.2015, 17.01.2015 and 02.03.2016, have been set aside.

It has been contended by learned counsel for the petitioner that after the death of Trikha Ram, Lambardar of village Jhabua, Tehsil Bawal, District Rewari, post of Lambardar was declared vacant. Mustari Munadi was conducted in the village for inviting applications for the post of Lambardar. He has submitted that resultantly 10 candidates applied, out of which 2 candidates had withdrawn their candidature in favour of the petitioner, whereas, 1 candidate had withdrawn his candidature in favour of respondent No.2-Hukam Singh. Thereafter, three other candidates also withdrew their candidature in favour of Rattan Lal, who also lateron withdrew his candidature in favour of the petitioner. He submits that thereafter, their inter-se merits were seen, Assistant Collector Ist Grade recommended name of the petitioner for the post of Lambardar vide order

dated 28.10.2015 (Annexure P-1) and forwarded his name to the SDM-cum-Collector, Bawal and thereafter, SDM-cum-Collector, Bawal again appreciated the entire merits of the petitioner and respondent No.2, and recommended the name of petitioner to the Collector, Rewari vide order dated 17.11.2015 (Annexure P-2). He submits that on appreciation of the inter-se merits of both the candidates i.e. the petitioner and respondent No.2, the Collector appointed the petitioner a Lambardar of the Village vide order dated 02.03.2016 (Annexure P-3). He has submitted that aggrieved by the appointment of the petitioner, respondent No.2 filed an appeal before the learned Commissioner, Gurugram against the well reasoned orders dated 28.10.2015, 17.11.2015 and 02.03.2016. He has submitted that the learned Commissioner ignoring the facts on record and the law settled, set aside the order dated 02.03.2016 vide his order dated 26.05.2016 (Annexure P-4) and illegally remanded the case to the District Collector with a direction that respondent No.2-Hukam Singh may be appointed as Lambardar of the Village and to issue authority of Lambardari in his favour. He has submitted that aggrieved by the order of Appellate authority, the petitioner preferred revision before the learned Financial Commissioner. He has submitted that the case was argued by both the sides and learned revisional Court without appreciating the evidence on record dismissed the same vide order dated 23.11.2016 (Anneuxre P-5). It is submitted that again aggrieved by the order dated 23.11.2016, the petitioner approached this Court by way of filing CWP-1215-2017 and on hearing learned counsel for the parties, this Court disposed of the same vide order dated 26.04.2017 (Annexure P-6) by setting aside the impugned order dated 23.11.2016 and matter was remanded to the learned Financial Commissioner for decision afresh. It is

submitted that after remand of the case, the learned Financial Commissioner again heard the case, but failed to appreciate the submissions made by the petitioner and the law settled and thus, dismissed the same again vide order dated 02.08.2017 (Annexure P-7). He has submitted that the view taken by the learned Financial Commissioner is totally unsustainable in the eyes of law. It is submitted that as per facts on record, the petitioner was more meritorious than respondent No.2 and hence, he was rightly appointed by the Collector as Lambardar of the Village. He has submitted that on the comparison of inter-se merits of both the petitioner and respondent No.2, it is apparent that the petitioner is BA, B.Ed by qualification and owns 2 acres of land in the village and out of total 10 candidates, 6 candidates withdrew their candidatures in his favour. He has submitted that that the petitioner is 30 years of age and his grand father was the Lambardar of the village. He has submitted that on the other hand, respondent No.2 is only 10+2 class pass and has 12 kanals of land in the village. He has further submitted that being 45 years of age, respondent No.2 is elder than the petitioner and besides that respondent No.2 was involved in criminal activity and he remained in Jail from 15.12.2004 to 16.12.2004 in case registered under Section 107/151 Cr.P.C. He has submitted that respondent No.2 was defaulter of house tax from the years 2013 to 2015. It is submitted that on comparison of inter-se merits of the petitioner and respondent No.2, the petitioner being meritorious was rightly appointed as Lambardar by the Collector. He has submitted that as per settled proposition of law, the choice of the Collector cannot be interfered in a cavalier manner. He has submitted that the petitioner being younger in age was the obvious choice of the Collector and his case was appreciated for his appointment. He has

submitted that the Appellate Court had illegally remanded the case with direction to appoint respondent No.2 as Lambardar of the Village, which was unsustainable in the eyes of law and thereafter, the revisional authority also fell in error in drawing a wrong conclusion by ignoring the merits of the petitioner and the law settled. He has submitted that in view of the overall facts and circumstances, the impugned order dated 02.08.2017 (Annexure P-7) and order dated 26.05.2016 (Annexure P-4) deserves to be quashed.

On the other hand, learned counsel for respondent No.2 has vehemently opposed the submissions made by learned counsel for the petitioner. He has submitted that for the appointment of Lambardar, requisite qualification is 8th pass, whereas, respondent No.2 was 10+2 and he was duly qualified. He has submitted that respondent No.2 was 45 years of age and he owns 12 kanals of land and 1/4th share in 64 kanal in the village. He has further submitted that the petitioner on the last date of filing of the application did not have any land in the village rather after the procedure for appointment had commenced, the petitioner managed to get the land transferred by succession in his name. He has submitted that the respondent had experience of one year as Lambardar of the Village. He has further submitted that as per report dated 25.11.2014 of Tehsildar Bawal, mother of the petitioner, namely, Smt. Birmati was in illegal possession of the land of her neighbour. Besides this the petitioner has a criminal background as he is facing prosecution in 3 FIRs. He has submitted that the learned Collector had failed to appreciate the same and thus, the learned Commissioner has rightly appreciated the inter-se merits and the settled law hence, there is no illegality in the impugned orders passed.

Heard.

It is evident from the submissions made and the record produced that the process for appointment of the Lambardar commenced in the Village after the death of Trikha Ram. In the process, applications for the post of Lambardar were invited and after scrutiny only two candidates i.e. the petitioner and respondent No.2 remained in the fray. On the analysis of the inter-se merits the recommendation was made, the Collector finally found the petitioner to be more suitable for the post and thus, he was appointed. However, the same was assailed by respondent No.2 by way of filing of appeal and the Appellate authority set aside the orders dated 28.10.2015, 17.11.2015 and 02.03.2016 and remanded the case with a direction to appoint respondent No.2 as Lambardar of the Village vide order dated 26.05.2016. Order dated 26.05.2016 was assailed by the petitioner by way of filing of revision before the learned Financial Commissioner, but the same was declined vide order dated 23.11.2016. The petitioner approached this Court by way of filing CWP-1215-2017 and this Court vide order dated 26.04.2017 set aside the impugned order dated 23.11.2016 and remanded the case to the Financial Commissioner for decision afresh. Learned Financial Commissioner again heard the case, however, earlier decision was maintained in favour of respondent No.2-Hukam Singh. Submissions have been made by both the sides, and both claim to be more meritorious than one another. The Learned Collector finding the petitioner to be more qualified and younger in age in addition to the other factors, appointed the petitioner as Lambardar of the Village. On the other hand, respondent No.2 raised various arguments in support of his contention that he was more meritorious, whereas, petitioner was also stated to be involved in criminal activities as he is facing prosecution in three FIRs. On the perusal of the

record, the view taken by the Appellate Court in remanding the case to the Collector for decision afresh could have served the interest of justice, however, by directing the Collector to appoint respondent No.2 the Lambardar of the Village defeated the very purpose of remanding the case for decision afresh. Learned Appellate Court in the considered opinion of this Court fell in error in issuing direction for appointment of respondent No.2 as Lambardar of the Village.

In Sukhjinder Pal Singh Vs. State of Punjab and others, 2016(3)R.C.R.(Civil)725, this Court 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.”

There is no gainsaying that subjective satisfaction of the Collector in the appointment of Lambardar has to be given due weightage and should not be normally interfered with and thus, if there appears to be some ignorance regarding appreciation of inter-se merits, then the Collector should be given another opportunity to re-appreciate the merits of the candidates. Thus, this Court is of the opinion that the impugned orders 02.08.2017 and 26.05.2016 suffer from patent illegality and hence, are set aside to the extent of directing the Collector to appoint respondent No.2 as Lambardar of the village. Rest of the observations made in the orders with regard to remand of the case to the Collector for decision afresh is kept intact. Now the Collector will re-appreciate the case of both the candidates i.e. the petitioner and respondent No.2 and take decision thereon

independently after hearing both the parties. The Collector is directed to conclude the proceedings expeditiously preferably within three months from the date of receipt of the certified copy of this order.

Petition stands disposed of.

28.07.2023
sharmila

Whether Speaking/Reasoned
Whether Reportable

(RAJESH BHARDWAJ)
JUDGE

: Yes/No
: Yes/No