

CWP-4119-2016 (O&M)Neutral Citation No. 2023:PHHC:146310 -1-

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

CWP-4119-2016 (O&M)

Date of Decision: November 02, 2023

Sunil Kumar

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE RAJESH BHARDWAJ

Present: Mr.Ankit Chaudhary, Advocate
for the petitioner.
Mr.Rajneesh Chadwal, AAG, Haryana
Mr.Sanjay Verma, Advocate
for respondent No.4.

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RAJESH BHARDWAJ, J.(ORAL)

Petitioner has approached this Court praying for issuance of a writ in the nature of certiorari for setting aside the order dated 18.01.2016, Annexure P-3 passed by respondent No.1 being wrong and illegal. It is further prayed to stay the operation of the impugned order dated 18.01.2016, Annexure P-3, during pendency of the present petition.

Adumbrated facts of the case are that on the death of earlier Lambardar Shoki Chand of general category of village Satri on 02.03.2010, the process for appointment of new Lambardar was initiated. On receiving the necessary approval, munadi was conducted in the village to invite applications from the eligible candidates. In pursuance of the same, 33 applications were received. However, many of the candidates withdrew their applications later on and thus only three candidates, namely, Shri Arvind Kumar s/o Shri Kanshi Ram, Sh.Tara Chand s/o Shokhi Chand (respondent No.4) and Sh.Sunil Kumar s/o Sh.Prem Pal (petitioner)

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remained in fray. Character verification of all the three candidates was conducted and their inter se merits were evaluated. On consideration of merits, the petitioner was found to be 40 years of age and 8th pass. Besides this, he owned 2.5 acres of agricultural land. So far respondent No.4-Tara Chand is concerned, he was found to be 56 years of age and matric pass and besides this he owned 2.5 acres of land. Learned Collector, on evaluation of the inter se merits, found petitioner- Sunil Kumar to be more suitable candidate and thus appointed him as Lambardar of the village vide its order dated 29.05.2012. Aggrieved by the same, respondent No.4 assailed the said order by way of filing an appeal before the learned Commissioner Rohtak Division Rohtak, who after hearing both the sides and appreciating the record of the case, found no merit in the appeal and thus dismissed the same vide its order dated 23.01.2014. Aggrieved by the same respondent No.4 filed revision before the learned Financial Commissioner contending that the order passed by the learned Collector, which has been upheld by the Commissioner, is unsustainable in the eyes of law. Learned Financial Commissioner accepted the revision and remanded the case to the Collector with a direction to decide the case afresh strictly on merits. Aggrieved by the same, the petitioner is before this Court by way of filing the present petition.

Learned counsel for the petitioner has vehemently contended that inter se merits of all the candidates in fray were evaluated. He submits that petitioner was younger in age than respondent No.4. He has also submitted that he was middle pass and as there is no minimum qualification required for the post of Lambardar, finding the petitioner more meritorious,

he was rightly appointed as Lambardar of the village by the Collector vide

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its order dated 29.05.2012. He submits that respondent No.4 assailed the same by way of filing an appeal before the Commissioner, however, learned Commissioner also found no infirmity in the order passed by the Collector and dismissed the same. He submits that respondent No.4 was 56 years of age and thus was elder in age than the petitioner. He submits that respondent No.4 filed the revision before the learned Financial Commissioner but learned Financial Commissioner failed to appreciate the evidence on record and the law settled and thus illegally set aside both the orders passed by the Collector and the Commissioner. He submits that petitioner owned 2.5 acres of land and he remained Sarpanch of the village from 2005 and 2010 and during his tenure a lot of development was done for which he was awarded with the Nirmal Puruskar by the Government. He further submits that petitioner is involved in social work as well and he had been awarded the appreciation certificate for construction of toilets in almost 100% houses in the village. He has further submitted that the petitioner also promoted the cases of family planning in the village. It is submitted that as per the law settled, the order passed by the Collector cannot be interfered with in a cavalier manner but the learned Financial Commissioner has set aside the same without there being any perversity in the order passed by the Collector. He has relied upon the judicial precedent of Hon'ble Apex Court in **Mahavir Singh vs Khiali Ram and others** 2009(3) SCC 439, judgment of this Court in **Ujagar Singh vs State of Punjab** 2008(3) RCR (Civil) 28 and **Dalip Singh vs Financial Commissioner etc.** 2008(2) RCR (Civil) 359. He submits that in view of the same, the impugned order being unsustainable in law, deserves to be set aside.

learned counsel for the petitioner.

Per contra, learned counsel for respondent No.4 has vehemently opposed the submissions made by counsel for the petitioner. He has submitted that though respondent No.4 was elder in age than the petitioner but he had no experience of discharging the duties of Lambardar. He further submits that respondent No.4 being matric was more qualified than the petitioner. He submits that as per the Mandate Rule 15 of the Punjab Land Revenue Rules, the Lambardar is the head of the village and he should be a man of repute. It is submitted that CWP No.1309 of 2012 titled **Subhash Chand vs State of Haryana and others** was filed before this Court against the petitioner Sunil Kumar in which this Hon'ble Court had passed the order that respondent No.1-Collector, Karnal, would decide Annexure P-3 within two months. He has submitted that the learned Deputy Commissioner, Karnal, thereafter decided the same and it was found that Sunil Kumar, ex-Sarpanch had caused loss of Rs.21,394/- to the Gram Panchayat and thus he had embezzled the money of Gram Panchayat. He has submitted that as it is evident from the record that the petitioner had embezzled the Gram Panchayat fund, thus he does not have unblemished record. He submits that the Collector having miserably failed to appreciate the same and without giving any finding on the same has passed the impugned order, which is unsustainable in the eyes of law. He further submits that the learned Commissioner as well has failed to appreciate the same and thus has illegally dismissed the appeal filed by respondent No.4. He submits that the learned Financial Commissioner has rightly appreciated the facts and circumstances of the case and the evidence on record and thus has passed the impugned order in accordance with law which suffers from no perversity. It

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is submitted that petition being devoid of any merit deserves to be dismissed.

Heard.

As is evident from the facts and circumstances of the case, the proceedings for appointment of new Lambardar was initiated on the death of earlier Lambardar. On receiving the applications from the interested candidates finally three candidates remained in fray including the petitioner and respondent No.4. On evaluation of their merits, the Collector found the petitioner to be more meritorious and thus, appointed him as Lambardar of the village vide order dated 29.05.2012. The appeal filed by respondent No.4 was dismissed by learned Commissioner. However, the revision filed by respondent No.4 was accepted by learned Financial Commissioner wherein both the orders were set aside and the case was remanded for decision afresh. It is apparent from the record that the petitioner remained Sarpanch of the village before his appointment as the Lambardar. As is evident from the record, CWP-1309-2012 was filed against the petitioner wherein the Collector was directed to decide the allegations raised in that case. The Deputy Commissioner had directed the petitioner to deposit the amount of Rs.21,354/-, which was deposited by him. This was contended by counsel for respondent No.4 before the Collector at the time of his appointment. However, the same was not appreciated by learned Collector. Needless to say that as per Mandate of Rule 15 of Punjab Land Revenue Act, reputation of the candidate for appointment of the Lambardar is to be given due preference. Learned Financial Commissioner, in the facts and circumstances, has remanded the case for decision afresh. Though as per the law settled, choice of the Collector cannot be interfered in a cavalier manner

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and the same can be interfered if there appears to be any perversity in the order.

In the considered opinion of this Court, in the light of the facts and circumstances of the case and the law settled, this Court finds that the view taken by the learned Financial Commissioner in remanding the case for deciding the matter afresh is in the interest of justice. Thus, this Court does not find any infirmity in the order passed by learned Financial Commissioner. The petition, being devoid of any merit, is hereby dismissed. However, as is apparent that appointment of the petitioner was made in the year 2012, thus the Collector is directed to decide the case afresh expeditiously preferably within three months from the date of receipt of a certified copy of this order.

In view of the disposal of main case, pending CMs applications are also disposed of.

November 02, 2023
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(RAJESH BHARDWAJ)
JUDGE

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| 1. Whether speaking/reasoned ? | Yes/No |
| 2. Whether reportable ? | Yes/No |