

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CWP-19399-2022(O&M)

Date of decision : 09.01.2023

Pardeep Kumar

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr.Ashwani Bakshi, Advocate
for the petitioner.

Ms.Upasana Dhawan, AAG, Haryana
for respondents no.1 to 3.

VIKAS BAHL, J.(ORAL)

This is a civil writ petition under Articles 226/227 of the Constitution of India for issuance of a writ, order or direction, especially a writ in the nature of certiorari quashing the order dated 01.06.2022 passed by respondent no.1.

Brief facts of the present case are that after the death of Kapoor Singh, the post of Lambardar (General category) of village Rithal Phougat, Tehsil and District Rohtak got vacated and applications were invited from interested persons for filing up the said vacancy, by the Tehsildar, Rohtak. In pursuance of the same, 9 persons, including the present petitioner Pardeep Kumar and respondent no.4-Naveen, applied for the said post. The Collector vide order dated 24.07.2020, after considering the comparative merits and demerits of all the candidates, appointed respondent no.4 as the

respondent no.4 as the Lambardar, the Collector had taken into consideration that respondent no.4 was a graduate and was the real nephew of the deceased Kapoor Singh, Lambardar and had helped his uncle in the work of Lambardar and had also produced the receipts of donations given by him to various organizations and had a deposit of Rs.41,50,500/- in Small Saving Scheme and also had two acres of agricultural land and one house and had also done MPHWS course and had also produced No Dues Certificate from the Electricity Department. The merits of other candidates, including the present petitioner, were also taken into consideration and ultimately, after drawing a comparison, it was found that respondent no.4 was more educated and was younger in age and was also the real nephew of deceased Kapoor Singh Lambardar and had the requisite knowledge concerning the work of Lambardar and even the Tehsildar, Rohtak had recommended the name of respondent no.4 for the post of Lambardar and thus, respondent no.4 was appointed as the Lambardar of village Rithal Phougat in the General category.

Four appeals were filed against the said order by four different candidates including the present petitioner. The Divisional Commissioner Rohtak, Division Rohtak, after reconsidering the merits and demerits of the candidates, had found that the present petitioner was a better candidate than the rest and accordingly, had set aside the order passed by the Collector and had directed the appointment of the present petitioner as Lambardar vide order dated 15.04.2021. While passing the said order, the Commissioner had observed that respondent no.4-Naveen's father had occupied Panchayat's land and thus, the said factor was one of the factors which weighed with the Divisional Commissioner in allowing the appeal filed by

the present petitioner.

Four revision petitions were filed by four candidates including respondent no.4 before the Financial Commissioner, Haryana, Chandigarh and the Financial Commissioner, Haryana, Chandigarh allowed the revision petition filed by respondent no.4-Naveen vide order dated 01.06.2022 after coming to the conclusion that there was no illegality and perversity in the order dated 24.07.2020 passed by the Collector and had thus, set aside the order of the Divisional Commissioner and restored the order of the Collector and appointed respondent no.4 as the Lambardar. In the said order, the Financial Commissioner, Haryana had observed that it is well settled law that the choice of the Collector for the appointment of Lambardar should not be interfered with unless the same is perverse or patently illegal. It was found that the present petitioner was a defaulter of a bank loan and there was no justification for appointing the petitioner as Lambardar of the village. The fact that the Rohtak Central Cooperative Bank (RCCB) had filed a complaint bearing no.634 of 2018 against the present petitioner and that the said case was still pending before the Chief Judicial Magistrate, Rohtak, was taken note of. It was further found that even the observation of the Commissioner to the effect that the father of the petitioner was in illegal occupation of the panchayat land had not been proved inasmuch as from the demarcation report, it had been revealed that the father of respondent no.4 was not in illegal possession of the panchayat land. It is the order dated 01.06.2022 passed by the Financial Commissioner which has been challenged by the petitioner in the present writ petition.

On 31.08.2022, a coordinate Bench of this Court was pleased to

pass the following order:-

“Father of the petitioner namely Jagdish was appointed as Lambardar by the Collector. The appointment was set aside in appeal by the Commissioner and revision before the Financial Commissioner was dismissed. Thereafter, process of appointment of Lambardar was re-initiated and respondent No. 4 has been appointed as Lambardar. Appeal of the petitioner has been allowed but the appellate order has been reversed by the Financial Commissioner.

Learned counsel for the petitioner has argued that the Collector has committed a factual error in finding that respondent No. 4 was the real nephew of the deceased Lambardar. Thus, the Financial Commissioner was in error in reversing the order of the Commissioner.

There is nothing on record to suggest that the aforementioned finding is factually erroneous and, thus, learned counsel for the petitioner prays for time to place on record relevant material.

Adjourned sine die.

To be listed as and when an appropriate application is filed in this regard.

(SUDHIR MITTAL)
JUDGE

August 31, 2022”

A perusal of the above order would show that the argument which was sought to be raised by learned counsel for the petitioner on 31.08.2022 was to the effect that the Collector had committed a factual error in finding that respondent no.4 was the real nephew of the deceased Lambardar and the matter was adjourned *sine die*. Thereafter, CM-20699-2022 was moved for placing on record the certificate issued by Jyoti, Sarpanch, Gram Panchayat Rithal Phogat, District Rohtak and the matter was taken up for arguments. A perusal of the said document would show that it had been certified therein that the father of Kapoor Singh (deceased

and thus, it was prima facie clear that respondent no.4 was the nephew of deceased Lambardar Kapoor Singh and the said aspect has been fairly admitted by the petitioner before this Court.

Learned counsel for the petitioner has primarily argued that the Commissioner while passing the order dated 15.04.2021 had found that the father of respondent no.4 was in possession of panchayat land and since respondent no.4 is residing with his father, thus, on the said account, respondent no.4 does not deserve to be appointed as the Lambardar and his appointment deserves to be set aside.

Notice of motion in the present case has not been issued but learned State counsel appearing for respondents no.1 to 3 has prepared the matter as an advance copy of the writ petition had been given to her. It is stated by learned State counsel on instructions from Mr.Arvind, Halqa Patwari that the certificate issued by Jyoti, Sarpanch on 07.09.2022 (Annexure P-11) could not have been issued by her as her tenure as a Sarpanch of Gram Panchayat, Rithal Phogat, District Rohtak had expired in February 2022. It is further stated that the demarcation had been done in the presence of Naib Tehsildar Rohtak and Kanungo and also the District Revenue Officer, Rohtak and the father of respondent no.4 was not found to be in illegal possession and it was some other persons who were found to be in illegal possession and even the proceedings qua taking back the possession of the lands which were in illegal possession of the said persons have been completed.

This Court has heard learned counsel for the petitioner and the learned State counsel and has perused the paper book.

It has been repeatedly held by this Court as well as the Hon'ble

Supreme Court that the choice of the District Collector for the appointment of the Lambardar is not to be lightly set aside moreso, when there is no perversity or illegality in the order of the Collector and even in case two views are possible.

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

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.

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. A perusal of the order of the Collector dated 24.07.2020 (Annexure P-5) would show that he had taken into

present petitioner and respondent no.4 and had found that respondent no.4 was younger and more educated and was the real nephew of deceased Lambardar Kapoor Singh and also had the knowledge concerning the work of a Lambardar and therefore, had appointed respondent no.4 as the Lambardar of village Rithal Phogat (General category). It has not been disputed before this Court that respondent no.4 is a graduate whereas the petitioner is 10th pass. A further perusal of the order of the Collector would also show that the argument of learned counsel for respondent no.4 to the effect that he had helped his uncle Kapoor Singh in the work of Lambardari was also noticed and even the fact that donations had been made by respondent no.4 to various organizations and also the fact that respondent no.4 was financially strong inasmuch as he had deposited Rs.41,50,500/- in Small Savings Scheme, had two acres of agricultural land and one house was also noticed. The fact that 72 persons had supported respondent no.4 and respondent no.4 had done the MPHWS course was also noticed. It has not been shown to this Court that the order passed by the Collector was perverse or illegal in any manner or against any provision of law.

The Commissioner, vide order dated 15.04.2021, had observed that the father of respondent no.4 had occupied panchayat land and had also re-appreciated the merits and demerits of the candidates and had appointed the petitioner as the Lambardar in place of respondent no.4. The learned Financial Commissioner vide order dated 01.06.2022 had set aside the order of the Commissioner and had upheld the order of the Collector after observing that it was settled law that the choice of the Collector to appoint the Lambardar should not be interfered with, unless the same is perverse or illegal. It was further observed by the Financial Commissioner that the

petitioner was a defaulter of bank loan which had been taken from the Rohtak Central Cooperative Bank and the said Bank had even filed a criminal complaint bearing no. 634 of 2018 against the present petitioner and the same was pending before the Chief Judicial Magistrate, Rohtak. A perusal of Rule 15(d) of the Punjab Land Revenue Rules, as applicable to the Haryana, would show that one of the considerations for appointment as headman (Lambardar) is the “*freedom from indebtedness*” of the candidate. Even a perusal of Rule 16 of the said Rules which deals with dismissal of the headman would show that Rule 16(ii) provides that the headman may be dismissed where “*he is seriously embarrassed by debt*”. Thus, being in debt is a very serious demerit while being considered for the appointment as a Lambardar. In the present case, it is not in dispute that at the time of passing of the order dated 01.06.2022 by the Financial Commissioner, the petitioner was a defaulter of a bank loan, although it has been pointed out by learned counsel for the petitioner before this Court that after passing of the order of the Financial Commissioner, the said dues have been paid.

This Court has found that the order passed by the Collector dated 24.07.2020 was in accordance with law and he had taken into consideration all the relevant factors which were brought to his notice and there is no perversity or illegality in the same. The Commissioner had illegally set aside the order of the Collector and the Financial Commissioner has rightly set aside the order of the Commissioner and restored the order of the Collector and the orders of the Financial Commissioner as well as the Collector thus, deserve to be upheld.

Before parting it would be relevant to crystalize the points for rejection of the plea raised by learned counsel for the petitioner with

respect to the alleged illegal possession of Panchayat land by the father of respondent no.4 and in the said regard, the following factors are relevant and are hereby detailed:-

- i) It is not in dispute that the said plea was not raised before the Collector. Thus, the order of the Collector cannot be stated to be perverse or illegal on account of a plea which was not even raised before the Collector and has been sought to be raised only subsequently after the passing of the order of the Collector.
- ii) The Financial Commissioner has specifically noticed the fact that the demarcation report which had been produced on record clearly stated that the father of respondent no.4 was not in illegal possession. Learned State counsel has also reiterated the said fact. Learned counsel for the petitioner has also fairly placed on record the report Annexure P-6 (at page 43 of the paper book) which reveals that the father of the petitioner was not named to be one of the persons who were in illegal possession as per the said demarcation report, thus, the finding of the Commissioner in the order dated 15.04.2021 on the said aspect was perverse and illegal.
- iii) At any rate, it has not been the case of the petitioner at any stage that respondent no.4 was in illegal possession of any panchayat land. No law has been cited before this Court to show that even assuming, for the sake of argument, that any relative of the candidate in question is or was at some stage in illegal possession of the Panchayat land, even the said candidate can be disqualified on the said ground.

Keeping in view the above said facts and circumstances and the

law laid down in the above said judgments, finding no merit and the present petition is dismissed.

Pending miscellaneous application stands disposed of in view of the abovesaid order.

(VIKAS BAHL)
JUDGE

January 09, 2023
Davinder Kumar

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