

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

CWP-7249-2016 (O&M)

Date of Decision: 08.12.2023

Zile Singh

..... Petitioner

Versus

Financial Commissioner and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Sandeep Goyal, Advocate, for the petitioner.

Mr. Rajneesh Chadwal, Assistant Advocate General, Haryana.

Mr. S.S. Momi, Advocate, for respondent No.4.

Rajesh Bhardwaj, J.

Prayer in the present petition is for quashing the order dated 15.03.2016 (Annexure P-3) passed by respondent No.1 vide which the well reasoned orders dated 13.04.2013 (Annexure P-1) and 08.05.2013 (Annexure P-2) passed by respondents No.3 and 2, respectively, have been set aside and respondent No.4 has been appointed as Lambardar of the village.

Adumbrated facts of the case are that on account of death of Bhagwana, earlier Schedule Caste Lambardar of the village Songri, post of Lambardar fell vacant and thus, process for the appointment of new Lambardar was initiated. *Mushtari Munadi* was conducted in the village for inviting applications from the interested candidates. In pursuance to the same, two applications from the candidates Sohan Lal (respondent No.4) and Zile Singh (petitioner). After evaluating the merits and demerits of both the candidates, learned Collector appointed respondent No.4 as Lambardar of the village vide order dated 30.11.2010, which was impugned by the petitioner by way of filing an appeal before the learned Commissioner, Ambala Division, Ambala who accepted the same vide order dated

27.07.2011 remanded the case to the learned District Collector to decide the case afresh. Respondent No.4 filed a revision against order dated 27.07.2011 before learned Financial Commissioner, which was dismissed vide order dated 04.12.2012. In the second round, two applications from petitioner and respondent No.4 were received. Character verifications of both the candidates were conducted and on the appreciation of merits and demerits of the applicants, Zile Singh (petitioner) was found to be 30 years of age and 8th class pass by qualification. On the other hand, Sohan Lal (respondent No.4) was found to be 24 years of age and 8th class fail by qualification. The learned Collector on evaluation of the inter-se merits of the candidates in fray, finding the petitioner to be more meritorious candidate appointed him as Lambardar of the village vide order dated 18.04.2013 (Annexure P-1). Aggrieved by the same, respondent No.4 filed an appeal before the Commissioner, Ambala Division, Ambala. Learned Divisional Commissioner after hearing both the sides finding no merit in the order passed by the Collector, dismissed the appeal vide order dated 08.05.2015 (Annexure P-2). Still aggrieved by the same, respondent No.4 filed revision before the learned Financial Commissioner, who heard both the sides and re-appreciated the record and set aside both the orders passed by the Collector and the Commissioner by directing the District Collector to issue Sanad Lambardari to respondent No.4 vide order dated 15.03.2016 (Annexure P-3). Hence, aggrieved by the same, the petitioner is before this Court by way of filing the present petition.

It has been vehemently contended by learned counsel for the petitioner that this is second round of litigation between the parties. It is submitted that on the comparison of the inter-se merits of both the

candidates, it is apparent that petitioner was 30 years of age and 8th class pass, whereas, respondent No.4 though was 24 years of age, however, he was 8th class fail and thus, less qualified than the petitioner. He submits that the petitioner though was involved in false case FIR No.56 dated 09.04.2001 registered under Sections 61/1/14 of Excise Act, however, he was acquitted in the same and thus, there remains no stigma against him. He submits that the petitioner was rightly found more meritorious and thus, was appointed as Lambardar of the village by the Collector. It is submitted that the appeal filed by respondent No.4 was also dismissed and thus, the order passed by the Collector was upheld. He further submits that learned Financial Commissioner has failed to appreciate the evidence on record and thus, has drawn wrong conclusion in setting aside the well reasoned order passed by the learned Collector and the Commissioner. He submits that at the time of appointment of the petitioner as Lambardar, respondent No.4 was 8th fail, however, after the petitioner having been appointed, he acquired qualification of matriculation in the year 2015, which has been relied upon by the learned Financial Commissioner and thus, held respondent No.4 to be more qualified than the petitioner. He submits that it is an admitted fact that the qualification of respondent No.4 at the time of appointment was 8th fail, which was relevant for consideration and thus, matriculation done subsequently could not have been taken into consideration for setting aside the appointment of the petitioner as Lambardar of the village. He has further submitted that the Collector is the main authority to appoint a Lambardar and his findings cannot be interfered with in a casual manner unless and until it suffers from patent illegality or perversity. He further submits that the order of learned Financial Commissioner being unsustainable in the eyes

of law deserves to be set aside.

Per contra, learned counsel for respondent No.4 has opposed the submissions made by counsel for the petitioner. He has submitted that on comparison of the inter-se merits of both the candidates, it is apparent that respondent No.4 was younger than the petitioner, though he was 8th fail at the time of appointment, but later on he completed his matriculation, which the learned Financial Commissioner has rightly appreciated the same and held him more qualified than the petitioner. He submits that though the petitioner has been acquitted in the criminal case registered against him, however, stigma still remained against him. He has submitted that respondent No.4 has no criminal antecedents and thus, he was more meritorious than the petitioner which fact was ignored by the learned Collector and the learned Commissioner. He submits that if the order of the Collector suffers from patent illegality, the same can be interfered with by the higher authorities. He further submits that the order passed by the learned Financial Commissioner suffers from no illegality, hence, the present petition deserves to be dismissed.

Evidently, this is the second round of litigation between the parties. As is evident from the perusal of the inter-se merits of the candidates, at the time of appointment by the Collector, the petitioner was elder in age than respondent No.4, but he was 8th class pass at that time, whereas, respondent No.4 was 8th class fail. Learned Financial Commissioner has observed that there is no minimum qualification required for the appointment of the Lambardar in the Schedule Caste category, however, the learned Financial Commissioner has taken into consideration the matriculation done by respondent No.4 after the petitioner having been appointed as Lambardar. Besides this the petitioner was involved in a

criminal case, however, he was acquitted by the trial Court in the same. Learned Financial Commissioner though set aside the orders passed by the Collector and the learned Commissioner, however, instead of remanding the case for decision afresh, has taken into consideration the overall merits of both the candidates and appointed respondent No.4 as Lambardar of the village. Thus, the view taken by the learned Financial Commissioner in appointing respondent No.4 as Lambardar, in the considered opinion of this Court is erroneous and hence, the impugned order dated 15.03.2016 passed by the learned Financial Commissioner is set aside. Resultantly, the case is remanded to the learned Collector for decision afresh by taking into consideration the overall merits and demerits of both the candidates without being influenced by the earlier decision taken.

The impugned order is modified accordingly. The petition is disposed of in above-mentioned terms.

Keeping in view the facts and circumstances of the case, the learned Collector is directed to conclude the process for appointment of Lambardar afresh after hearing both the sides within a period of three months from the date of receipt of certified copy of this case.

08.12.2023
sharmila

Whether Speaking/Reasoned
Whether Reportable

(RAJESH BHARDWAJ)
JUDGE

: Yes/No
: Yes/No