

108

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

CWP No.18403 of 2023

Date of decision : 01.09.2023

Hartirath Singh

..... Petitioner

Versus

State of Punjab and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Navjot Singh, Advocate
for the petitioner.

Mr. Arun William, AAG, Punjab.

Mr. Sherry K. Singla, Advocate
for the caveator/respondent No.4.

RAJESH BHARDWAJ, J.

Present writ petition has been filed for issuance of a writ in the nature of certiorari for quashing the order dated 01.06.2023 (Annexure P-1) passed by the learned Financial Commissioner, Punjab whereby the appeal preferred by respondent No.4 for appointment as a Lambardar of village Harigarh, District Barnala has been accepted and order dated 18.03.2021 (Annexure P-2) passed by the learned Commissioner, Patiala Division, District Patiala has been set aside without appreciating the facts of the case and respective merits and demerits of the parties. Further prayer has been made for staying the operation and effect of the order

dated 01.06.2023 (Annexure P-1) passed by the learned Financial Commissioner.

Brief facts of the case are that on the death of Surjit Singh, Lambardar of village Harigarh, Tehsil & District Barnala on 02.12.2018, the post of Lambardar fell vacant. For filling up the post, process for appointment of new Lambardar was initiated and the approval from the Deputy Commissioner was taken on 04.09.2019. Resultantly, the Naib Tehsildar, Dhanaula conducted the proclamation through field staff on 20.01.2020. In pursuance to the same, three applications were received from the candidates, namely, Harinder Singh son of Surjit Singh (respondent No.4), Harpreet Singh son of Sukhdev Singh and Hartirath Singh son of Labh Singh (petitioner). The petitioner was found to be 35 years of age and he owned 17 acres of land. So far as respondent No.4 is concerned, he was found to be 60 years of age and was B.A. pass. Besides this, he owned 14 kanal 19 marlas of land. On the scrutiny of applications, the Naib Tehsildar, Dhanaula recommended the name of Hartirath Singh i.e. the petitioner for the post of Lambardar. Thus, the Sub Divisional Magistrate Barnala, recommended the name of petitioner for the appointment of Lambardar of village Harigarh. The Collector appreciated the complete record of candidates and thus, on comparing the *interse* merits of candidates, appointed respondent No.4, namely, Harinder Singh as the Lambardar of the village vide his order dated 17.12.2020. Aggrieved by the same, the petitioner filed an appeal under Section 13 of the Punjab Land Revenue Act 1887 before the learned Divisional Commissioner, Patiala.

The Divisional Commissioner, after hearing both the sides, accepted the appeal filed by the petitioner and thus, set aside the order passed by the District Collector dated 17.12.2020 by appointing the petitioner-Hartirath Singh as the Lambardar of village Harigarh vide his order dated 18.03.2021. Aggrieved by the same, respondent No.4 filed an appeal under Section 13 of the Punjab Land Revenue Act before the learned Financial Commissioner, Punjab. The learned Financial Commissioner, after hearing both the sides, finding merit in the appeal filed by respondent No.4, accepted the same and thus, set aside the order passed by the Commissioner and appointed respondent No.4 as the Lambardar of village Harigarh vide his order dated 01.06.2023. Hence, the petitioner is before this Court by way of filing the present writ petition.

Learned counsel for the petitioner has vehemently contended that on comparing the *interse* merits of both the petitioner as well as respondent No.4, the petitioner was obviously younger in age than respondent No.4. He submits that the petitioner was 10+2 pass and thus, was completely eligible for the appointment of Lambardar. He submits that respondent No.4 had faced a prosecution for the offence under Section 420 IPC. He submits that learned Collector had fallen in error in overlooking the evidence on record and thus, had drawn a wrong conclusion in appointing respondent No.4 as the Lambardar. He submits that respondent No.4 is not even residing in the village and thus, he could not have been appointed as the Lambardar of village Harigarh. He submits that the learned Commissioner had rightly set aside the cryptic order passed

by the District Collector and thus, had rightly appointed the petitioner to be the Lambardar. He submits that the learned Financial Commissioner without appreciating the facts and circumstances of the case and the law settled, has illegally set aside the well reasoned order passed by the Commissioner, which is totally unsustainable in the eyes of law. He submits that the petitioner being younger in age than respondent No.4 was more meritorious but this fact was ignored by both the Collector and by the Financial Commissioner. He further submits that the impugned order being unsustainable in the eyes of law deserves to be set aside by restoring the order passed by the learned Divisional Commissioner dated 18.03.2021.

Per contra, learned counsel for respondent No.4 has opposed the submissions made by learned counsel for the petitioner. He submits that though respondent No.4 was elder in age but he had much more experience than that of the petitioner. He further submits that respondent No.4 was never named in the FIR. However, he was illegally summoned under Section 319 Cr.P.C. He has drawn attention of this Court to the revision petition filed against the summoning order dated 18.05.2018 passed by learned Judicial Magistrate First Class, Barnala wherein respondent No.4 was summoned under Section 319 Cr.P.C. He submits that the Revisional Court after hearing both the sides had accepted the revision petition filed by respondent No.4 and others vide order dated 02.07.2019 and thus, the order dated 18.05.2018 summoning respondent No.4 under Section 319 Cr.P.C. was set aside by the Revisional Court. He has submitted that once the summoning order had been set aside by the Revisional Court, there was

no stigma attached to the antecedents of respondent No.4. Hence, the view taken by the learned Collector in appointing respondent No.4 as the Lambardar suffers from no perversity. He submits that as per law settled, the order passed by the Collector cannot be interfered in a casual manner, unless, the same suffers from patent illegality but view taken by the learned Commissioner was totally perverse. He submits that the Commissioner not only set aside the order passed by the Collector but appointed the petitioner to be the Lambardar of the village Harigarh, which is totally against the settled principles of law. He has submitted that the learned Financial Commissioner committed no illegality in accepting the appeal filed by respondent No.4 and thus, has rightly restored the order passed by the Collector appointing respondent No.4 to be the Lambardar. He has submitted that the impugned order suffers from no perversity and thus, the petition being devoid of any merit be dismissed.

I have heard learned counsel for both the parties and perused the material on record.

After hearing learned counsel for both the sides and perused the material on record, it is apparent that on the death of the earlier Lambardar, namely, Surjit Singh of village Harigarh on 02.12.2018, the post of Lambardar fell vacant. For filling up the same, process for appointment of new Lambardar was initiated and approval from the Deputy Commissioner was taken on 04.09.2019. Resultantly, the Naib Tehsildar, Dhanaula conducted the proclamation on 20.01.2020 and in pursuance to the same, three applications were received. On scrutiny of the applications,

the Naib Tehsildar, Dhanaula recommended the name of petitioner as the petitioner was found to be 38 years of age and owned 17 acres of land. Besides this, respondent No.4 was found to be 60 years of age and was B.A. pass and owned 14 kanal 19 marlas of land. The Sub Divisional Magistrate, Barnala, recommended the name of petitioner for the post of Lambardar of village Harigarh. However, the District Collector, on comparing *interse* merits of the candidates, found respondent No.4 to be more meritorious and thus, he was appointed as the Lambardar of village Harigarh vide his order dated 17.12.2020. Aggrieved by the same, the petitioner filed an appeal before the Commissioner, which was accepted and thus, the order passed by the District Collector was set aside. Besides this, the petitioner was appointed as the Lambardar. The appeal was filed by respondent No.4 before the Financial Commissioner. The view taken by the Commissioner was found to be perverse and thus, same was set aside and order passed by the District Collector was restored.

This Court in “***Sukhjinder Pal Singh Vs. State of Punjab and others***”, 2016(3)R.C.R.(Civil)725, 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.”

It is the settled principle of law that the Choice of the Collector should not be normally disturbed unless some grave discrepancy is observed in the same.

The issue regarding whether the Appellate Court can appoint the candidate of its choice by setting aside the choice of the Collector is already pending consideration before the larger Bench of this Court. Though it is evident from the record produced that respondent No.4 was summoned under Section 319 Cr.P.C. to face the prosecution. However, the same was set aside in revision petition filed by respondent No.4. Thus, at the time of appointment of respondent No.4 as the Lambardar by the District Collector dated 17.12.2020, there was no stigma against respondent No.4 as contended by learned counsel for the petitioner.

However, in the considered opinion of this Court, the view taken by the Collector in appointing respondent No.4 as the Lambardar which was also upheld by the learned Financial Commissioner suffers from no perversity and as such the same is affirmed. The petition being devoid of any merit is hereby dismissed.

01.09.2023

rittu

(RAJESH BHARDWAJ)
JUDGE

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