

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

**CWP No.3259 of 2018
Reserved on 03.10.2023
Date of Pronouncement: 07.10.2023**

Harbans Singh

..... Petitioner

Versus

**Financial Commissioner Punjab, Civil Secretariat,
Punjab, Chandigarh and others**

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Sunny K. Singla, Advocate
for the petitioner.

Mr. Arun William, AAG, Punjab.

Mr. N. P. S. Mann, Advocate
for 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 06.12.2017 (Annexure P-4) passed by respondent No.1 vide which the respondent No.1 has wrongly set aside the well reasoned order dated 02.12.2016 (Annexure P-3) passed by respondent No.2 and wrongly restored the order dated 28.01.2013 (Annexure P-2) passed by respondent No.3 and to uphold the order dated 02.12.2016 (Annexure P-3) passed by respondent No.2. Further prayer has been made for staying the implementation of order dated 06.12.2017 passed by respondent No.1.

Brief facts of the case are that on the death of earlier Lambardar, namely Harbans Singh, post of Lambardar in village Malookpur, Tehsil Nangal, District Roopnagar fell vacant. Hence, for the appointment of new Lambardar, the necessary approval was sought and mustri munadi was conducted for inviting the applications from eligible candidates. As a result, five applications from Balwinder Singh son of Husan Singh, Surjit Kaur wife of deceased Harbans Singh Lambardar, Gurcharan Singh son of Chajju Ram, Ramkes Singh son of Nanak Singh and Samrit Singh son of Ram Asra were received. Thereafter, Harbans Singh son of Jawala Singh i.e. the petitioner approached the Court of Sub Divisional Magistrate, Nangal for the appointment of Lambardar on the ground that he did not know about the mustri munadi conducted and he wanted to apply for the same. Resultantly, the Sub Divisional Magistrate, Nangal directed the fresh mustri munadi to be conducted and hence, the petitioner also filed his application for the appointment of Lambardar. On receipt of the applications, character verifications of all the candidates were got conducted. On the police verification, it was found that FIR No.110/04 dated 07.10.2004 was registered against Balwinder Singh i.e. respondent No.4 under Sections 466/447/465/467/468/471/120-B of IPC which was pending and FIR No.94/96 dated 04.06.1986 under Sections 147/148/149/323 of IPC was registered against Harbans Singh i.e. the petitioner in Police Station Una wherein compromise had been effected between the parties. On the comparison of *interse* merits of the petitioner and that of respondent No.4 by the Collector, it was found that petitioner was 54 years of age and 10th class pass and he had done the ITI in Fitter

Trade. Besides this, he owned 04 kanal 10 marla of land at village Malookpur (Punjab). He also owns 2 Kanal in village Gohlani and 07 kanal of land in Malookpur, Himachal Pradesh. On the other hand, respondent No.4-Balwinder Singh was 46 years of age and he was 9th pass. Besides this, he owned 09 kanal 04 marla of land in village Malookpur (Punjab) and 03 kanal land in Malookpur (Himachal Pradesh) and has 06 kanal land in village Bela Dhiani (Punjab). Learned District Collector on the evaluation of merits and demerits of the candidates, found Balwinder Singh i.e. respondent No.4 to be more meritorious and suitable and thus, appointed him as the Lambardar of the village vide his order dated 28.01.2013. Aggrieved by the same, petitioner and two other co-applicants, namely, Gurcharan Singh and Surjit Kaur filed the appeals before the Commissioner, Roopnagar Division, Roopnagar. All the appeals were heard together by learned Commissioner and were disposed of vide his common order dated 02.12.2016. After hearing both the sides, the learned Commissioner accepted the appeal filed by the petitioner and thus, set aside the order passed by District Collector dated 28.01.2013 and appointed the petitioner to be the Lambardar of the village. Aggrieved by the same, respondent No.4 filed the revision petition under Section 16 of the Punjab Land Revenue Act, 1887 before the learned Financial Commissioner, Punjab i.e. respondent No.1. Learned Financial Commissioner, after hearing both the sides, accepted the revision petition filed by respondent No.4 and thus, restored the order of District Collector dated 28.01.2013 vide her order dated 06.12.2017. 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 the initiation of process for appointment of Lambardar, petitioner and respondent No.4 along with co-applicants filed their respective applications. He submits that the petitioner though was more meritorious among all other candidates, however, the District Collector illegally rejected the merits of the petitioner and thus, appointed Balwinder Singh i.e. respondent No.4 to be Lambardar of the village. He submits that aggrieved by the same, the petitioner filed an appeal before the learned Commissioner. He submits that the learned Commissioner re-appreciated the evidence on record and the law settled and thus, found the petitioner to be more meritorious. He submits that respondent No.4 was facing trial in FIR No.110/04 dated 07.10.2004 registered under Sections 466/447/465/467/468/471/120-B of IPC but the District Collector ignored the same without giving any finding on the same. He submits that the learned Commissioner found the order passed by the Collector perverse and thus, rightly set aside the impugned order passed by the Collector dated 28.01.2013 and appointed the petitioner to be the Lambardar of village vide his order dated 02.12.2016. He further submits that respondent No.4 however filed the revision petition before respondent No.1, which has been illegally accepted by respondent No.1. He submits that it is an admitted fact that respondent No.4 was facing trial in FIR No.110/04 dated 07.10.2004 and thus, at the time of appointment, the trial against him was going on. He submits that acquittal of respondent No.4 subsequently on 28.05.2012 would be of no relevance as the stigma against respondent No.4 would remain on his character. He submits that the learned Collector

has not appreciated the same and thus, passed a non speaking order assigning no reason. He submits that as the order of learned Collector suffers from perversity, thus, the Commissioner has rightly set aside the same by appointing the petitioner as a Lambardar of the village. He submits that the learned Financial Commissioner has failed to appreciate the law settled that the order of the Collector can be interfered with if it suffers from perversity and thus, the learned Financial Commissioner having failed to appreciate the same has drawn a wrong conclusion in accepting the revision petition filed by respondent No.4. Learned counsel for the petitioner has relied upon the decisions passed by this Court in ***“Sombir vs. Financial Commissioner, Haryana and another”***, 2009(1) RCR (Civil) 280 and ***“Harjit Singh vs. State of Punjab and others”***, LPA No.2179 of 2017. He submits that the impugned orders being in contravention to the facts and circumstances of the case and the law settled, deserve to be set aside by appointing the petitioner as a Lambardar of the village.

Per contra, learned counsel for respondent No.4 has opposed the submissions made by learned counsel for the petitioner. He vehemently submits that on the comparison of *interse* merits of both the candidates, it is apparent that respondent No.4 was younger in age than the petitioner and he was 9th class pass. He submits that though respondent No.4 faced the prosecution in FIR No. 110/04 dated 07.10.2004, however, vide order dated 28.05.2012, the learned trial Court had acquitted respondent No.4 by giving him the benefit of doubt. He submits that once respondent No.4 is acquitted by the trial Court, there was no disqualification against him as

after acquittal no stigma remains on the character of respondent No.4. He submits that respondent No.4 having been found to be the most suitable candidate for the villagers, was rightly appointed by the Collector. He submits that the learned Commissioner had fallen in error in setting aside the order passed by the Collector. He submits that respondent No.4 had played a very active role in the social service and he was a blood donor as well. He submits that the learned Financial Commissioner had rightly set aside the illegal order passed by the Commissioner by restoring the order passed by the learned District Collector. He submits that as per the law settled, the Collector is the prime authority for the appointment of the Lambardar and his choice cannot be interfered in a casual manner except in the situation when the same suffers from patent illegality or perversity. He submits that in view of the evidence on record and the law settled, the impugned order suffers from no infirmity whatsoever. He submits that the present petition being devoid of any merit deserves to be dismissed.

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

After hearing learned counsel for both the parties and perusing the material on record, it is apparent that the process for appointment of new Lambardar on the death of Lambardar, namely, Harbans Singh son of Shiv Ram in village Malookpur, Tehsil Nangal, District Roopnagar was initiated. Both the petitioner and respondent No.4 duly applied for the appointment along with other co-applicants. Thereafter, on comparison of *interse* merits and demerits of the candidates, respondent No.4 was found to be more meritorious, who was 46 years of age and 9th class pass.

Whereas on the other hand, the petitioner was elder in age than respondent No.4 and he owned the land in village Malookpur (Punjab) as well as Malookpur (Himachal Pradesh). This is an admitted fact that respondent No.4 was facing trial in FIR No.110/04 dated 07.10.2004 under Sections 466/447/465/467/468/471/120-B of IPC at the time of appointment of the Lambardar. Though later on, he was acquitted by the trial Court i.e. JMIC, Anandpur Sahib vide his order dated 28.05.2012 on the basis of benefit of doubt. The Hon'ble Division Bench of this Court in *Sombir's case (supra)* relied upon by learned counsel for the petitioner has held that the Commissioner can interfere with the appointment of the Lambardar only in case the reasoning given is perverse and in *Harjit Singh's case (supra)* this Court has held that where the criminal cases are registered then even on acquittal, the person is not eligible for the appointment as the Lambardar. Respondent No.4 though was appointed by the District Collector but at the time of his appointment as Lambardar, he was facing trial in the FIR registered against him. The factum regarding respondent No.4 facing trial at the time of his appointment is an admitted fact whereas the learned Collector at the time of his appointment has not even taken the same into consideration. The petitioner was also 10th class pass whereas respondent No.4 was 9th class pass. The judgments relied upon by the petitioner are relevant in the facts and circumstances of the present case. On weighing the facts and circumstances of the case and the law settled, this Court finds that the order of the District Collector suffers from perversity.

Hence, the impugned orders passed by the District Collector and the Financial Commissioner are set aside. The order passed by the

learned Commissioner to the extent of appointing the petitioner to be the Lambardar of village is also set aside. The case needs to be decided afresh by the Collector keeping in view the *interse* merits of both the candidates and the law settled.

Accordingly, the case is remanded to the Collector for deciding the matter afresh expeditiously by hearing both the sides in accordance with law preferably within a period of three months from the date of receipt of certified copy of this order.

Disposed of.

(RAJESH BHARDWAJ)
JUDGE

07.10.2023

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