

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

CWP No.24331 of 2019

Date of Decision: 17.08.2023

Basant Singh

..... Petitioner

Versus

State of Punjab and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. K. B. S. Mann, Advocate
for the petitioner.

Mr. Arun William, AAG, Punjab.

Mr. G. L. Bajaj, Advocate
for respondent No.4.

RAJESH BHARDWAJ J. (ORAL)

Present writ petition has been filed for issuance of a writ in the nature of certiorari for quashing of order dated 22.03.2017 (Annexure P-7) passed by learned Financial Commissioner, Revenue, Punjab also for quashing of order dated 22.05.2015 (Annexure P-5) passed by learned Commissioner, Faridkot Division, Faridkot whereby the appeal filed by the petitioner was dismissed and also for quashing of order dated 08.05.2012 (Annexure P-3) passed by learned District Collector, Bathinda whereby respondent No.4 has wrongly been appointed as Lambardar of village Bhisiana, Tehsil and District Bathinda.

Brief facts of the case are that on the death of Lambardar, namely, Jangir Singh (Scheduled Caste category) on 12.01.2010, the post of Lambardar fell vacant in village Bhisiana, Tehsil and District Bathinda.

For filling up the post, the process for appointment of new Lambardar was initiated. Resultantly, as per the order passed by the District Collector, Bathinda dated 18.03.2010 directing the Assistant Collector Second Grade-cum-Naib Tehsildar, Bathinda, the proclamation was conducted in the village and applications were invited from the eligible candidates. After the proclamation, four applications were received from Basant Singh son of Nehru Singh, Jagdish Singh son of Gurdas Singh, Jaspal Singh son of Jeet Singh and Darshan Singh son of Jangir Singh. Thereafter, Assistant Collector Second Grade-cum-Naib Tehsildar, Bathinda recommended the name of respondent No.4-Darshan Singh for the post of new Lambardar. However, Sub Divisional Magistrate, Bathinda vide his report dated 26.08.2011, had recommended the name of petitioner-Basant Singh for the post of Lambardar. On the scrutiny of record of the candidates, it was found that Basant Singh was 29 years of age and had passed 12th class whereas respondent No.4-Darshan Singh was 39 years of age and had passed 4th class. Respondent No.4, Darshan Singh was the son of deceased Lambardar. Besides this, respondent No.4 was prosecuted in FIR No.39, dated 08.10.1989 under Sections 323, 324 and 34 IPC. On the analysis of overall *interse* merits of both the candidates, the District Collector appointed Darshan Singh i.e. respondent No.4 to be the Lambardar of the village vide order dated 08.05.2012. Aggrieved by the same, the petitioner filed an appeal before the learned Commissioner, Faridkot. However, the learned Commissioner finding no merit in the appeal, dismissed the same vide his order dated 22.05.2015. The petitioner assailed the same by way of

filing the revision before the Financial Commissioner. However, the learned Financial Commissioner, after hearing both the sides, dismissed the same vide order dated 22.03.2017 and thus, upheld both the orders of the Collector and that of the Commissioner. Aggrieved by the same, the petitioner is before this Court.

Learned counsel for the petitioner has vehemently contended that on comparison of *interse* merits of both the petitioner and respondent No.4, the petitioner was more meritorious and thus, being suitable, deserves to be appointed as Lambardar but all the authorities miserably failed to appreciate the same. He submits that admittedly respondent No.4 was prosecuted in FIR No.39 dated 08.10.1989 under Sections 323, 324 and 34 IPC. He submits that though respondent No.4 was acquitted by the trial Court but the same was on the basis of compromise arrived at between both the sides. He submits that the acquittal of respondent No.4 cannot be said to be honorable acquittal. He submits that the petitioner was much more qualified than respondent No.4. He submits that petitioner admittedly younger in age than respondent No.4. He has submitted that the only factor which weighed with the respondents-authorities was that respondent No.4 was the son of deceased Lambardar whereas the same has no sanctity in the eyes of law as the hereditary claim cannot be taken into consideration in view of the law settled. He submits that the petitioner actively participated in the social works and thus, he being more meritorious, deserves to have been appointed. He further submits that admittedly respondent No.4 had faced the prosecution in criminal case but the learned Collector had not

appreciated the same as there is no discussion regarding the prosecution faced by respondent No.4. Learned counsel for the petitioner further relies upon the decision of Hon'ble the Supreme Court in "***Mahavir Singh vs. Khaili Ram***", 2009(1) RCR (Civil) 757 said that the candidate who is younger in age should have been given the preference. Thus, he submits that both the Appellate and Revisional Authorities have totally overlooked the submissions made by learned counsel for the petitioner and the perversity in the appointment made by the Collector and thus, all the orders deserve to be set aside.

Learned counsel for respondent No.4 has vehemently opposed the submissions made by learned counsel for the petitioner. He submits that there is no minimum requirement of education for the post of Lambardar. Besides this, he submits that respondent No.4 being a matured person had the requisite experience of discharging the duties of Lambardar. He has submitted that the petitioner though was prosecuted in FIR, however, he had already been acquitted by the trial Court on the basis of compromise arrived at between the parties. It is submitted that once the petitioner already stands acquitted, there is no stigma on the petitioner and hence, respondent No.4 was rightly appointed by the Collector. He has submitted that choice of the Collector cannot be interfered in a casual manner by the higher authorities and thus, the impugned orders passed by the learned Commissioner and that by the learned Financial Commissioner suffer from no illegality and thus, 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, it is apparent that on the death of Lambardar, namely, Jangir Singh (Scheduled Caste category), on 12.01.2010, the post of Lambardar fell vacant in village Bhisiana. Thus, the process for appointment of new Lambardar was initiated and proclamation was conducted in the village. Applications were invited from the eligible candidates and on the proclamation, four applications were received. The Assistant Collector 2nd Grade-cum-Naib Tehsildar, Bathinda recommended the name of respondent No.4 for the post of new Lambardar. However, Sub Divisional Magistrate, Bathinda vide his report dated 26.08.2011 had recommended the name of petitioner for the post of Lambardar. On scrutiny of record of candidates, it was found that petitioner-Basant Singh was 29 years of age and had passed 12th whereas respondent No.4-Darshan Singh was 39 years of age and had passed 4th class. Respondent No.4-Darshan Singh was the son of deceased Lambardar. Besides this, this is also not in dispute that petitioner was younger in age than respondent No.4. Though, respondent No.4 was acquitted in the prosecution, however, there is an admitted fact that he faced prosecution as well.

As per settled proposition of law by the Hon'ble Supreme Court in the judgment titled as ***Mahavir Singh Vs. Khiali Ram, 2009(1) RCR(Civil) 757***, a the candidate who is younger in age should have been given the preference.

A perusal of the order passed by the District Collector shows that there is no findings regarding respondent No.4 having faced the prosecution in FIR No.39, dated 18.10.1989. There is no gain saying that the order of District Collector should not be interfered in a cavalier manner. However, the same can be interfered if there appears to be some perversity in the order. In the case in hand, the petitioner was more qualified and younger in age. Besides this, there is nothing on record to show that the petitioner had ever faced any prosecution in a criminal case.

Thus, this Court does not find any finding given by the District Collector regarding the contentions raised by learned counsel for the petitioner with regard to the prosecution in a criminal case faced by respondent No.4. Accordingly, finding the perversity in the impugned orders passed, all the orders dated 22.03.2017 (Annexure P-7), 22.05.2015 (Annexure P-5) and order dated 08.05.2012 (Annexure P-3) are hereby set aside. The case is remanded to the District Collector, Bathinda to decide it a fresh after hearing both the sides. The District Collector would decide the case in accordance with law within a period of three months from the date of receipt of certified copy of this order.

The petition stands allowed in the abovementioned terms.

17.08.2023

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(RAJESH BHARDWAJ)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable or not	:	Yes/No