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

CWP-8380-2017

Date of decision : 20.12.2023

Ram Singh**.....Petitioner**

versus

State of Haryana and others**..... Respondents****CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ*********

Present :- Mr. S.S. Sahu, Advocate
for the petitioner.

Ms. Upasana Dhawan, AAG, Haryana.

Mr. Radhey Shyam Sharma, Advocate
for respondent No.4.

*********RAJESH BHARDWAJ, J.**

Petitioner has approached this Court praying for issuance of directions especially in the nature of certiorari praying for setting aside the impugned order dated 20.03.2017 (Annexure P-7) passed by learned Financial Commissioner and order dated 02.11.2016 (Annexure P-5) passed by learned Commissioner Hisar Division Hisar being illegal, null and void as the learned Financial Commissioner and Commissioner have passed a totally non speaking order without considering the merits of this case as the learned Collector before appointing the petitioner as Lambardar of the Village Birabandi specifically remanded the case with direction to the Sub-Divisional Magistrate, Fatehabad to enquire about the unauthorized possession over panchayat land by the petitioner and respondent No.4-Malkiat Singh and in compliance of direction of Deputy Commissioner, Sub-Divisional Magistrate got enquired this fact through

BDPO who after enquiry reported that there is no unauthorized possession of petitioner and private respondent No.4 over panchayat land and then Sub-Divisional Magistrate again recommended the name of the petitioner for appointment to the post of Lambardar and thereafter, the Deputy Commissioner, Fatehabad vide order dated 26.02.2016 (Annexure P-4) appointed the petitioner as Lambardar of Village Birabadi but learned Commissioner Hisar Division Hisar without considering the facts and material on record *set aside* the well reasoned speaking order passed by the Deputy Commissioner, Fatehabad without appreciating the facts and evidence and settled law by this Court vide order dated 02.11.2016 (Annexure P-5) as this Court has categorically held that order passed by the Deputy Collector cannot be interfered until and unless there is illegality and perversity in the order of Deputy Commissioner.

Adumbrated facts of the present case which relates to the appointment of SC Lambardar in Village Birabadi are that on the death of earlier Lambardar namely, Alladita on 22.05.1996, the post of SC Lambardar fell vacant in the Village and to fill up the same, process for the appointment of new Lambardar was initiated. The *mustri munadi* was conducted for inviting applications from the interested candidates. In pursuance to the same, four applications were received from the candidates namely, Ram Singh, Janak, Mahavir, Malkiyat Singh. Their character antecedents were verified and inter merits were appreciated. The Sub Divisional Magistrate, Ratia recommended the name of Ram Singh for the appointment as Lambardar. Learned District Collector on evaluation of *inter se* merits of all the candidates, appointed petitioner-Ram Singh as SC Lambardar of the Village, Birabandi vide his order

dated 26.02.2016. Aggrieved by the same, respondent No.4 filed appeal before the learned Commissioner however, after hearing both the sides, learned Commissioner remanded the case to the Collector for deciding it afresh vide his order dated 02.11.2016. Aggrieved by the same, petitioner assailed the order passed by the Commissioner by way of filing the revision before the learned Financial Commissioner. Learned Financial Commissioner after hearing both the sides, finding no merit in the same, affirmed the order passed by the Commissioner in remanding the case to the Collector for decision afresh vide order dated 20.03.2017. Being aggrieved, the petitioner approached this Court by way of filing the present petition.

Learned counsel for the petitioner has contended that on receiving the application of all the candidates, learned Collector had duly verified the antecedents of all the candidates. He has submitted that the allegations pertaining to the unauthorized possession over the panchayat land of the petitioner were duly enquired into. On receiving the report, it was found that the petitioner and the respondent No.4 were not having any unauthorized possession over the panchayat land. The *inter se* merits of the candidates were evaluated. He submits that finding the petitioner to be more meritorious, he was appointed as the Lambardar of the Village. He submits that ignoring the same, learned Commissioner has illegally accepted the appeal filed by the respondent and thus, remanded the case for decision afresh. He submits that even the learned Financial Commissioner has failed to appreciate the evidence on record and the law settled and thus, illegally upheld the order passed by the Commissioner in remanding the case. He has submitted that learned Collector is the prime

authority and choice of the Collector should not be interfered with unless and until it suffers from perversity. However, as there was no perversity in the order passed by the Collector, the impugned orders are unsustainable in the eyes of law and thus, deserve 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 there were specific allegations against the petitioner regarding encroachment upon the panchayat land. Besides this, he was the defaulter of the loan as well. He has submitted that petitioner was involved in criminal case and he was acquitted in the same on the basis of compromise arrived at between the parties. He submits that the impugned orders remanding the case for decision afresh suffer from no infirmity and thus, petition being devoid of any merits, deserves to be dismissed.

Heard. After hearing counsel for the parties and perusing the record, it is apparent that on the death of earlier Lambardar, Alladita, process for the appointment of new Lambardar was initiated and petitioner was appointed as Lambardar by the Collector vide his order dated 26.02.2016. However, the allegations regarding encroachment by the petitioner and being defaulter of the loan, were found to be of prime consideration. It was also argued before the Appellate Court that the petitioner was involved in a criminal case but he was acquitted on the basis of compromise. Thus, in view of the law settled and in the interest of justice, learned Commissioner remanded the case to the Collector for decision afresh and the same was affirmed by the Revisional Court as well in the revision. As per law settled, the order passed by the Collector cannot be interfered with unless the same suffers from any patent

illegality. The Revisional Court has remanded the case for decision afresh by taking into consideration the *inter se* merits and demerits of both the sides.

This Court does not find any infirmity in the impugned orders passed and thus, the petition being devoid of any merits is hereby dismissed and the orders under challenge are upheld. The case is remanded to the Collector for deciding it afresh as in accordance with law. Keeping in view the period spent by the parties in litigation, the Collector is directed to decide the same after hearing both the sides within three months from the date of receipt of copy of this order. Office is directed to send copy of this order to the Collector concerned forthwith who on receipt of the same will issue notice of appearance to both the parties.

20.12.2023
m. sharma

(RAJESH BHARDWAJ)
JUDGE

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