

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

CWP-6631-2018

Date of decision : 12.09.2023

Baldev Singh

.....Petitioner

versus

Financial Commissioner Revenue Punjab and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Rai Singh Chauhan, Advocate and
Ms. Deepika Chauhan, Advocate
for the petitioner.

Mr. Arun William, AAG, Punjab.

Mr. Naveen Batra, Advocate
for respondent No.4.

RAJESH BHARDWAJ, J.

Prayer in the present petition is for quashing the order dated 07.02.2018 (Annexure P-9) passed by respondent No.1-Financial Commissioner (Revenue), Punjab. Further prayer has been made that the order passed by the Commissioner, Roopnagar Division, Roopnagar i.e. respondent No.2 dated 07.03.2017 (Annexure P-6) and that of the District Collector, Roopnagar (respondent No.3) dated 08.04.2013 (Annexure P-5) vide which the petitioner was appointed as a Lambardar in pursuance to which Sanad dated 10.11.2013 (Annexure P-15) was issued, the petitioner was performing the duties of Lambardar of Village Hambewal, Tehsil Nanga, District Roopnagar, the same be upheld.

Adumbrated facts of the case are that on the death of Lambardar Kashmir Singh son of Babu Ram, the post of Lambardar fell vacant and hence, the necessary approval was granted for filling up the

post on 11.04.2011. Pursuant to that, Tehsildar, Nangal got conducted *mustri munadi* in the Village for inviting the applications from the eligible candidates. Applications were received from ten candidates. The antecedents of all the applicants were got verified and their *inter se* merits were evaluated. However, before the Court of Sub Divisional Magistrate, Nangal only five candidates namely, Sukhdev Singh, Lekh Ram, Baldev Singh son of Kashmir Singh and Baldev Singh son of Karam Singh (petitioner), Davinder Singh (respondent No.4) came present. However, remaining five candidates did not come present and hence, were proceeded *ex parte* after affording the opportunity of personal hearing. On evaluation of merits, respondent No.4-Davinder Singh was found to be 49 years of age and had 10th passed and Army graduate who retired from Army as Havaladar. Besides this, he owned 25 kanals of land in the Village Habewal. On the other hand, petitioner Baldev Singh son of Karam Singh was found to be 65 years of age. He was Army graduate and also pre-university pass. He retired from the Army as Subedar. He was also found to have been awarded Rashtrapati Commission for his Army service. He being the only son and having joined Army, his father was getting Jagir. Besides this, he owned 4 kanals 03 marlas of land in Village Hambewal. Learned Collector on comparison of the *inter se* merits, found Baldev Singh son of Karam Singh to be the most suitable candidate and thus, appointed him as Lambardar of the Village vide his order dated 08.04.2013. Aggrieved by the same, co-applicant, Sukhdev Singh, respondent No.4-Davinder Singh and co-applicant namely, Baldev Singh son of Kashmir Singh challenged the same by way of filing three separate appeals before the Commissioner, Roopnagar which were heard together.

Learned Commissioner after hearing counsel for the parties, finding no merit in the said three appeals, dismissed the same vide order dated 07.03.2017 and thus, appointment made by the Collector was upheld. However, being aggrieved by the same, respondent No.4 challenged the same by way of filing ROR No.634 of 2017 before the Financial Commissioner (Appeal), Punjab. On hearing both the sides, learned Financial Commissioner remanded the case to the District Collector with the direction to examine whether the selected Lambardar is in a position to perform his duties and in case, he found that the candidate is unable to perform his duties as Lambardar then he was directed to consider alternate candidates for this position vide order dated 07.02.2018. Thus, aggrieved by the same, petitioner is before this Court by way of filing the present writ petition.

Learned counsel for the petitioner has vehemently contended that as evident from the record, petitioner duly applied for the post of Lambardar in pursuance to the *mustri munadi* conducted in the village. He has submitted that the appointment made by the Collector was challenged by respondent No.4 before the learned Commissioner, however, the same was dismissed and his appointment was upheld by the Commissioner as well vide his order dated 07.03.2017. He submits that the said order was challenged by respondent No.4 by way of filing the revision before the Financial Commissioner and learned Financial Commissioner illegally remanded the case for examining whether the petitioner was in a position to discharge his duties which is totally beyond the evidence on record. He submits that during the pendency of the revision before the learned Financial Commissioner, the wife of petitioner

suffered serious illness which caused serious problem and she was admitted in hospital and thus, the petitioner in all his fairness filed the application dated 12.03.2016 to respondent No.2 for the appointment of Sarbrah Lambardar as during that period, he was not in a position to discharge his duties. He submits that taking note of the prevailing condition in the family life of the petitioner, respondent No.2 appointed Chaman Lal as Sarbrah Lambardar for one year vide order dated 24.08.2016. He submits that while appointing Chaman Lal who was nephew of the petitioner as Sarbrah Lambardar, respondent No.2 had directed that depositing the land revenue in the Treasury would be the responsibility of the present Lambardar i.e. the petitioner. It is submitted that unfortunately, the wife of petitioner died on 24.03.2016 as is evident from the death certificate placed on record. He submits that soon thereafter the petitioner duly resumed his duties on the post of Lambardar. He has submitted that learned Financial Commissioner-respondent No.1 has failed to appreciate the same and thus, has remanded the case on the misconception that the petitioner had filed the application for the appointment of Sarbrah Lambardar due to his own ill health. He submits that as evident from the record, petitioner had filed the application for appointing his nephew Chaman Lal as Sarbrah Lambardar due to illness of his wife and Chaman Lal was appointed only for one year. He submits that after the death of his wife, petitioner had duly resumed his duties as Lambardar. He reiterated that during the period his nephew Chaman Lal remained Sarbrah Lambardar, the responsibility of depositing the land revenue was of petitioner only and he was duly depositing the same. He has submitted that the petitioner is discharging his duties on the post of

Lambardar uninterruptedly as on date. It is submitted that the petitioner was found to be most suitable candidate among all the applicants and thus, he was appointed by the Collector which was duly upheld by the Commissioner as well. He submits that as per the law settled, choice of the Collector cannot be interfered by the higher authorities unless the same suffers from the patent illegality. However, learned Financial Commissioner has failed to appreciate the same and thus, has drawn a wrong conclusion in setting aside the well reasoned order passed by both the Collector and the Commissioner and thus, the same 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 submits that on comparison of *inter se* merits of both the candidates, it is apparent that respondent No.4 was 49 years of age at the time of appointment whereas, the petitioner was 65 years of age and thus, respondent No.4 was much younger in age. He has submitted that besides this, respondent No.4 was having 25 kanals of land which was in any case much more than that of the petitioner. He has submitted that respondent No.4 always took active participation in the blood donation and other social welfare activities. He submits that petitioner himself filed the application for appointment of Sarbrah Lambardar as he was unable to perform his duties and thus, the impugned order suffers from no illegality wherein the appointment of petitioner has been *set aside* and the case has been remanded for a decision afresh. He has relied upon the Hon'ble Supreme Court judgment titled as **Mahavir Singh Vs. Khiali Ram, 2009(1) RCR(Civil) 757**. He submits that the 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 process for the appointment of Lambardar was initiated on the death of Kashmir Singh son of Babu Ram. In pursuance to the *mustri munadi*, the applications were received. The petitioner was found to be elder than respondent No.4, he had retired from the Army as Subedar and was awarded Rashtrapati Commission by the President of India. Thus, on comparison of the *inter se* merits of both the candidates, petitioner was found to be the most suitable candidate. Admittedly, petitioner filed an application for the appointment of his nephew Chaman Lal as Sarbrah Lambardar for the reason due to unavoidable situation in his family as his wife suffered serious illness. Respondent No.2 appreciated the application and appointed his nephew as Sarbrah Lambardar for the period of one year vide order dated 24.08.2016. However, it was specifically observed that the responsibility of depositing the land revenue would be that of the sitting Lambardar only. The wife of petitioner died on 24.03.2016 and thereafter, he resumed his duties. As submitted before this Court, petitioner is discharging the duties of Lambardar till date. Though both the petitioner and respondent No.4 have served in Army for a considerable long time, however in overall evaluation of the *inter se* merits of both the candidates, petitioner was found to be more suitable and thus, the Collector appointed him as Lambardar. The said order was upheld by the Commissioner while dismissing the appeal challenging his appointment made by the Collector. However, respondent No.1 has remanded the case solely on the ground that petitioner was not in a position to discharge his duties as he himself

filed the application for the appointment of Sarbrah Lambardar. On appreciation of the arguments raised by both the sides and perusing the record, this Court finds that the conclusion drawn by the Financial Commissioner is contrary to the evidence on record. The exigency arose for filing the application for the appointment of Sarbrah Lambardar was due to the serious illness of his wife which was beyond his control. It is undisputed fact before this Court that after the death of petitioner's wife, he resumed his duties on the post of Lambardar and is working till date. Thus, this Court is not in agreement with the conclusion drawn by the Financial Commissioner for setting aside the decision of the Collector dated 08.04.2023. Consequently, the impugned order dated 07.02.2018 passed by the Financial Commissioner being unsustainable in the eyes of law, is hereby *set aside*. Resultantly, the petition is allowed and the order of Collector appointing the petitioner as Lambardar is upheld.

12.09.2023
m. sharma

(RAJESH BHARDWAJ)
JUDGE

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