

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

CWP-19425-2023

Date of decision : 19.09.2023

Shingara Singh

.....Petitioner

versus

Financial Commissioner (Appeals) Punjab and others ... Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Surjit Singh Swaich, Advocate
for the petitioner.

RAJESH BHARDWAJ, J.

Prayer in the present petition is for quashing the impugned order dated 13.07.2023 (Annexure P-3) passed by learned Financial Commissioner (Appeals), Punjab, Chandigarh whereby the order dated 26.11.2021 (Annexure P-2) passed by learned Divisional Commissioner, Patiala, Division Patiala has been *set aside* and the order dated 01.03.2021 (Annexure P-1) passed by learned Collector, Fatehgarh Sahib has been restored whereby Karnail Singh-respondent No.4 was appointed as Namberdar by the learned Collector. The impugned order dated 13.07.2023 (Annexure P-3) is patently illegal, arbitrary, erroneous and perverse, against the provisions of the Punjab Land Revenue Act, 1887 and Rules framed there under unconstitutional and suffers from jurisdictional error and cannot be sustained in the eye of law and thus, liable to be quashed and the order dated 26.11.2021 (Annexure P-2) passed by learned Divisional Commissioner is liable to be restored.

Adumbrated facts of the case are that due to the death of Darshan Singh Lambardar (General Category) on 22.12.2018, post of Lambardar fell vacant in Village Suhavi Patti Hargana, Tehsil Khamanon, District Fatehgarh Sahib. On receiving the necessary approval, process for the appointment of new Lambardar was initiated. In pursuance to the same, the Assistant Collector Second Grade (Tehsildar) Khamanon got conducted the *mustri munadi* in the village for inviting the applications from the interested persons for filling up the said vacancy. Pursuant to the same, eight applications were received from the candidates namely, Shingara Singh son of Sarwan Singh (petitioner), Karnail Singh (respondent No.4) son of Gurdev Singh, Amarjit Kaur (respondent No.5) widow of Darshan Singh, Paramjit Kaur widow of Major Singh, Devinder Singh son of Sarup Singh, Karam Singh son of Bhajan Singh, Iqbal Singh son of Mohinder Singh, Harjang Singh son of Major Singh. The character verification of all the candidates were got done from the Senior Superintending of Police, Fatehgarh Sahib. On the basis of same, the Assistant Collector 2nd Grade Khamanon vide his report dated 27.10.2020 recommended the name of Karnail Singh (respondent No.4). On appreciation of the candidature of Shingara Singh (petitioner), he was found to have been recommended by 49 persons of the village. He was 67 years of age and 8th pass. Besides this, he owned 4.5 acres of land. As per the verification report FIR No.18 dated 24.02.2011 under Sections 307, 382, 323, 504, 427, 120-B, 148, 149 of IPC was found to have been registered against him. Amarjit Kaur (respondent No.5) was found to be 58 years of age and owned 4 kanals of land. There was no evidence produced by her regarding her qualification.

Karnail Singh (respondent No.4) was found to have been recommended by 56 persons of the Village. He was 60 years of age and had passed matric. Besides this, he owned 1.5 acre of land in the village. On comparison of overall *inter se* merits of the candidates, learned District Collector vide his order dated 01.03.2021 appointed Karnail Singh (respondent No.4) son of Gurdev Singh as Lambardar of the Village. Aggrieved by the same, petitioner filed the appeal under Section 13 of the Punjab Land Revenue Act, 1887 before the Divisional Commissioner, Patiala Division, Patiala. However, after hearing both the sides, learned Divisional Commissioner, Patiala accepted the appeal filed by the petitioner and thus, *set aside* the order passed by the Collector by directing petitioner-Shingara Singh to be appointed as the Lambardar of the Village vide his order dated 26.11.2021. Aggrieved by the same, respondent No.4-Karnail Singh filed an appeal under Section 13 of the Punjab Land Revenue Act, 1887 before the learned Financial Commissioner. After hearing both the sides, learned Financial Commissioner accepted the same by setting aside the order passed by learned Commissioner and thus, upheld the order passed by learned Collector dated 01.03.2021 vide his impugned order dated 13.07.2023. Hence, the petitioner is before this Court by way of filing the present petition.

Learned counsel for the petitioner has vehemently contended that on the initiation of the process for the appointment of new Lambardar, petitioner filed his application along with the other applicants. As per the verification conducted, petitioner was found to be 67 years of age who passed middle class and owned 4.5 acres of land. He

has submitted that though the petitioner had faced criminal case i.e. FIR No.18 dated 24.02.2011 under Sections 307, 382, 323, 504, 427, 120-B, 148, 149 of IPC however, the charges were framed by the trial Court for the offence under Sections 341, 323, 506 and 34 of IPC. He has submitted that the petitioner on the conclusion of the trial was acquitted by the trial Court vide order dated 09.02.2017 by giving the benefit of doubt. He further submits that the complainant filed the appeal against the acquittal of the petitioner before the learned Additional Sessions Judge and after hearing both the sides, learned Additional Sessions Judge dismissed the same vide order dated 21.07.2018. He has submitted that as evident petitioner was falsely implicated in the FIR No.18 dated 24.02.2011 under Sections 307, 382, 323, 504, 427, 120-B, 148, 149 of IPC and hence, he was acquitted by the trial Court. Thus, the petitioner carries no stigma against him. He has relied upon the judgment titled as **Rishipal Vs. State of Haryana and others, 2016(2) RCR (Civil) 29** and has submitted that weighing the facts and circumstances of the case, in view of the law settled in the **Rishipal's case (supra)**, order of the Collector suffered from the patent illegality and thus, deserves to be *set aside*. He has submitted that the petitioner filed an appeal before the Divisional Commissioner wherein both the sides were heard at length and evidences led by both the sides were re-appreciated. He has submitted that finding the patent illegality, learned Divisional Commissioner accepted the appeal filed by the petitioner and thus, *set aside* the order passed by the Collector and directed the petitioner to be appointed as Lambardar vide his order dated 26.11.2021. He has submitted that respondent No.4 filed the appeal before the Financial Commissioner against the order dated

26.11.2021 passed by the Divisional Commissioner which was illegally accepted by the learned Financial Commissioner vide order dated 13.07.2023. He submits that learned Financial Commissioner has failed to appreciate the evidence on record and the law settled and thus, has drawn a wrong conclusion in setting aside the well reasoned order passed by the Divisional Commissioner. He submits that in view of the same, the impugned order passed by the Collector and that of the Financial Commissioner being perverse deserves to be *set aside* by appointing the petitioner as Lambardar.

Per contra, learned counsel for respondent No.4 has vehemently opposed the submissions made by counsel for the petitioner. He submits that as evident from the record, respondent No.4 was 60 years of age and matric pass. Besides this, he owned 1.5 acre of land. He has submitted that there is nothing on record to show that respondent No.4 has ever faced any criminal case. Besides this, there is no adverse report in his verification of whatsoever nature. He has submitted that respondent No.4 was younger in age than petitioner and had a spotless character. He submits that on the overall analysis of the candidates in the fray, respondent No.4 was found to be the most suitable and deserving candidate and hence, he was rightly appointed as Lambardar by the Collector vide his order dated 01.03.2021. He has submitted that in the appeal filed, learned Divisional Commissioner had totally ignored the facts and circumstances of the case and law settled that the order of the Collector cannot be interfered except in a situation when it suffers from patent illegality or perversity. As there was no perversity, in the orders passed by the Collector, so the view taken by the Commissioner in setting

aside the order passed by the Collector was totally unsustainable in the eyes of law. It is submitted that as per the law settled, respondent No.4 being younger in age was to be given preference and the same was followed by the learned Collector. He has submitted that there was nothing adverse against the reputation of respondent No.4 whereas the petitioner had faced the criminal prosecution as is evident from the record. He submits that even though the petitioner had been acquitted by the trial Court by giving him benefit of doubt. It is submitted that even if the petitioner had been acquitted by the trial Court, the stigma still remains on him and respondent No.4 had spotless character make him a suitable candidate for the appointment. He has submitted that learned Financial Commissioner has rightly accepted the appeal filed by respondent No.4 whereby he *set aside* the illegal order passed by the Divisional Commissioner and thus, upheld the order passed by the Collector. He submits that it is a settled proposition of law that the Collector is the prime authority for the appointment of the Lambardar and the same could not be interfered in a casual manner.

He submits that the orders passed by the Collector and the Financial Commissioner suffer from no illegality or perversity. Thus, petition being devoid of any merits deserves to be dismissed.

Heard. As evident from hearing the arguments of both the sides and perusing the record, both the petitioner and respondent No.4 applied for the appointment to the post of Lambardar. On comparison of the inter se merits of all the candidates in the fray, learned Collector appointed respondent No.4 as Lambardar of the Village vide his order dated 01.03.2021 finding him the most suitable candidate. Admittedly the

petitioner had faced criminal prosecution in FIR No.18 dated 24.02.2011 under Sections 307, 382, 323, 504, 427, 120-B, 148, 149 of IPC though by giving benefit of doubt, the trial Court acquitted him vide its order dated 09.02.2017. On perusal of the record of both the petitioner and respondent No.4, petitioner was found to be 67 years of age whereas respondent No.4 was 60 years of age. Besides this, respondent No.4 was matric pass whereas the petitioner was 8th pass. Both the candidates are almost at par regarding their age and qualification. It cannot be denied that the petitioner had faced criminal prosecution whereas respondent No.4 had no adverse record whatsoever as evident from the record. The Collector who is the prime authority in the case of appointment of Lambardar had the jurisdiction to select the best candidate out of the candidates in the race. He thus, chose respondent No.4 who was younger in age than the petitioner, more qualified than him and was having spotless character. Besides this, petitioner had faced criminal prosecution in FIR as mentioned above whereas, antecedents of respondent No.4 was found to be neat and clean. Hence finding him most suitable, respondent No.4 was appointed as the Lambardar of the Village. In the appeal, the learned Commissioner set aside the order by appointing the petitioner as Lambardar. The issue regarding the fact that whether Commissioner while dealing with the appeal can appoint the candidate of his choice or not is pending consideration before the Full Bench of this Court. Even otherwise as per law settled, the choice of the Collector cannot be interfered except in the situation where it suffers from patent illegality or perversity. However, the Commissioner fell in error while setting aside the well reasoned order passed by the Collector. In the absence of any

perversity, learned Financial Commissioner in the considered opinion of this Court has rightly set aside the same and thus, restored the order passed by the Collector. In all its humility, this Court finds that there is no dispute regarding the law laid down by the Hon'ble Division Bench of this Court in the case of *Rishipal (supra)* cited by learned counsel for the petitioner. However, in the facts and circumstances of the present case, the same is distinguishable.

In the judgment titled as *Jog Dhian Vs. Financial Commissioner, Haryana and others, 2005(1) RCR (Civil) 658* it has been held that on acquittal of accused in a criminal charge, though by giving benefit of doubt, he is presumed to be innocent, but the stigma on him is not completely washed out-If, in that case, Collector chooses to appoint other candidate of equally good merit, the choice of the Collector is final.

The Hon'ble Supreme Court in judgment titled as *Mahavir Singh Vs. Khiali Ram, 2009(1) RCR(Civil) 757* has held that a candidate who is younger in age should have been given the preference.

Thus, in the considered opinion of this Court order passed by Financial Commissioner suffers from no illegality or perversity. Hence the petition being devoid of any merits is hereby dismissed.

19.09.2023
m. sharma

(RAJESH BHARDWAJ)
JUDGE

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