

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

LPA No. 2179 of 2017 (O & M)

Reserved on: 01.03.2023

Date of Decision: 15.03.2023

Harjit Singh

.....Appellant(s)

Versus

State of Punjab and others

....Respondent(s)

**CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA
HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN**

Present:- Mr. Rajeev Dev Sharma, Advocate, for the appellant.

Ms. Deepali Puri, Addl. A.G., Punjab.

Mr. R.S. Manhas, Advocate, for respondent No.5.

G.S.SANDHAWALIA, J.

Consideration in the present Letters Patent Appeal is qua the order of the learned Single passed in *CWP No. 26470 of 2016, Harjit Singh vs. State of Punjab and others*, decided on 21.12.2016. The learned Single Judge has, vide the order under challenge, upheld the order of the Financial Commissioner dated 11.05.2016 (Annexure P-3 therein) appointing respondent No.5-Sahib Singh as Lambardar in place of the present appellant. Resultantly, the orders passed in favour of the appellant for appointment as Lambardar for village Behdri Bajurg, the benefit of which had been granted to him by the District Collector, Gurdaspur on 25.04.2011 (Annexure P-1) and upheld by the Commissioner, Jalandhar Division, Jalandhar on 21.02.2014 (Annexure P-2) were upset.

The legal lacuna which we feel as such which has happened

District Collector is the best suited to judge the merit of the candidates with whom interaction is done and it is not for the Financial Commissioner as such to interfere until there is perversity in the order of the District Collector. In the present case, a finding necessarily was liable to be recorded that there is no such perversity on account of which the Financial Commissioner could have interfered, which has been wrongly upheld by the learned Single Judge and, therefore, the interference in appeal by us.

A persual of the order of the learned Single Judge would go on to show that a finding was recorded by him that District Collector had accepted the report of the Assistant Collector Ist Grade, Pathankot without recording his own findings after due application of his independent and judicious mind and the comparative merits of the candidates had to be considered. It was noticed that there are no particular facts of any criminal case remotely referred or recorded which were pending against Sahib Singh and without having been substantiated on record. The District Collector was thus held not justified in accepting the report made by the Assistant Collector Ist Grade, Pathankot. The learned Single Judge held that the particulars and seriousness of alleged criminal cases should have been taken into consideration before passing of the respective orders and, therefore, the order was held to be suffering from illegality and perversity which was held not to be sustainable. Similarly, the learned Single Judge felt that the Commissioner had also committed the same error and once the acquittal was there, he should have interfered. The order of the Financial Commissioner was accordingly approved that he had not noted that the respondents have been acquitted in both the criminal cases which were falsely registered against him and that Sahib Singh who was the present appellant had a clear edge, even though their educational qualifications were

at par as he had more land in the village than the appellant. Being the son of ex-Lambardar also was another aspect which weighed with the learned Single Judge and, therefore, the learned Single Judge felt that the District Collector's order was patently illegal and he accordingly approved the order of the Financial Commissioner.

A perusal of the record would go on to show that the District Collector was examining the merits of two more candidates namely Naresh Thakur and Manohar Lal apart from the present appellant and the private respondent. Manohar Lal had withdrawn his application and the name of Sahib Singh had been sent by the Assistant Collector Ist Grade, Pathankot for conducting a hearing before recommending the name as there were criminal cases pending against him. The Assistant Collector Ist Grade, Pathankot gave the details of the pending cases and recommended Harjit Singh-appellant thereafter. On the date of hearing, Sahib Singh had not appeared and only Harjit Singh had put in appearance. He was noticed to be 38 years old and matric pass and owner of 9 kanals and 9 marlas of land. The Collector noticed that details of criminal cases had been given by the Assistant Collector in his report and the judgment of the Division Bench of Court in ***Ranjit Singh vs. Financial Commissioner, Haryana and another 2009 (4) RCR (Civil) 350*** was kept in mind that where criminal cases are registered and even on acquittal, the person is not eligible for appointment as Lambardar. Resultantly, the present appellant was appointed as Lambardar. Thus, apparently, the finding which has now been recorded by the learned Single Judge that there was nothing before the District Collector cannot be said to be sustainable as there were valid reasons as such for the District Collector to

case (supra). A perusal of the said judgment would go on to show that the order of the learned Single Judge was upheld by the Division Bench by noting that if Rule 15 of the Punjab Land Revenue Rules is kept in mind, registration of a criminal case would be a relevant factor and it would not be justified to appoint a person even though he had been acquitted under the charge of Section 302 IPC.

The appellant has also placed on record the criminal proceedings as such in which the respondent Sahib Singh was involved, which would go on to show that he was involved in a sessions case and was tried by the Additional Sessions Judge, Kangra at Dharamshala under Sections 402, 399, 395 read with Section 34 IPC in an incident which had taken place on 11.03.1999. The allegations were that four persons had got down in front of the Commission Agent who was carrying the amount of commission from different shopkeepers and were armed with sharp edged weapons and they hijacked his vehicle alongwith cash which he had kept in his car and he had thus been robbed of Rs.9,50,000/-. It is another matter as such that eventually, the case ended in acquittal on the ground that the recovery of the currency notes could not be linked with the commission of the crime. It is also to be noticed that out of the accused persons, three of them were residents of villages falling under Police Station Sujampur, Pathankot, Punjab including Sahib Singh. The recovery was also effected of Rs.4,73,941/- and though as noticed above, the acquittal is on technical grounds as such. The Maruti car which had also been hijacked on 11.03.1999 was also subsequently found abandoned without number plates in the fields. It was held by the trial Court that on account of the fact that the identification in Court by the complainant

known to him and it was only for a short time they had interacted and he had himself stated that he had not seen the faces of the unidentified persons, the Court had given benefit as such. The allegations were grossly serious and in such circumstances, merely because the District Collector did not specifically refer to them but had gone through the list of cases and kept the principle in mind as laid down by this Court, we are of the considered opinion that persons having criminal antecedents cannot be permitted to be appointed as a Lambardar.

Similarly, if one is to go through the judgment of the Judicial Magistrate Ist Class, Pathankot dated 07.03.2007 (Annexure A-2) which was recorded in FIR No. 129 of 1999, Sahib Singh was arrayed as accused No.3 and the allegations are of theft under Sections 379 and 411 IPC of Khairwood. The respondent No.5 had been arrested on account of disclosure statement of one Som Raj and recoveries were also got effected from him of 113.05 quintals and 106 quintals of Khairwood but acquittal was recorded on the ground that the prosecution witnesses had not supported the case in the police station that wood belonged to him and nor his wood was stolen.

The third case in which he had been acquitted pertains to offences under Sections 279, 33 and 427 IPC, which he can be ignored for the said purpose as the offence would not fall under the ambit of moral turpitude respectively. It is apparently in such circumstances, we are of the considered opinion that the Commissioner had dismissed his appeal on the ground that he is not having a clean slate, though he might have been acquitted. It is also to be noticed that he never appeared before the District Collector, Gurdaspur and, therefore, he being a person of criminal nature was also irresponsible.

The Financial Commissioner had allowed the revision in the

absence of the counsel for the present appellant and wrongly relied upon the fact that the respondent No.5 is son of ex-Lambardar when admittedly the hereditary aspect is no longer to be considered. The finding which is recorded as such is on the basis of the relative merit as such which was not justified as a finding had to be recorded that the order of the District Collector had to suffer from a perversity before interference could be made, which is not the case herein. It has been time and again held that perversity or illegality in the impugned order of the Collector is the only ground and the order cannot be lightly set aside. Reliance can be placed upon the judgments in ***Mahavir Singh vs. Khiali Ram, (2009) 3 SCC 439*** and ***Phool Kumar vs. State of Haryana and others, 2010 (2) RCR (Civil) 819.***

In such circumstances, we are of the considered opinion that the appeal is liable to be allowed and the order of the Collector, as duly upheld by the Commissioner, is liable to be maintained. Accordingly, the present appeal is allowed. The judgment of the learned Single Judge dated 21.12.2016 and the order of the Financial Commissioner dated 11.05.2016 (Annexure P-3) are set aside. All pending miscellaneous applications also stand disposed of accordingly.

(G.S. SANDHAWALIA)
JUDGE

15.03.2023
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(HARPREET KAUR JEEWAN)
JUDGE

Whether reasoned/speaking
Whether reportable

Yes/No
Yes/No