

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

CWP-22366-2023

Date of decision: 16.11.2023

Ram Singh

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr.Ajaivir Singh, Advocate, for the petitioner.

Mr. Vikas Mehsempuri, Advocate,
for caveator-respondent No.5.

RAJESH BHARDWAJ, J.

Prayer in the present petition is for quashing the impugned order dated 20.07.2023 (Annexure P-8) passed by respondent No.2, whereby, appeal filed by respondent No.5 has been allowed and the order passed by the Collector vide order dated 17.07.2013 (Annexure P-1) has been upheld in an illegal and arbitrary manner.

Adumbrated facts of the case are that vide order dated 07.04.2006, the Commissioner, Patiala Division, Patiala created a new post of Numbardar in village Saini Majra. For the post two applications from Bachan Singh and Harpal Singh were received. After scrutiny, the candidature of Harpal Singh was declined by the Assistant Collector 2nd Grade. Harpal Singh filed a revision before the learned Collector, Patiala, who after hearing both the parties, vide order dated 02.07.2008 recommended for inviting the application afresh for the post of Numbardar after conducting *Mushtari Munadi* in the village. Against the order of Collector, Bachan Singh filed a revision before the Commissioner, Patiala Division, Patiala, who vide order dated 20.05.2009 dismissed the same. Thereafter, fresh proclamation was conducted in the village and in pursuance to the same, two applications were received from Ram Singh (petitioner) and

Tarlochan Singh (respondent No.5). Their character verifications were conducted. On the appreciation of their inter-se merits, Ram Singh (petitioner) was found to be 47 years age and 6th pass by qualification. Besides this he was found to be owner of 25 bighas 7 biswas of agricultural land. So far Tarlochan Singh (respondent No.5) is concerned, he was found to be 45 years of age and BA+ ITI (Technical) class pass by qualification and owner of 18 Bighas 18 Biswas of land in the village. The learned Collector on the overall evaluation of the inter-se merits of the candidates in fray, found respondent No.5 Tarlochan Singh to be the most suitable candidate and thus, appointed him as Numbardar of the village vide order dated 17.07.2013 (Annexure P-1). Aggrieved by the same, petitioner-Ram Singh filed an appeal before the Commissioner, Patiala Division, Patiala. After hearing both the sides, learned Commissioner found no illegality in the appointment made by the Collector and thus, dismissed the appeal vide order dated 03.09.2013 (Annexure P-2). However, petitioner Ram Singh filed a review petition before the Commissioner pleading that his merits were not properly considered and discussed while passing the order dated 03.09.2013. Learned Commissioner again looked into the facts of the case and after hearing both the sides, held that there is nothing adverse against the petitioner and allowed the review application vide order dated 03.12.2013 (Annexure P-3) while remanding the case to the District Collector for passing fresh order. Aggrieved by order dated 03.12.2013, respondent No.5-Tarlochan Singh filed an appeal under Section 13 read with Section 15 of the Punjab Land Revenue Act, 1887 before the Financial Commissioner. Learned Financial Commissioner heard both the sides and re-appreciated the evidence on record and vide order dated 30.09.2015 (Annexure P-4) finding no error in the order dated 17.07.2013 passed by the learned Collector and order dated 03.09.2013

passed by the Commissioner, upheld the same and set aside the order dated 03.12.2013 passed in review application. Hence, the petitioner has approached this Court by way of filing the present petition.

Learned counsel for the petitioner has vehemently contended that the learned Collector has illegally appointed respondent No.5 as Numbardar. He submits that the petitioner has more land than respondent No.5. He further submits that name of the petitioner was recommended by the entire Gram Panchayat, Assistant Collector 2nd Grade and SDM for the post of Numbardar. He has submitted that the petitioner carries a good reputation and he has no criminal antecedents and nothing adverse was found against him on his verification. He submits that on the other hand, respondent No.5 has criminal antecedents, as FIR No.40, dated 12.04.2015, under Sections 323, 324, 506, 341, 148, 149 IPC has been registered against him and he is also facing contempt proceedings under Order 39 Rule 2A CPC. He has further submitted that the learned Collector and Financial Commissioner have failed to appreciate the same and thus, have drawn wrong conclusion in appointing respondent No.5 as Numbardar of the village. He further submits that the appointment of respondent No.5 is in violation of Rule 15 of the Punjab Land Revenue Rules. He has submitted that though learned Commissioner dismissed the appeal filed by the petitioner, but the review application filed by him was rightly allowed holding that there is nothing adverse against the petitioner, however, the learned Financial Commissioner allowed the appeal filed by respondent No.5 in an illegal and arbitrary manner. He submits that the impugned orders being unsustainable in the eyes of law, deserve to be set aside.

Learned counsel for caveator-respondent No.5 has opposed the submissions made by learned counsel for the petitioner. He has submitted that

respondent No.5 being more meritorious was appointed by the Collector. He has submitted that as is apparent from the record, respondent No.5 is not only younger than the petitioner but he is more qualified than the petitioner. It is submitted that as per law settled, a candidate younger in age should be given preference. He submits that respondent No.5 was duly appointed by the Collector, which was upheld by the learned Financial Commissioner. He further submits that learned Collector is the prime authority to appoint the Numbardar of the village. He submits that there was no criminal case pending against respondent No.5 at the time of his appointment. Thus, he submit that the present petition being devoid of any merit, deserves to be dismissed.

Heard.

As is apparent from the record, vide order dated 07.04.2006, the Commissioner, Patiala Division, Patiala created a new post of Numbardar in village Saini Majra. Both the petitioner and respondent No.5 applied for the post. On the comparison of the inter-se merits of both the candidates, respondent No.5 was found to be more meritorious being younger in age and more qualified than the petitioner and was appointed by the learned Collector vide order dated 17.07.2013. It is settled principle of law that the Collector is the prime authority in the appointment of the Numbardar and respondent No.4 was found to be more suitable for the appointment of the Numbardar. The petitioner filed an appeal before the learned Commissioner and finding no patent illegality in the order of the Collector, the learned Commissioner dismissed the same vide order dated 03.09.2013. However, petitioner Ram Singh filed a review petition before the Commissioner praying for reconsideration of his merits. The learned Commissioner heard both the side and perused the record and finding nothing adverse against the petitioner, allowed

the review application by remanding the case to the Collector for decision afresh, vide order dated 03.12.2013. Allowing the review was illegal as the scope of review is a limited one and in review the error apparent on the face of record is to be rectified. But the learned Commissioner has fallen in error by reversing his own order dated 03.09.2013 by allowing the review application and then remanding the case to the Collector for decision afresh. Thereafter, in the appeal filed by respondent No.5, the learned Financial Commissioner allowed the same vide order 30.09.2015 finding no patent error in the order passed by Collector as well as Commissioner (dated 03.09.2013). The argument raised by learned counsel for the petitioner that FIR was registered against respondent No.5 has no merit as at the time of his appointment, there was no criminal case pending against him. However, in case any criminal case is registered against him after the appointment then there is another remedy as per the statute. However, the case which did not even exist at the time of appointment, cannot have any bearing on his appointment.

In Sukhjinder Pal Singh Vs. State of Punjab and others, 2016(3) R.C.R. (Civil) 725, this Court while dealing with the same question has held as under:-

“14. It is pertinent to mention here that the appointment of Numbardar is primarily the prerogative and administrative act of the District Collector. The selection made by him is normally not to be undone unless and until it is shown that the same suffers from gross irregularity, perversity or there is some patent error in the appointment.”

As per law settled, the Collector is the main authority for appointment of the Numbardar. It is the Collector, who not only appreciates the antecedents of all the candidates in the fray, but also personally interacts with

them. Thus, the subjective satisfaction of the Collector cannot be ignored in a cavalier manner.

Hon’ble Supreme Court in Mahavir Singh vs. Khiali Ram and others, 2009(1) RCR (Civil) 757 has held that for the appointment of Numbardar, age of the candidate is a relevant factor. Thus, respondent No.4 being younger in age was the preference of the Collector.

Thus, this Court finds no perversity in the order passed by the Collector, which is duly upheld by the learned Financial Commissioner. Hence, the present petition being devoid of any merit is hereby dismissed.

(RAJESH BHARDWAJ)
JUDGE

16.11.2023
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No