

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

CWP-382-2018 (O&M)

Date of decision : 24.08.2023

Balwant Singh

.....Petitioner

versus

State of Punjab and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Lokesh Vohra, Advocate
for the petitioner.

Mr. Arun William, AAG, Punjab.

Ms. Sushma Sharma, Advocate for
Mr. Vijay Kumar Chaudhary, Advocate
for respondent No.4.

RAJESH BHARDWAJ, J.

Petitioner has approached this Court praying for quashing the order dated 24.09.2009 (Annexure P-2) passed by Commissioner, Ferozepur Division Ferozepur and order dated 28.02.2014 passed by Financial Commissioner (Animal Husbandry) Punjab, Chandigarh being patently erroneous and misconceived and upholding the decision dated 24.12.2008 passed by the Collector, District Moga.

Learned counsel for the petitioner has submitted that for the appointment of Harijan Lambardar of Village Daudhar Garbi, Commissioner of Ferozepur vide Memo No.R.A-2006/H.11/529 dated 06.02.2006 has sent a letter which was forwarded to Tehsildar, Moga vide letter No.512/reader dated 06.08.2006. Resultantly, Naib Tehsildar, Badni by way of proclamation invited the applications from the eligible candidates. In pursuance to the same, Balvir Singh son of Bhajan Singh and Mukhtiar Singh son of Mardana Singh filed their applications.

However, Sub Divisional Magistrate vide order dated 21.09.2007, directed the Tehsildar to conduct a fresh *munadi* for inviting applications afresh. As a result, Naib Tehsildar, Moga conducted fresh proclamation and thus, fresh applications were invited. In pursuance to the same, fresh applications were received from Satnam Singh son of Balvir Singh, Jasmail Singh son of Darshan Singh, Harpal Singh son of Sarban Singh, Balvir Singh son of Bhajan Singh, Balwant Singh son of Karnail Singh and Buta Singh son of Visakha Singh. On scrutiny of all the applications, Naib Tehsildar forwarded the name of Balvir Singh son of Bhajan Singh to the office of Tehsildar, Moga. Tehsildar Moga forwarded the name of Balvir Singh son of Bhajan Singh to the Court of Sub Divisional Magistrate, Moga. The Sub Divisional Magistrate, Moga on scrutiny of the candidate, forwarded his name to the Collector. On the scrutiny of the applications, Balwant Singh @ Bant Singh (petitioner) was found to be 47 years of age and had studied upto 5th class. On the other hand, Satnam Singh (respondent No.4) was found to be 22 years of age and was matric pass. On comparison of the *inter se* merits of all the candidates, the Collector, Moga appointed Balwant Singh @ Bant Singh son of Karnail Singh resident of Village Daudhar Garbi as permanent harijan Lambardar of Village Daudhar Garbi vide his order dated 24.12.2008. Aggrieved by the same, respondent No.4-Satnam Singh filed the appeal before the Commissioner of Ferozepur Division, Ferozepur under Section 13 of the Punjab Land Revenue Act, 1887, however, after hearing counsel for the parties, learned Commissioner accepted the appeal by setting aside the order of the Collector and appointed Satnam Singh, respondent No.4 as Lambardar vide his order dated 24.09.2009. He submits that aggrieved by

the same, petitioner filed an appeal under Section 13 of the Punjab Land Revenue Act, 1887 before the Financial Commissioner (Animal Husbandry), Punjab but learned Financial Commissioner failed to appreciate the submissions raised by the petitioner and thus, illegally declined the same vide impugned order dated 28.02.2014. It has been submitted by counsel for the petitioner that the sole reason for setting aside the well reasoned order passed by the Collector was that the petitioner was prosecuted in FIR No.28 dated 17.03.2016 under Sections 452, 376, 511 of IPC, P.S. Badhni Kalan but the petitioner was duly acquitted by the trial Court vide order dated 02.06.2006 because the prosecution witnesses did not support the case of the prosecution and even the prosecutrix had turned hostile. He submits that before having been appointed as Lambardar, the petitioner remained as member of the Panchayat as well. He submits that even in the year 2014, petitioner was elected as Sarpanch of the Village which is self-speaking about his character. He has submitted that as per settled proposition of law, the choice of Collector cannot be interfered in a cavalier manner. However, both the Appellate and Revisional Authorities have fallen in error in ignoring the same. He further submits that the petitioner though was prosecuted for the offence in the FIR, however, as he was acquitted by the trial Court, the same would not have any affect on his appointment as Lambardar. He relies upon the judgment titled as **Ram Pal Vs. The District Collector, Karnal and others, 2012(5) RCR (Civil) 493**. He also submits that the Commissioner not only *set aside* the well reasoned order passed by the Collector but appointed respondent No.4 as Lambardar which is against the settled proposition of law. He has submitted that the

issue pertaining to whether the appellate or revisional authority can appoint the Lambardar of their choice is pending adjudication before the Larger Bench of this Court and hence, the impugned orders suffer from the patent illegality and thus, deserve to *set aside*.

Learned counsel for respondent No.4 has vehemently opposed the submissions made by counsel for the petitioner. She has submitted that the present writ petition has been filed after delay of about 04 years. She submits that the petitioner was arrested in the abovesaid FIR and remained in judicial custody though later on, he was acquitted on the ground that the prosecution witnesses turned hostile. She submits that the impugned order was passed by the Commissioner on dated 24.09.2009 and the revision filed by the petitioner against the same was dismissed on 28.02.2014. Thus, after having remained quiet for four years, the petitioner has filed this petition in the year 2018 only in order to harass the respondent. She submits that admittedly the petitioner faced the prosecution for a heinous offence which falls in the category of moral turpitude and his acquittal for want of the evidence would not entitle him for the post of Lambardar for which the reputation of the person is of paramount consideration. She has submitted that the writ suffers from delay and laches and thus, the petition being devoid of any merits, deserves to be dismissed.

Heard. On hearing counsel for the parties and perusing the record, it is evident that for initiating the process for appointment of Harijan Lambardar of Village Daudhar Garbi, Commissioner, Ferozepur dated 06.02.2006 has sent a letter which was forwarded to Tehsildar, Moga on 06.08.2006. Resultantly, Naib Tehsildar, Badni by way of

proclamation invited the applications from the eligible candidates and Balvir Singh and Mukhtiar Singh filed their applications. However, Sub Divisional Magistrate vide order dated 21.09.2007, directed the Tehsildar to conduct a fresh *munadi* for inviting applications afresh. As a result, Naib Tehsildar, Moga conducted fresh proclamation and thus, fresh applications were invited. Accordingly, fresh applications were received from Satnam Singh, Jasmail Singh, Harpal Singh, Balvir Singh, Balwant Singh and Buta Singh. On scrutiny of all the applications, Naib Tehsildar forwarded the name of Balvir Singh to the office of Tehsildar, Moga. Tehsildar Moga forwarded the name of Balvir Singh son of Bhajan Singh to Sub Divisional Magistrate, Moga. The Sub Divisional Magistrate, Moga on scrutiny of the candidate, forwarded his name to the Collector. On the scrutiny of the applications, Balwant Singh @ Bant Singh was found to be 47 years of age and had studied upto 5th class. On the other hand, Satnam Singh was found to be 22 years of age and was matric pass. On comparison of the *inter se* merits of all the candidates, the Collector, Moga appointed Balwant Singh @ Bant Singh (petitioner) son of Karnail Singh as permanent Harijan Lambardar of Village Daudhar Garbi vide his order dated 24.12.2008.

Perusal of the order passed by the Collector would show that the factum regarding the prosecution of the petitioner in FIR No.28 dated 17.03.2016 under Sections 452, 376, 511 of IPC was never brought to the notice of the Collector as there was no whisper regarding the same in the order dated 24.12.2008 passed by Collector. This fact was discussed for the first time during the appeal filed before the Commissioner. Undoubtedly, the offence for which the petitioner was prosecuted was a

heinous offence although he was acquitted on the ground that the prosecutrix turned hostile in that case. Thus, the Commissioner *set aside* the order passed by the Collector vide his order dated 24.09.2009 and appointed respondent No.4-Satnam Singh to be the Lambardar. The revision filed by the petitioner against the same before the Financial Commissioner was also declined vide order dated 28.02.2014. There is no gain saying that for 04 years, the petitioner did not agitate the same. Both the appeal and revision were filed by the petitioner himself and hence, it cannot be assumed that the petitioner was not aware of the impugned orders passed. Against the final order dated 28.02.2014 passed by learned Financial Commissioner in the revision filed by the petitioner, there is nothing on record to show that the petitioner challenged the same further in all these years. Thus, the conduct of the petitioner itself is self-speaking.

It is trite to say that law does not come to rescue all the fence-sitters. The writ petition filed seriously suffers from the delay and latches. Besides this, the factum regarding his prosecution for a heinous offence was not even discussed by the Collector. Thus this Court finds no infirmity in the impugned orders and hence, the petition is dismissed.

24.08.2023
m. sharma

(RAJESH BHARDWAJ)
JUDGE

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