

203 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-702-2020 (O/M)

Date of decision : 14.10.2024

Balwant Singh

..... Petitioner

Versus

Financial Commissioner, Punjab and others Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. M.S. Dhami, Advocate
for the petitioner.

Mr. Navneet Singh, Senior DAG Punjab.

Mr. Inder Pal Singh, Advocate for
Mr. Amar Jeet, Advocate
for respondent No. 4.

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HARSH BUNGER, J. (ORAL)

1. Petitioner (Balwant Singh) has filed the instant civil writ petition under Articles 226/227 of Constitution of India, inter alia, seeking a writ in the nature of certiorari for setting aside the order dated 19.08.2019 (Annexure P-5), passed by learned Financial Commissioner (Appeals), Punjab (in short 'Financial Commissioner'), whereby the order dated 16.09.2016 (Annexure P-3), passed by learned Commissioner, Jalandhar Division, Jalandhar (in short 'Divisional Commissioner') was set aside and the order dated 21.11.2013 (Annexure P-1), passed by learned District Collector, Hoshiarpur (in short

'Collector'), appointing respondent No. 4 (Surjit Singh) as Lambardar of village Gambowal, Tehsil Dasuya, District Hoshiarpur, was upheld.

2. Briefly, on demise of Shri Shankar Singh, previous Lambardar of village Gambowal, Tehsil Dasuya, District Hoshiarpur, proceedings were initiated for filling up the vacancy. In pursuance to the proclamation, 6 candidates applied for the aforesaid vacancy. It transpires that out of 6 candidates, 2 candidates, namely, Satnam Singh and Inderpal Singh had not appeared before Tehsildar, Dasuya and they were proceeded against ex-parte.

2.1 The Tehsildar, Dasuya, and Sub Divisional Magistrate, Dasuya, recommended the name of respondent No. 4 (Surjit Singh) for appointment to the aforesaid vacancy and the file was sent to the learned Collector.

2.2 After considering the relative merits/demerits of the candidates, the learned Collector, vide order dated 21.11.2013 (Annexure P-1), appointed respondent No. 4 (Surjit Singh) as Lambardar of village Gambowal.

2.3 It transpires that the aforesaid Collector's order dated 21.11.2013 (Annexure P-1) was challenged by the present petitioner by filing an appeal (RA-19-2014) before the learned Divisional Commissioner, which was allowed, vide order dated 16.09.2016 (Annexure P-3).

2.4 Feeling aggrieved against the aforesaid order dated 16.09.2016 (Annexure P-3), passed by learned Divisional Commissioner, respondent No. 4 herein filed an appeal (ROA-03-2017) before the learned Financial Commissioner, which came to be decided,

vide order dated 19.08.2019 (Annexure P-5), whereby learned Divisional Commissioner's order dated 16.09.2016 (Annexure P-3) was set aside and learned Collector's order dated 21.11.2013 (Annexure P-1), appointing respondent No. 4 (Surjit Singh) as Lambardar of village Gambowal, was upheld.

3. In the aforementioned circumstances, the petitioner has filed the instant civil writ petition before this Court, for the relief(s), as noticed above.

4. Learned counsel for the petitioner submits that the learned Financial Commissioner has erred in law and facts in allowing the appeal filed by respondent No. 4. It is submitted that the petitioner is more meritorious than respondent No. 4 as he is younger in age and more educated than respondent No. 4 and is son of deceased Lambardar and has also remained Sarabrah Lambardar for more than 3 years. It is further submitted that the petitioner owns 47 kanals 17 marlas agriculture land and has clean antecedents. It is next submitted that petitioner being agriculturist remains always available and is easily accessible to the villagers. It is also submitted that petitioner is having sound financial position and has good reputation in the village. With the aforementioned submissions, prayer has been made for setting aside the order passed by the learned Financial Commissioner dated 19.08.2019 (Annexure P-5) and restoring the order dated 16.09.2016 (Annexure P-3), passed by learned Divisional Commissioner.

5. Per contra, learned counsel appearing for respondent No. 4 has opposed the submissions made on behalf of petitioner by submitting that learned Collector has appointed respondent No. 4 to the post of

Lambardar of village Gambowal after finding him most suitable candidate upon considering comparative merits of all the candidates. It is next submitted that respondent No. 4 is permanent resident of village; remains always available to the people of village; owns 8 kanals 4 marlas and enjoys good reputation in the village. It is also submitted that name of respondent No. 4 was recommended by lower revenue officials. It is contended that there is hardly any difference in educational qualification of respondent No. 4 and petitioner. It is next contended that the appellate authority had erred in law and fact by ignoring the learned Collector's choice, however, learned Financial Commissioner has rightly set aside learned Divisional Commissioner's order and restored learned Collector's order and no interference is required to be made in learned Financial Commissioner's order. Accordingly, prayer for dismissal of the writ petition has been made.

6. I have heard learned counsel for the parties and have also perused the paperbook with their able assistance.

7. In the present case, learned Collector had appointed respondent No. 4 as Lambardar of village Gambowal, however, learned Divisional Commissioner set aside learned Collector's order and appointed petitioner as Lambardar of village Gambowal on the ground that petitioner was younger in age than respondent No. 4; holding more land and more educated than respondent No. 4 and also considering that petitioner is son of deceased Lambardar and had worked as Sarabrah Lambardar. However, on an appeal filed by respondent No. 4, learned Financial Commissioner has set aside learned Divisional Commissioner's

order and restored learned Collector's order appointing respondent No. 4 as Lambardar.

8. In my considered view, learned Divisional Commissioner had erred in setting aside learned Collector's order without appreciating the settled law that in the matter of appointment of Lambardar, choice of learned Collector is not to be lightly interfered with, even if two views are possible (see ***Kuldip Singh Versus Financial Commissioner, Appeals-II, Punjab, 2016 (1) RCR (Civil) 273***).

8.1 Although, there is difference of 5 years in age of petitioner and respondent No. 4 and petitioner is younger than respondent No. 4 and Hon'ble the Supreme Court in '***Mahavir Singh v. Khiali Ram and others***', ***2009(1) RCR (Civil) 757***, has also held that age of a candidate is a relevant factor; however, the age of a person is to be considered in the context of his physical ability and capacity to discharge his duties as a headman of the village. No such plea has been raised that respondent No. 4 is incapacitated from discharging the functions of a Lambardar, in view of his age. There is nothing on record suggestive of the fact that any complaint was made against him that he is not able to render his services properly owing to his age. In this scenario, rejecting the claim of respondent No. 4 on the ground that he is older than the petitioner, may amount to injustice to him. Similar view was taken by a Division Bench of this Court in ***Ram Kumar Versus The Financial Commissioner, Haryana and others, 2013 (2) RCR (Civil) 1038***.

8.2 As regards educational qualification, petitioner is BA Part-II pass, whereas respondent No. 4 is 10+2. It is not a case that respondent

No. 4 is an illiterate, therefore, respondent No. 4 cannot be taken as ineligible for the post of Lambardar.

8.3 As regard land holding, a Division Bench of this Court in case of ***Gurpreet Singh Versus Financial Commissioner (Revenue), Punjab***, 2017(1) RCR (Civil) 233, held that after abolition of land revenue in the States of Punjab and Haryana, long back, owning land by the candidates for the post of Lambardar would not be of much significance any further.

8.4 Further, giving preference to son of deceased Lambardar is in essence giving priority to hereditary claim, which has been held to be ultra vires to the Constitution of India and offends Article 14 of Constitution of India by a Division Bench of this Court in the case of ***Karnail Singh Versus The State of Haryana etc.***, 1973 PLJ 676, wherein it was held as under :-

“4. It may appear obvious that Rule 15 (supra) applies only at the time of all first appointments of village Headman or Lambardars. Clauses (e) and (f) laying down two further criteria for consideration in the matter of selection of an incumbent to this office were added afterwards in the years 1945 and 1954, respectively. The paragraph under the clauses was added by the Government of Punjab (India) on 14th July, 1954. The last two sentences in this paragraph may seem to lay further emphasis on heredity or family connections. The criteria mentioned in the various clauses of Rule 15 can be taken into consideration under sub-rule (i) of Rule 17 where a successor to the office of village Headman has to be selected in an estate, or sub-division thereof, owned chiefly or

in its entirety by the Government. In all other estates or villages or their sub-divisions, the successor has to be appointed under sub-rule (ii) of Rule 17 and the criteria mentioned in Rule 15 do not seem to come in. The sub-rule on the other hand says that the successor shall be appointed by the rule of primogeniture unless some social custom of succession is proved. In such exceptional circumstances also the appointment is to be confined to a collateral of the fourth or nearer degree. In making the appointment of respondent No. 4 in Civil Writ No. 1048 of 1967 and the other private respondents in Civil Writ Nos. 666 and 696 of 1970, Rule 17(ii) has been invoked and the person appointed is either the son or the grandson of the deceased Lambardar. The claim of heredity may appear to have prevailed as against all other considerations. It is true that some additional qualifications of the heir appointed have also been mentioned at places but there has been no judging of the claims of the rival candidates by making a comparison of their respective qualifications. The main consideration that may appear to have prevailed is that the person selected was connected by ties of blood or heredity with the last incumbent. Shri Naubat Singh, the learned District Attorney for the State of Haryana, has argued that in actual practice other qualifications are also taken into consideration and the appointments are not made in all cases on the grounds only of heredity. Practice apart, Rule 17(ii) may seem to attach too much importance to the claim of heredity and the selection of the successor is sought to be confined to a male lineal descendant or the nearest

collateral. Rule 17(ii) may seem to make discrimination or distinction on the ground of heredity or family connections. This rule may, therefore, appear to be violative of the fundamental rights guaranteed by Articles 14, 15 and 16 of the Constitution of India. Reference could in this connection be made to the Supreme Court rulings in Gazula Dasaratha Rama Rao v. State of Andhra Pradesh and others, AIR 1961 Supreme Court 564, and The State of Assam and others v. Kanak Chandra Dutta, AIR 1967 Supreme Court 884. Shri Naubat Singh has cited before us a Divisional Bench ruling of the Madras High Court in Rishikesavan Naidu v. S. Srinivasa Reddiar, AIR 1965 Madras 178, but the facts in that case were altogether different. The person who had been selected to the hereditary office in that case had no other rival in the field. He would have been selected un-opposed independently of his family connections that heredity was no disqualification for being selected to a particular post or appointment.

5. For reasons given above, we declare sub-rule (ii) of Land Revenue Rule 17 to be ultra vires and unconstitutional. The appointments under this sub-rule of respondent No. 4 in Civil Writ No. 1048 of 1967, respondent No. 3 in Civil Writ No. 696 of 1970 and respondent No. 4 in Civil Writ No. 666 of 1970 is quashed and the State Government is directed to make fresh appointments after considering the claims of all the contesting candidates....”

9. Considering the totality of circumstances, in my considered view, learned Financial Commissioner has rightly set aside learned

Divisional Commissioner's order dated 16.09.2016 (Annexure P-3) and restored learned Collector's order dated 21.11.2023 (Annexure P-1), appointing respondent No. 4 as Lambardar. There is no scope for any interference in the order dated 19.08.2019 (Annexure P-5), passed by learned Financial Commissioner.

10. Resultantly, the instant civil writ petition fails and the same is accordingly dismissed.

11. Pending application (s), if any, shall also stand closed.

(HARSH BUNGER)
JUDGE

14.10.2024
sjks

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No