

206 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-467-2024 (O/M)

Date of decision : 09.08.2024

Gian Chand

..... Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Vikram Singh, Advocate
for the petitioner.

Mr. Ravi Pratap, DAG Haryana.

Mr. S.S. Momi, Advocate
for respondent No. 4.

-. -

-. -

HARSH BUNGER, J. (ORAL)

1. Petitioner (Gian Chand) 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 06.12.2023 (Annexure P-7), passed by learned Financial Commissioner (Revenue), Haryana (in short 'Financial Commissioner') whereby he has set aside the order dated 17.10.2018 (Annexure P-4), passed by the learned Collector, Kurukshetra (in short 'Collector') and also order dated 10.11.2021 (Annexure P-5), passed by learned Commissioner, Ambala Division, Ambala (in short 'Divisional Commissioner') and the matter has been remanded to the learned Collector to reconsider the candidatures of the petitioner and respondent No 4 herein (Rajesh Kumar) on merits and to select the better of two for the post of Lambardar of village Kaserla, Tehsil Thanesar, District Kurukshetra.

2. Briefly, on demise of Shri Lehri Singh, previous Lambardar (Backward Category) of village Kaserla, proceedings were initiated for filling up the vacancy. In pursuance to the proclamation (mustri munadi) calling upon the applications for filling up the said vacancy, ten applications (including the one submitted by the petitioner and also respondent No. 4-Rajesh Kumar), were received. It appears that ultimately, only petitioner and respondent No. 4 remained in the fray and learned Collector, vide its order dated 31.12.2009, appointed respondent No. 4 as Lambardar; however, on an appeal filed by present petitioner, the aforesaid order dated 31.12.2009 was set aside by the learned Divisional Commissioner, vide its order dated 31.03.2010 and the present petitioner was appointed as Lambardar. Thereafter, respondent No. 4 preferred a revision petition (ROR-628/2009-10) before the learned Financial Commissioner, who vide its order dated 09.06.2011 (Annexure P-1), set aside both the orders dated 31.12.2009 and 31.03.2010 and remanded the case back to the learned Collector for passing a fresh speaking order.

2.1 Upon remand, the learned Collector, vide its order dated 02.11.2011 (Annexure P-2), appointed the present petitioner as Lambardar.

2.2 It transpires that on an appeal filed by respondent No. 4, the learned Divisional Commissioner, vide its order dated 19.09.2012, remanded the matter to the learned Collector for passing a fresh order. The learned Collector, vide its order dated 05.03.2013, called for fresh recommendations from the lower revenue officials.

2.3 Thereafter, the Assistant Collector 2nd Grade, as well as Sub Divisional Magistrate, Thanesar, recommended the name of the petitioner

for appointment as Lambardar; however, the learned Collector, vide its order dated 29.07.2015, ordered fresh proceedings.

2.4 The aforesaid order dated 29.07.2015 came to be challenged by the petitioner as well as respondent No. 4 by filing their respective appeals. Both the appeals came to be decided by the learned Divisional Commissioner, vide a common order dated 09.05.2018 (Annexure P-3), whereby the appeal filed by petitioner came to be allowed and the appeal filed by respondent No 4 was dismissed by observing that respondent No. 4 was not eligible for the post of Lambardar. Accordingly, the matter was remanded to the learned Collector for deciding the case on merits.

2.5. Thereafter, respondent No. 4 preferred a revision petition (ROR-75/2018-19) before the learned Financial Commissioner, challenging the order dated 09.05.2018 (Annexure P-3), however, it appears that no stay was granted in said ROR-75/2018-19.

2.6 In the meanwhile, it appears that in pursuance to the learned Commissioner's order dated 09.05.2018 (Annexure P-3), the learned Collector appointed the petitioner as Lambardar of village Kaserla, vide its order dated 17.10.2018 (Annexure P-4). An appeal filed by respondent No. 4 against the aforesaid order dated 17.10.2018 was also dismissed by the learned Divisional Commissioner, vide order dated 10.11.2021 (Annexure P-5).

2.7 It transpires that, vide order dated 13.10.2023 (Annexure P-6), passed by learned Financial Commissioner, respondent No. 4 withdrew his revision petition (ROR-75/2018-19) with liberty to

file a fresh revision petition for challenging the subsequent orders dated 17.10.2018 as well as 10.11.2021.

2.8 Thereafter, respondent No. 4 filed a revision petition (ROR-359/2022-23), challenging the order dated 29.07.2015, order dated 09.05.2018, order dated 17.10.2018 (Annexure P-4) and order dated 10.11.2021 (Annexure P-5), before the learned Financial Commissioner, which came to be allowed, vide order dated 06.12.2023 (Annexure P-7) and the matter was remanded to the learned Collector for fresh decision and for selecting a better candidate out of petitioner and respondent No. 4.

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

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

5. Here, it would be apposite to state the relative merits of the candidates, which can be summed up as under :-

Particulars	Petitioner (Gian Chand)	Respondent No. 4 (Rajesh Kumar)
Age	38	36
Educational qualification	9 th pass	6 th pass
Landholdings	10 Kanal	10 Kanal
Recommended by	Tehsildar and SDM, Thanesar.	-----

5.1 A bare perusal of the above chart would show that as far as age of candidates is concerned, there is hardly any difference and even the landholding is similar, however, the petitioner is more educated than respondent No. 4 and his name was recommended by the Tehsildar as

well as Sub Divisional Magistrate, Thanesar. Although, the Collector is not bound by the recommendation made by the Revenue Authorities in favour of a candidate; however, due consideration is to be accorded to such recommendations as they are in a position to assess the suitability of a candidate and such recommendation would have some persuasive value. In this regard, reference can be made to the observations made in the case of ***Hakam Singh Versus Financial Commissioner (Revenue), Punjab***, 2016 (4) RCR (Civil) 335 and ***Atma Singh Versus The Financial Commissioner, Revenue, Punjab***, 2016 (1) LAR 592.

5.2 In the present case, petitioner was appointed as Lambardar by learned Collector, Kurukshetra, vide order dated 17.10.2018 (Annexure P-4) and said appointment was upheld by learned Divisional Commissioner, vide order dated 10.11.2021 (Annexure P-5), by observing as under :-

“5. I have heard the arguments of the learned counsels of the candidates and after examining the facts on file, evidence, records and orders of the lower court, I have come to the conclusion that the decision of the Collector in the matter of Numberdari is final. There is a decision in which interference would be justified only if there is some legal irregularity or error in it. In the present case, the Collector has clarified in his order in compliance with the order of this court dated 09.05.2018 that there is no unauthorized possession of the applicant over the Panchayat land and he is also not a defaulter of the cooperative society. In this case, the Collector, after a comparative study of the merits and demerits of the candidates, has appointed the Lambardar of the village, finding the candidate more eligible in the areas, social circle and age and

education, illegal occupation of Panchayat land, work efficiency, experience and other criteria. The respondent party has all the qualities required to qualify for the post of Lambardari. Appointment to Lambardar is not an election, but a suitable candidate is nominated for the post of Lambardar. The applicant can perform the functions and duties of Lambardari with greater capacity and thoroughness than the Appellant. The Collector has passed the speaking order while keeping in view all the merits, demerits, facts and issues, education and age and social status and land owner, from which I am agree. The Learned Counsel for the appellant failed to prove any irregularity in the impugned order. Keeping in view the abovesaid facts in my opinion there is no perversity in the impugned order. So there is no need to interfere in the impugned order, which is justified. Accordingly I dismiss the appeal being baseless and without any force. The order dated 17.10.2018 passed by the Collector is upheld. A copy of this order be sent to the Collector and Sub Divisional Officer (Civil) for compliance. Order passed and announced.”

5.3 Apparently, the allegation of unauthorized possession by petitioner and he being defaulter of a cooperative society were considered by the learned Collector as well as learned Divisional Commissioner, who have recorded a categorical finding that there is no unauthorized possession of petitioner and also that petitioner is not a defaulter of the cooperative society.

5.4 In the case of ***Kuldip Singh Versus Financial Commissioner, Appeals-II, Punjab***, 2016(1) RCR (Civil) 273; it was held by the Division Bench of this Court that choice of the District

Collector cannot be lightly set aside, even if two views are possible, unless there is any patent illegality or perversity therein. It is also well established that the learned Collector is the main authority for appointment of the Lambardar. It is the Collector, who not only appreciates the antecedents of all the candidates in the fray but also personally interacts with them.

6. Besides, I have also gone through the order passed by the learned Financial Commissioner whereby the matter has been remanded to the learned Collector for fresh decision. Evidently, the learned Financial Commissioner has remanded the case by noticing that respondent No. 4 was not considered on the ground that he was not class 8th pass, but he demonstrated his reading skill in open court. In the same breath, learned Financial Commissioner observed that educational qualification is an important factor among other factors.

6.1 As regards educational qualification is concerned, even if the Haryana Government Notification dated 02.06.2008, prescribing that the Lambardar should be literate and preferably middle pass; is kept out of consideration, even then the fact remains that petitioner is more educated than respondent No. 4.

6.2 In my considered view, the petitioner has clear edge over respondent No. 4 inasmuch as that the petitioner is more educated than respondent No. 4 and his name was recommended by lower revenue officials. The learned Collector has appointed petitioner as Lambardar and the same was upheld by learned Divisional Commissioner. Therefore, learned Financial Commissioner has erred in remanding the matter, without considering the well settled position in law that the choice

of Collector is not to be lightly interfered with, even if two views are possible.

7. In the aforementioned facts and circumstances, the order dated 06.12.2023 (Annexure P-7), passed by learned Financial Commissioner is unsustainable and the same is accordingly set aside. Resultantly, the instant writ petition is allowed and the order dated 17.10.2018 (Annexure P-4), passed by learned Collector, appointing the petitioner as Lambardar of village Kaserla, Tehsil Thanesar, District Kurukshetra; which was upheld by learned Divisional Commissioner, vide order dated 10.11.2021 (Annexure P-5), is maintained.

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

(HARSH BUNGER)
JUDGE

09.08.2024
sjks

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No