

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

CWP-2550-2024

Date of decision : 20.02.2024

Dharamvir Singh

.....Petitioner

versus

Financial Commissioner and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Krishan Singh Dadwal, Advocate
for the petitioner.

RAJESH BHARDWAJ, J.

This petition has been filed praying for quashing the order dated 14.06.2017 passed by respondent No.3 (Annexure P-7) whereby the candidature of the petitioner for the post of Nambardar has been rejected as well as against the order dated 18.05.2018 (Annexure P-9) passed by respondent No.2 whereby the appeal filed by the petitioner has been ordered to be dismissed and order dated 01.06.2023 (Annexure P-11) passed by respondent No.1 whereby the revision filed by the petitioner has also been ordered to be dismissed without taking into consideration that respondent No.4 who is employed in a private firm has been appointed to the post of Nambardar, ergo, he would not be available to the residents of the Village when his services would be required as well as the comparative merits, which are clearly suggestive of the fact that the petitioner is more meritorious than respondent No.4 keeping in view the facts and circumstances, which are being set out in the present petition.

Adumbrated facts of the case are that on the death of earlier Nambardar namely, Harbhajan Singh on 19.08.2009, the post of Nambardar fell vacant in the Village and thus, the process for appointment

of new Nambardar was initiated. On getting the approval, proclamation was made in the Village for inviting the applications from the interested eligible candidates. In pursuance to the same, five applications were received from the candidates namely, Dharamvir (petitioner), Sikandarjit Singh, Sukhdev Ram (respondent No.4), Ram Pal and Chuni Lal. Their police verification was got conducted. Candidates namely, Chuni Lal, Ram Pal and Sikanderjit Singh did not appear in the Court of Tehsildar and therefore, *ex parte* proceedings were initiated against them. Thus, character verification of remaining two candidates was carried out in the concerned Police Station. On recording the statement of candidates, Tehsildar, Balachaur vide his report dated 25.04.2016 sent the case to the Sub Divisional Magistrate, Balachaur with recommendation to appoint candidate petitioner-Dharamvir Singh as new Nambardar of the Village. The Sub Divisional Magistrate, Balachaur vide its report dated 14.03.2017 sent the case back to Tehsildar Balachaur with direction that after hearing all the candidates on the basis of facts, considering the eligibility of the candidates and the illegal encroachment and other objections raised by the candidates against each other should be verified and the case be sent again. On finding their suitability, the Naib Tehsildar, Balachaur on hearing the objections raised by the candidates vide his report dated 11.04.2017 sent the case to the Sub Divisional Magistrate recommending the name of Sukhdev Ram (respondent No.4) for his appointment as Lambardar. On appreciation of the merits of the petitioner and respondent No.4, it was found that petitioner-Dharamvir Singh was 33 years of age and 7th class pass by qualification. He could read Punjabi and Hindi language very well. Besides this, he owned 5 kanal 10 marla of land. Respondent No.4- Sukhdev Ram was found to be 30 years and 10+2 by qualification. He

could read and write Hindi, English and Punjabi. Besides this, he owned 4 kanal of land. The case was sent to the Collector and Collector appreciated the merits and demerits of the candidates in the fray. The report of Naib Tehsildar, Balachaur and Sub Divisional Magistrate, Balachaur were also perused and appreciated by the learned Collector and the residence of Dharamvir Singh (petitioner) was found to be in the land owned by the Panchayat which was illegal encroachment on the land of the Panchayat. On evaluation of the overall merits and demerits of the candidates, the Collector found respondent No.4-Sukhdev Ram to be the most meritorious and suitable candidate and thus, appointed him as Nambardar of the Village vide his order dated 14.06.2017. Aggrieved by the same, petitioner filed the appeal before the Commissioner, Rupnagar. However, learned Commissioner, on hearing both the sides and re-appreciating the record, found no perversity in the orders passed by the Collector and thus, dismissed the appeal vide his order dated 18.05.2018. Still aggrieved, petitioner assailed these orders before the learned Financial Commissioner, respondent No.1 by way of filing ROR No.422 of 2018. Respondent No.1 heard both the sides and re-appreciated the records produced. However, finding no perversity in the orders, he dismissed the revision petition filed by the petitioner vide his order dated 01.06.2023. Thus, being aggrieved, petitioner is before this Court by way of filing the present petition.

Learned counsel for the petitioner has vehemently contended that on comparison of the *inter se* merits of both the candidates, petitioner was the most meritorious and suitable candidate however, learned Collector has illegally ignored his merits and thus, appointed respondent No.4 as Lambardar of the Village which is in violation of Rule 15 of the Punjab Land Revenue Act and the settled principles of law. He has

submitted that the petitioner has been non-suited on the false and frivolous ground that he has constructed his residence by making illegal encroachment on the Panchayat land. He has submitted that the petitioner had purchased the house from one Gurdev Kaur and is residing there. He has submitted that petitioner and Gurdev Kaur had entered into agreement dated 10.08.2015 and in pursuance to the same, he purchased this house where he is residing and hence, the same cannot be termed as illegal encroachment. He has submitted that his father has given the affidavit to the revenue authorities specifically mentioning therein that no share in the said house has been given to the petitioner and he is residing separately from other family members. He has submitted that the house where the petitioner is residing does not fall in the shamlat land because the same is situated within the abadi area and therefore, the same is excluded from the definition of shamlat deh. He submits that thus petitioner has been illegally non-suited on the ground that he has encroached upon the Panchayat land. It is submitted that in view of the conditions enumerated in Rule 15 of the Punjab Land Revenue Act, petitioner was the most meritorious candidate but the Collector has failed to appreciate the same and thus, the impugned order passed by the Collector suffers from perversity but the Appellate and Revisional Authorities also fallen in error in not appreciating the evidence on record and the law settled and thus, have illegally upheld the perverse order passed by the Collector. It is submitted that the order passed by the Collector, Commissioner and Financial Commissioner being perverse, deserve to be *set aside* by appointing the petitioner as Nambardar of the Village.

Heard. On hearing counsel for the petitioner and perusing the record, it is evident from the record that on comparison of the inter se merits of both the candidates, petitioner was found to be 33 years of age and 7th Class pass. Besides this, he owned 5 kanal 10 marla of land. On the other hand, respondent No.4-Sukhdev Ram was found to be 30 years and 10+2 by qualification. Besides this, he owned 4 kanal of land. It is obvious from the comparison of the inter se merits of both the candidates that respondent No.4 was younger in age and more qualified than that of petitioner. Learned Collector has evaluated the *inter se* merits of both the candidates. The name of petitioner was recommended by the Sub Divisional Magistrate, Balachaur for his appointment as Lambardar of the Village. The Collector had appreciated the report submitted by the Naib Tehsildar, Balachaur and the Sub Divisional Magistrate wherein it was reported that the petitioner has constructed his residence by way of illegal encroachment in the Panchayat land. Learned counsel for the petitioner though has argued that the allegations were false and frivolous as the petitioner had purchased the house from one Gurdev Kaur was residing in the same however, there is nothing on record to prove the report submitted by the Tehsildar and Sub Divisional Magistrate as observed by the Collector to be false. Even otherwise, respondent No.4 was not only younger in age but was more qualified than the petitioner. Thus, the contentions raised by counsel for the petitioner that the petitioner had an edge over respondent No.4 is without any force.

As per the settled proposition of law, the Hon'ble Supreme Court in the judgment titled as **Mahavir Singh Vs. Khiali Ram, 2009(1) RCR(Civil) 757** has held that the candidate who is younger in age should

be given preference.

Besides this, 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 Lambardar 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.”

The Collector is the prime authority for the appointment of Lambardar who has to take into consideration the overall merits and demerits of all the candidates. Needless to say that the appointment made by the Collector was upheld by the Appellate as well as the Revisional Authority and thus, there is a concurrent finding in favour of respondent No.4.

In view of the overall facts and circumstances of the case on the anvil of the law settled, this Court does not find any infirmity in the impugned orders passed by the Collector, Appellate and Revisional Authority and thus, the petition being devoid of any merits is hereby dismissed.

20.02.2024
m. sharma

(RAJESH BHARDWAJ)
JUDGE

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