

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

CWP-4509-2024

Date of Decision: 05.03.2024

Rajinder Pal

..... Petitioner

Versus

Financial Commissioner (Appeals) and othersRespondents

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Rai Singh Chauhan, Advocate,
Mr. Rohit Sapehiya, Advocate and
Ms. Deepika Chauhan, Advocate, for the petitioner.
Mr. Gaurav Dutta, Advocate for respondent No.4-Caveator.

Rajesh Bhardwaj, J.

1. Prayer in the present petition is for quashing of the impugned order dated 14.12.2023 passed by Financial Commissioner (Appeals), Punjab (Annexure P-9) i.e. respondent No.1 and order dated 29.08.2023 passed by Commissioner Roopnagar, Division Roopnagar (Annexure P-7) i.e. respondent No.2 to the extent that respondent No.4 has illegally been appointed as Lambardar on the appeal filed by the petitioner while setting aside the order dated 22.03.2023 passed by the District Collector (Annexure P-5) i.e. respondent No.3, who has never challenged the said order and qua them it has become final, which is without jurisdiction and thus, liable to be set aside.

2. Adumbrated facts of the case are that on account of death of Nasib Chand, earlier Lambardar (SC) of the village Garle Dhahan, Tehsil Balachaur, District Shaheed Bhagat Singh Nagar, post of SC Lambardar fell vacant and thus, process for the appointment of new Lambardar was initiated. *Mushtri Munadi* was conducted in the village for inviting applications from the interested and eligible candidates. In pursuance to the

same, eleven applications were received. Their character verifications were got done by the Tehsildar, Balachaur through SHO Police Station Balachaur. Tehsildar, Balachaur vide his report dated 22.10.2010 recommended name of Puran Chand for the appointment of SC Lambardar. On appreciation of their inter-se merits, Rajinder Pal (petitioner) was found to be 57 years of age and matric pass by qualification. As far as Puran Chand (respondent No.5) is concerned, he was found to be 61 years of age and matric by qualification. Learned Collector on evaluation of the inter-se merits and demerits of all the candidates, finding respondent No.5 to be more meritorious candidate appointed him as Lambardar of the village vide order dated 03.03.2021 (Annexure P-3). Aggrieved by the same, petitioner Rajinder Pal filed an appeal before the Commissioner, Roopnagar Division, Roopnagar. Learned Divisional Commissioner after hearing both the sides, accepted the appeal and thus, remanded the case to the Deputy Commissioner-cum-Collector for deciding it afresh on merit, vide his order dated 29.04.2022 (Annexure P-4). This order was not further assailed by either of the parties and thus, learned Collector proceeded to decide the case afresh in pursuance to the remand order passed by the Commissioner. Besides other candidates, Sucha Ram (respondent No.4) was found to be 62 years of age and BA Part-I by qualification.

3. Learned Collector on evaluation of the overall merits of the candidates, remanded the case to the Sub Divisional Magistrate, Balachaur with a direction to get effected fresh proclamation in the village for appointment on the post of Lambardar by inviting fresh applications from the eligible candidates, vide his order dated 22.03.2023. Aggrieved by the same, petitioner filed an appeal before the Commissioner, Roopnagar

Division, Roopnagar. Learned Divisional Commissioner, after hearing the appeal found the order passed by the Collector to be perverse and thus, he not only set aside the same, but also appointed respondent No.4 Sucha Ram as SC Lambardar of the village vide his order dated 29.08.2023 (Annexure P-7). Still aggrieved by the same, petitioner filed an appeal before the Financial Commissioner, who after hearing both the sides, found no infirmity in the order passed by the Commissioner and thus, dismissed the appeal filed by the petitioner vide his order dated 14.12.2023 (Annexure P-9). Hence, aggrieved by the same, the petitioner is before this Court by way of filing the present petition.

4. Learned counsel for the petitioner has contented that this is the second round of litigation among the parties. He submits that in the first round, learned Collector ignoring the merits of the petitioner had illegally appointed Puran Chand (respondent No.5) as SC Lambardar of the village, however, learned Commissioner had set aside the same by remanding the case for a decision afresh. He submits that on remand, learned Collector after appreciating the inter-se merits of all the candidates, ordered that fresh *mushtri munadi* be conducted and fresh applications be invited for the appointment of Lambardar in the village vide his order dated 22.03.2023. However, being aggrieved petitioner filed an appeal against the same. He submits that respondent No.4 did not assail the order passed by the learned Collector but learned Commissioner not only set aside the order passed by the Collector, but also appointed respondent No.4 Sucha Ram as Lambardar of the village, which is totally unsustainable in the eyes of law. It is submitted that learned Financial Commissioner has also fallen in error in rejecting the appeal filed by the petitioner and thus, has illegally upheld the

order passed by the Commissioner. He has submitted that the order passed by the Collector was in the right spirit wherein fresh proclamation was directed to be made for inviting fresh applications. He submits that the impugned orders being unsustainable in the eyes of law, deserve to be set aside.

5. Learned counsel for respondent No.4-Caveator has vehemently opposed the submissions made by counsel for the petitioner. He has submitted that though in the first round of litigation, learned Collector had illegally appointed respondent No.5-Puran Chand, however, the same was set aside in the appeal filed by the Commissioner vide his order dated 29.04.2022, whereas, the case was remanded to be decided afresh on merits. However, learned Collector instead of deciding the case on merits, remanded the case to the SDM with a direction to make fresh proclamation. He has submitted that the order passed by the Collector was against the direction given by the Commissioner. He submits that in the appeal filed against the order of the Collector, learned Commissioner has rightly appointed respondent No.4 as Lambardar of the village, which was further rightly upheld by the Financial Commissioner as well. He has submitted that there being no infirmity in the orders passed by the Commissioner and the Financial Commissioner, the present petition deserves to be dismissed.

6. Heard.

7. After hearing learned counsel for the parties and perusing the record, it is apparent that this is the second round of litigation between both sides. In the first round, respondent No.5 was appointed as Lambardar of the village, but learned Commissioner remanded the case while accepting the appeal filed by the petitioner. Learned Collector duly appreciated the inter-se merits of all the candidates in fray and thus, found it appropriate that

fresh *mushtri munadi*/proclamation be made and fresh applications be invited for the appointment of Lambardar in the village. However, in the appeal filed against the order of the Collector, learned Commissioner not only set aside the order of the Collector, but he appointed respondent No.4 as Lambardar of the village. Learned Financial Commissioner as well upheld the order passed by the Commissioner. Counsel for respondent No.4 has fairly admitted that respondent No.4 never assailed the order dated 22.03.2023 passed by the Collector, whereby the case was remanded to the SDM for fresh proclamation. Thus, it is evident that learned Commissioner has appointed respondent No.4 in the appeal filed by the petitioner.

8. 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.”

9. There is no gainsaying that the Collector is the prime authority for appointment of the Lambardar but learned Commissioner and Financial Commissioner have failed to appreciate the settled proposition of law by appointing a candidate of their own choice. 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.

10. In the considered opinion of this Court the view taken by the Commissioner and Financial Commissioner, is totally unsustainable in the

eyes of law, thus, both the impugned orders dated 29.08.2023 and 14.12.2023 are set aside. The view taken by the Collector vide order dated 22.03.2023 in remanding the case to the SDM for inviting fresh application by making fresh proclamation, is upheld.

11. In the facts and circumstances of this case, the Collector is directed to initiate fresh process for appointment of Lambardar by making fresh proclamation and conclude the same expeditiously preferably within a period of three months from the date of receipt of copy of this order.

12. Disposed of in above-said terms.

13. Registry is directed to send a copy of this order to the Collector concerned, who on receipt of the same would proceed with the matter in accordance with law.

05.03.2024			(RAJESH BHARDWAJ)
sharmila			JUDGE
	Whether Speaking/Reasoned	:	Yes/No
	Whether Reportable	:	Yes/No