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

CWP No.5858 of 2024 (O&M)

Date of Decision: 20.05.2024

Jagdish Lather

..... Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Dr. Pankaj Nanhera, Advocate
for the petitioner.

RAJESH BHARDWAJ, J.

CM-4914-CWP-2024

Instant application has been filed for placing on record the certified copy of impugned order dated 23.04.2023 in the main case.

For the reasons recorded in the application, the same is allowed. Certified copy of impugned order dated 23.04.2023 is ordered to be taken on record.

CWP-5858 of 2024

1. Present writ petition has been filed for quashing the order of learned Financial Commissioner, Revenue i.e. respondent No.2 (Annexure P-3) as the same was passed *ex parte* and without the petitioner able to lead any evidence and is thus violative of the principles



of natural justice. Further prayer has been made for directing respondent No.2 to decide the controversy in respect to the appointment to the post of lambardar by following the principles of natural justice and in a time bound manner.

2. Adumbrated facts of the case are that for the appointment of new lambardar of village Chhapra Jagir, District Karnal, the necessary process was initiated. The mustri munadi was conducted in the village for inviting the applications from the interested/eligible candidates. In pursuance to the same, 09 applications were received including that of the petitioner and respondent No.5. Except the petitioner and respondent No.5, rest of the applicants withdrew their applications and thereafter the petitioner and respondent No.5 finally remained in the fray. Their credentials were got verified from the concerned police station and finding the same satisfactory, further process was adopted. On the appreciation of *inter se* merits of petitioner and respondent No.5, it was found as follows:

Name	Age	Qualification	Resident of village	Land	Remarks
Jagdish Lather	47 years	Matriculate	Permanent resident of village	Owner of agricultural land measuring 6 acres and 4 k	Family welfare scheme and deposited Rs.10,000/-
Arjun Dass	48 years	10+2 and qualified Shastri from Varansi	Permanent resident of village	Owens 7 acres	Blood donor, ex block samiti chairman FDR of Rs.2,20,000/- etc



3. On the comparison of *inter se* merits of both the candidates, the Naib Tehsildar-cum-Assistant Collector 2nd Grade recommended the name of respondent No.5 for the appointment of lambardar of the village to Sub Divisional Magistrate, Karnal. Agreeing with the same, the Sub Divisional Magistrate, Karnal also recommended the name of respondent No.5 for his appointment and thus, directed both the candidates to appear before the Court of Deputy Commissioner/Collector on 14.12.2016. The learned Collector on the evaluation of over all merits and demerits of both the candidates found respondent No.5 to be more suitable and thus, appointed him as lambardar of the village vide his order dated 22.03.2017. However being aggrieved by the same, the petitioner filed an appeal before the learned Commissioner, Karnal Division, Karnal. On hearing both the sides, the learned Commissioner found the order passed by the Collector to be perverse and thus, set aside the same by remanding the case to the Collector for decision afresh vide order dated 07.12.2018. Being aggrieved by the same, respondent No.5 filed revision petition before the learned Financial Commissioner. The learned Financial Commissioner has disposed of the revision petition vide order dated 16.12.2019 by remanding the case to the learned Commissioner, Karnal to verify whether respondent No.5 was in illegal possession of Khasra No.68/7/2 min. After the remand, the learned Commissioner, Karnal has set aside the order dated 22.03.2017 passed by the Collector vide his order dated 17.09.2021 by appointing the petitioner as lambardar of the village. Being aggrieved, respondent No.5 filed an appeal under Section



13 of the Punjab Land Revenue Act, 1887 before the learned Financial Commissioner. The learned Financial Commissioner heard both the sides and appreciated the evidence on record. He found the order passed by the learned Commissioner to be perverse and thus, while setting aside the same, restored the order passed by the Collector dated 22.03.2017. Hence aggrieved the petitioner is before this Court by way of filing the present writ petition.

4. Learned counsel for the petitioner has submitted that on the comparison of *inter se* merits of both the candidates, it is apparent that the petitioner was younger in age than respondent No.5. He submits that as per letter dated 05.04.2023 issued by the Sarpanch, Gram Panchayat of village Chappra Jagir, Karnal, respondent No.5 was in illegal possession of the village land but the Collector had failed to appreciate the same and thus held respondent No.5 more suitable in an arbitrary manner. He submits that the learned Commissioner had rightly held that respondent No.5 was in unauthorized possession of the Panchayat land and thus rightly held the order passed by the Collector to be perverse and set aside the same by appointing the petitioner as lambardar of the village. However the learned Financial Commissioner has failed to appreciate the evidence on record and the law settled and thus, illegally set aside the same. He submits that the petitioner was not allowed to lead his evidence before the learned Financial Commissioner and thus, the impugned orders being in violation of the principles of natural justice, deserves to be set aside.



5. Heard.

6. The Court has heard learned counsel for the petitioner and perused the record with his able assistance.

7. It has been deciphered from the record of the case that on comparison of *inter se* merits of both the candidates, there was no substantial difference between the age of both the candidates as the petitioner was 47 years of age and respondent No.5 was 48 years of age at the time of their consideration by the Collector whereas respondent No.5 was more qualified than the petitioner. The Tehsildar and the Sub Divisional Magistrate on the comparison of *inter se* merits had recommended the name of respondent No.5 for his appointment. The learned Collector on the evaluation of over all merits and demerits of both the candidates found respondent No.5 to be more suitable and appointed him as lambardar of the village vide his order dated 22.03.2017. This order was assailed by the petitioner by way of filing an appeal before the Commissioner, who vide his order dated 07.12.2018 remanded the case to the Collector for decision afresh. The order passed by the Commissioner was assailed by respondent No.5 by way of filing ROR No.251 of 2018-19 before the learned Financial Commissioner, who disposed of the same vide his order dated 16.12.2019 by remanding the matter to the Commissioner to verify whether Khasra No.68/7/2 min was the government land or panchayat land and whether respondent No.5 was in unauthorized possession of same. The learned Commissioner vide his order dated 17.09.2021 set aside the order passed by the Collector



dated 22.03.2017 and appointed the petitioner as lambardar of the village. The matter was remanded to the Commissioner by the learned Financial Commissioner vide order dated 16.12.2019 to enquire into the allegations of unauthorized possession by respondent No.5. However the same was not enquired about the possession of respondent No.5 over khasra No.68/7/2. As emanated from the record, learned Sub Divisional Officer (Civil), Karnal in his order dated 28.11.2016 found that land/khasra No.68/7/2 min. was abadi deh and possession of respondent No.5 was not unauthorized. As revealed from the order passed by the learned Financial Commissioner, the service was duly effected on the petitioner, however he did not appear before him and thus, was proceeded *ex parte*. Once the service is effected on the petitioner and he did not appear, the learned Financial Commissioner was well within his jurisdiction to proceed against him *ex parte*. Thus, the allegations made by the petitioner regarding the unauthorized possession by respondent No.5 over the panchayat land was proved to be false and thus, the learned Financial Commissioner found the order passed by the Commissioner to be perverse. Not only this, respondent No.5 was more qualified than the petitioner.

8. There is no gainsaying that as per the law settled, the candidate younger in age is to be preferred. However on the appreciation of merits of both the candidates, the Court does not find any substantial difference between both the petitioner and respondent No.5. Thus, the Collector on the evaluation of over all merits of both the candidates,



found respondent No.5 to be more suitable and thus, appointed him as lambardar of the village. As per the law settled, the Collector is the prime authority for appointment of the Lambardar and his choice cannot be interfered with in a cavalier manner and the same can be interfered with in the situation when the same suffers from patent illegality or perversity but the learned Commissioner has fallen in error in setting aside the same in violation of the law settled. The learned Financial Commissioner has rightly set aside the order passed by the Commissioner by restoring the order passed by the Collector. Thus, the case has been decided on merits keeping in view the law settled.

9. Thus, this Court finds no merit in the present petition and hence, the same being devoid of any merit is hereby dismissed.

20.05.2024
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(RAJESH BHARDWAJ)
JUDGE

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