

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

CWP-8297-2022

Date of decision : 31.01.2024

Kulwant Singh

.....Petitioner

versus

State of Punjab and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Kanwaljit Singh, Senior Advocate with
Mr. Robin Gill, Advocate
for the petitioner.

Mr. Navneet Singh, Senior DAG, Punjab.

Mr. Pawan Kumar, Senior Advocate with
Mr. Vidhushi Kumar, Advocate
Mr. Karnail Singh, Advocate and
Mr. Surya Kumar, Advocate
for respondent No.4.

RAJESH BHARDWAJ, J.

Prayer in the present petition is for quashing of order dated 18.02.2021 (Annexure P-4) passed by the Divisional Commissioner, Patiala Division and that of learned Financial Commissioner, Punjab dated 06.10.2021 (Annexure P-5) by upsetting the order of Collector in the matter of appointment of a Lambardar in a most arbitrary, illegal manner, which is apposite to Rule 15 of the Punjab Land Revenue Rules.

Adumbrated facts of the case are that on the death of earlier Lambardar namely, Kartar Singh on 01.07.2019, the post of Lambardar fell vacant in the Village and thus, the process for appointment of new Lambardar was initiated. The *mustri munadi* was conducted in the village for inviting applications from the eligible interested candidates. In pursuance to the same, four applications were received from the

candidates namely, Naib Singh, Kulwant Singh (petitioner), Balvir Singh and Jagdev Singh (respondent No.4). Their character antecedents were got verified by the police. On perusal of the application filed by the petitioner, he was found to be 42 years of age and 12th pass by qualification. Besides this, he owned 17 kanals of land. He was found to have actively participated in the public welfare activities. He was also nephew of the deceased Lambardar namely, Kartar Singh. On the other hand, respondent No.4-Jagdev Singh was found to be 44 years of age and 12th class pass by qualification. Besides this, he owned 72 kanals 06 marlas of land. He was also found to be blood donor and social worker. On evaluation of their *inter se* merits, the Naib Tehsildar recommended the name of petitioner-Kulwant Singh for the appointment as Lambardar whereas, the Sub Divisional Magistrate recommended the name of respondent No.4-Jagdev Singh to the Collector for his appointment as Lambardar. During the pendency of the case before the Collector, candidate namely, Naib Singh withdrew his application in favour of petitioner-Kulwant Singh. Learned Collector on evaluation of *inter se* merits and demerits of all the candidates in the fray, found the petitioner as most suitable candidate and appointed him as Lambardar of the Village vide his order dated 23.07.2020. Aggrieved by the same, respondent No.5 filed the appeal under Section 13 of the Punjab Land Revenue Act, 1887 before the Divisional Commissioner, Patiala. Learned Divisional Commissioner, heard both the sides and re-appreciated the evidence on record and finding the order passed by the Collector perverse, he accepted the appeal and *set aside* the order passed by the Collector and thus, appointed respondent No.4 as Lambardar of the Village vide his order

dated 18.02.2021. Being aggrieved, petitioner filed the appeal under Section 13 of the Punjab Land Revenue Act, 1887 before the learned Financial Commissioner. Learned Financial Commissioner on hearing both the sides and perusing the record, found no merit in the appeal filed by the petitioner and thus, dismissed the same vide his order dated 06.10.2021 and thus, upheld the order dated 18.02.2021 passed by the Commissioner. Thus, petitioner is before this Court by way of filing the present petition.

Learned Senior Counsel appearing for the petitioner has vehemently argued that on comparison of the *inter se* merits of all the candidates in the fray, it is apparent that the petitioner was found to be most meritorious candidate and thus, he was appointed as Lambardar of the Village. He has submitted that as per settled law, it is the prerogative of the Collector to assess the merits and demerits of the candidates in the fray and being the prime authority in the appointment of Lambardar, his choice cannot be interfered unless the same suffers from any perversity. It is submitted that learned Commissioner has miserably failed to appreciate the law settled and thus, he not only *set aside* the well reasoned order passed by the Collector but also appointed respondent No.4 as Lambardar of the Village as per his own choice. He submits that the view taken by the learned Commissioner is totally against the settled principles of law. He submits that learned Financial Commissioner i.e. respondent No.1 again failed to appreciate the merits of the petitioner and the law settled and thus, has illegally upheld the order passed by the Commissioner. He submits that the petitioner actively participated in the social works and he being very well educated was rightly found to be

most meritorious candidate by the Collector, but order has been illegally *set aside* by both the learned Divisional Commissioner and learned Financial Commissioner. It is also submitted by him that after filing the application for appointment as Lambardar, respondent No.4 intentionally did not appear before learned Collector however, learned Collector duly appreciated the merits of each candidate and thus, finding the petitioner to be the most suitable candidate, he rightly appointed him as a Lambardar of the Village. He submits that the impugned orders passed being totally against the law settled, deserve to be *set aside*.

Per contra, learned Senior counsel for respondent No.4 has vehemently opposed the submissions made by counsel for the petitioner. It has been submitted by learned Senior Counsel that respondent No.4 was the most meritorious and suitable candidate for the appointment as Lambardar. He submits that finding respondent No.4 meritorious, his name was recommended by the SDM to the Collector for his appointment however, this report was not placed on record. He submits that respondent No.4 owned more land than that of the petitioner, however, the same was considered less, which is against the facts on record. He submits that respondent No.4 duly applied for his appointment however, learned Collector without hearing respondent No.4 has passed the order dated 23.07.2020 appointing petitioner as Lambardar which is totally in violation of the principles of natural justice as respondent No.4 was not provided any opportunity of being heard at the time of his appointment. He submits that learned Commissioner finding the order passed by the Collector to be perverse had rightly *set aside* the said order and thus, rightly appointed respondent No.4 as Lambardar of the Village. He

submits that the order passed by the Commissioner was duly upheld by learned Financial Commissioner as the order passed by the Collector was perverse. He also submits that the petitioner has claimed to be the nephew of the deceased Lambardar and thus, putforth his claim on the basis of hereditary which is unsustainable as per the law settled. He has also submitted that respondent No.4 is working as a Lambardar after his appointment by the Commissioner and till date, he is discharging his duties as Lambardar of the Village. He submits that the petition being devoid of any merits, deserves to be dismissed.

Heard. On hearing learned Senior Counsel for both the sides, it is apparent that on the death of earlier Lambardar namely, Kartar Singh on 01.07.2019, the process for appointment of new Lambardar was initiated. Four applications were received from the interested eligible candidates including the petitioner and that of respondent No.4. On evaluation of merits and demerits of all the candidates, learned Collector appointed the petitioner as Lambardar of the Village however, this order was *set aside* by the Commissioner vide his order dated 18.02.2021 which was further upheld by the learned Financial Commissioner vide his order dated 06.10.2021. It is an admitted fact that the petitioner was appointed as Lambardar of the Village by the Collector. On comparison of their *inter se* merits, both the candidates are virtually at par in terms of their age and qualification. Both the candidates are also land owners. However, this is the settled proposition of law that the choice of the Collector can be interfered only in case the same suffers from perversity. However, the Commissioner has not only *set aside* the order passed by the Collector but also appointed respondent No.4 as per his choice which was further

upheld by the learned Financial Commissioner. It is also an admitted fact that respondent No.4 although duly applied but was not present before the Collector and thus, the appointment order was passed in favour of petitioner in his absence. From the arguments raised before this Court, it is apparent that there are disputed question of facts which requires reappraisal of the whole case. However, learned Appellate and Revisional Authorities have appointed the candidate of their own choices. This Court finds that the view taken by the Appellate and Revisional Authorities is unsustainable in the eyes of law. Thus, both the impugned orders passed by the Commissioner and the Financial Commissioner are *set aside*. The order passed by the Collector is also in the absence of respondent No.4. Hence, the same is also *set aside*. Resultantly, the case is remanded to the Collector for decision afresh. Learned Collector would hear both the parties concerned and would take decision afresh without being influenced by the order passed earlier expeditiously preferably, within three months from the receipt of copy of this order. Office is directed to send a copy of this order to the Collector forthwith who on receipt of the same will issue notice to both the parties for appearance and proceed with the matter as per law. However, as submitted by learned Senior Counsel for respondent No.4 that respondent No.4 is working as Lambardar as on date, thus, it is clarified that he would continue to be the Lambardar of the Village till the final fresh decision is taken by the Collector.

Petition is disposed of in the above-said terms.

31.01.2024
m. sharma

(RAJESH BHARDWAJ)
JUDGE

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