

2024:PHHC:136555



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

CWP-10524-2022 (O&M)
Date of decision : 19.10.2024

KULWINDER SINGH

...Petitioner

Versus

FINANCIAL COMMISSIONER (APPEALS) PUNJAB
AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Sherry Singla, Advocate
for the petitioner.

Mr. Nirmaljit Singh Diwana, Sr. D.A.G., Punjab.

Mr. D.S. Gandhi, Advocate
for respondent No.4.

HARSH BUNGER, J.

Petitioner (Kulwinder Singh) has filed the present writ petition under Articles 226/227 of the Constitution of India, *inter-alia*, seeking a writ in the nature of *certiorari* for setting aside the order dated 15.03.2022 (Annexure P-4) passed by the learned Financial Commissioner (Appeals) Punjab; whereby the petitioner's appointment as *Lambardar* (General Category) of Village Cheemna, Tehsil Jagraon, District Ludhiana, has been set aside and respondent No.4 (Sukhraj Kaur) has been appointed as *Lambardar*.

2. Briefly, on demise of Sh. Ajit Singh, previous *Lambardar* (General Category) of Village Cheemna, Tehsil Jagraon, District Ludhiana, proceedings for filling up the said vacancy were initiated. In pursuance to

the proclamation carried out for filling up the afore-said vacancy, eight applications (including the one submitted by petitioner-Kulwinder Singh and another by respondent No.4-Sukhraj Kaur) were received and thereafter, their antecedents were got verified from the local police, which were found to be in order.

2.1 Learned Tehsildar, Jagraon recommended the name of the petitioner for appointment to the afore-said vacancy, whereas, the learned Sub-Divisional Magistrate, Jagraon recommended the name of respondent No.4 for appointment to the post of *Lambardar* and forwarded the case to the learned Collector.

2.2 Learned Collector, Ludhiana vide order dated 04.12.2018 (Annexure P-1) appointed the petitioner as *Lambardar* of Village Cheemna.

2.3 An appeal filed by respondent No.4 against the Collector's order was also dismissed by the learned Commissioner, Patiala Division, Patiala vide its order dated 05.10.2020 (Annexure P-2).

2.4 Thereafter, respondent No.4 preferred a revision petition (ROR-01-2021) before the learned Financial Commissioner (Appeals), Punjab, which was allowed vide order dated 15.03.2022 (Annexure P-4) and respondent No.4-Sukhraj Kaur, was appointed as *Lambardar* of Village Cheemna.

2.5 In the afore-mentioned facts and circumstances, the petitioner has filed the present writ petition before this Court, for the relief/s, as noticed here-in-above.

3. Learned counsel for the petitioner submits that the learned Financial Commissioner, has erred in law and fact in passing the impugned order, whereby respondent No.4 has been appointed as *Lambardar* and that

too, without setting aside the appointment of the petitioner as *Lambardar*. It is submitted that the learned Financial Commissioner, has wrongly allowed the revision petition filed by respondent No.4 on the ground that the petitioner had destroyed the trees planted by the Forest Department. It is submitted that the petitioner had duly explained the manner in which, certain plantations were inadvertently destroyed, while doing agricultural work by him in his fields and the petitioner had even paid the fine/penalty imposed by the Department of Forest, Punjab (Ludhiana Division), therefore, the same could not have been considered as a de-merit against him. It is further submitted that the learned Collector, had appointed the petitioner as *Lambardar*, after finding him more suitable for the said post and the said appointment was further upheld by the learned Commissioner, therefore, there was no occasion for the learned Financial Commissioner, to appoint respondent No.4 as *Lambardar*, and that too, by ignoring the well-settled position in law that in the matter of appointment of *Lambardar*, the choice of the Collector is not to be lightly interfered with unless the same is patently illegal or perverse.

3.1 With the afore-said submissions, prayer has been made for setting aside the impugned order and for maintaining the order passed by the learned Collector, appointing the petitioner as *Lambardar*.

4. Per contra, learned counsel appearing for respondent No.4 has opposed the submissions made on behalf of the petitioner by submitting that since the petitioner had destroyed the plantations made by the Forest Department, Punjab, a fine was imposed, which renders him unsuitable for the post of *Lambardar* as he has no value/concern for the environment. It is further submitted that the *Lambardari* belongs to Patti Jhanda-Baza, whereas the petitioner belongs to another patti namely, Bakhatmal. It is

next submitted that even otherwise, respondent No.4 is younger in age and more educated than the petitioner; therefore, there is no illegality or perversity in the order passed by the learned Financial Commissioner. Accordingly, prayer has been made for dismissal of the writ petition.

5. Heard.

6. In the present case, the petitioner was appointed as *Lambardar* of Village Cheemna by the learned Collector and the Collector's order was further upheld by the learned Divisional Commissioner, Patiala. However, the learned Financial Commissioner, has appointed respondent No.4- Sukhraj Kaur as the *Lambardar* of Village Cheemna, only on the ground that the petitioner had damaged trees planted by the Forest Department, Punjab, for which, a fine was also imposed upon him.

6.1 As regards the damage caused to the plantation is concerned, learned counsel for the petitioner has submitted that the said plants/saplings were inadvertently damaged while the petitioner was doing agricultural work in his fields and he had duly accepted his negligence and had even deposited the fine imposed by the Forest Department.

7. In my considered view, since the petitioner admitted his negligence and has even paid the penalty/fine imposed by the Forest Department, the learned Financial Commissioner should have taken a lenient view and maintained the order passed by the learned Collector, Ludhiana.

7.1 Further, the proverbial adage "To err is human and to forgive is divine" would come to the rescue of the petitioner. I am also reminded of the observations made by the Hon'ble Supreme Court in the case of ***Commissioner of Police and others v. Sandeep Kumar, 2011(4) SCC 644,***

wherein the following observations were made :-

"When the incident happened the respondent must have been about 20 years of age. At that age young people often commit indiscretions, and such indiscretions can often been condoned. After all, youth will be youth. They are not expected to behave in as mature a manner as older people. Hence, our approach should be to condone minor indiscretions made by young people rather than to brand them as criminals for the rest of their lives.

In this connection, we may refer to the character 'Jean Valjean' in Victor Hugo's novel 'Les Miserables', in which for committing a minor offence of stealing a loaf of bread for his hungry family Jean Valjean was branded as a thief for his whole life.

The modern approach should be to reform a person instead of branding him as a criminal all his life.

.....

It is true that in the application form the respondent did not mention that he was involved in a criminal case under section 325/34 IPC. Probably he did not mention this out of fear that if he did so he would automatically be disqualified.

At any event, it was not such a serious offence like murder, dacoity or rape, and hence a more lenient view should be taken in the matter."

8. That apart, the comparative merits of the candidates in fray, as noticed by learned Collector, can be summed up as under :-

S. No.	Particulars	Petitioner (Kulwinder Singh)	Resp. No.4 (Sukhraj Kaur)
1	Age	44 years	39 years
2	Educational qualification	Matric	10+2
3	Land holding/s	11 Acres	4 K – 0 M
4	Recommended by	Tehsildar Jagraon	SDM, Jagraon

8.1 From the above comparison, it is seen that although respondent No.4 is younger in age by five years than the petitioner, however, the age of a person is to be considered in the context of his physical ability and capacity to discharge his duties as a headman of the village. No such plea has been raised that the petitioner is incapacitated from discharging the functions of a Lambardar, in view of his old age. Similar view was taken by a Division Bench of this Court in *Ram Kumar Versus The Financial Commissioner, Haryana and others, 2013 (2) RCR (Civil) 1038*. Accordingly, this contention is rejected.

8.2 Further, respondent No.4 has studied upto 10+2, whereas the petitioner is a matriculate; therefore, he cannot be said to be ineligible for the post of *Lambardar*. As regards the land holding, the petitioner has more land than respondent No.4.

8.3 Evidently, the petitioner was appointed as *Lambardar* by the learned Collector and the said appointment was upheld by the learned Commissioner.

9. In *Kuldip Singh vs 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. It is also well established that the learned Collector is the main authority for appointment of the *Lambardar*, 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, could not have been ignored in a cavalier manner by the learned Financial Commissioner.

10. Considering the totality of circumstances, I am of the considered view that order dated 15.03.2022 (Annexure P-4) passed by the

learned Financial Commissioner, is un-sustainable in the eyes of law and the same is, accordingly, set aside. Resultantly, the instant writ petition is allowed and order dated 04.12.2018 (Annexure P-1) passed by the learned Collector, Ludhiana, appointing the petitioner as *Lambardar* of Village Cheemna, Tehsil Jagraon, District Ludhiana, is maintained.

11. All pending application/s, if any, shall also stand closed.

October 19, 2024
gurpreet

(HARSH BUNGER)
JUDGE

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