

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

CWP-10033-2020

Date of decision : 29.01.2024

Sarwan Singh

.....Petitioner

versus

State of Punjab and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Dheeraj Mahajan, Advocate
for the petitioner.

Mr. Arun William, AAG, Punjab.

Mr. Satbir Rathore, Advocate
for respondent No.5.

RAJESH BHARDWAJ, J.

Prayer in the present petition is for quashing the impugned order dated 09.12.2019 (Annexure P-5) passed by respondent No.2, erroneously setting aside the well reasoned order dated 13.12.2016 (Annexure P-2) passed by respondent No.3 and order dated 16.02.2016 (Annexure P-1) passed by respondent No.4 acting in a completely illegal and arbitrary manner, being contrary to law thus, erroneously setting aside the appointment of petitioner as Lambardar by wrongly accepting the revenue revision (Annexure P-3) filed by respondent No.5.

Adumbrated facts of the case are that the Commissioner Jalandhar Division vide his Office letter G-2-2015 dated 12.01.2015 issued under Rule 19-B/14(I) of Punjab Land Revenue Rules had approved the appointment of Harijan Lambardar (SC) for Village Langah, Tehsil Mukerian, District Hoshiarpur. Thus, for filling up the post,

procedure was initiated and *mustri munadi* was conducted in the Village for inviting the applications from the eligible interested candidates. In response to the same, eight applications were received including the petitioner and respondent No.5. Their character verification was conducted through the police department. The candidates were heard in person as well. On comparison of their *inter se* merits, the Sub Divisional Magistrate, Mukerian recommended the name of petitioner for the appointment as Lambardar of the Village. Before the Collector, five candidates namely, Tarsem Lal, Sarwan Singh, Ravel Chand, Moti Ram and Tarsem Lal son of Karam Chand came present through their counsel however, candidate Ravel Chand had withdrawn his application in favour of the petitioner. Thus, four candidates remained in the fray. Learned Collector analyzed the merits and demerits of all the candidates in the fray. On comparison of the *inter se* merits of petitioner and respondent No.5, it was found as follows:-

Names	Age	Profession	Ex-servicemen	Education	Special remarks
Sarwan Singh (petitioner)	57	Retired	Subedar Major	9 th	Petitioner being popular in the village was unanimously selected as Sarpanch from 2008 to 2013
Tarsem Lal (respondent No.5)	69	Agriculturist	Ex-serviceman Constable	Illiterate	Nothing

Thus, learned Collector on analysis of the overall merits and demerits of all the candidates, found the petitioner to be the most meritorious candidate and thus, appointed him as a SC Lambardar of the

Village vide his order dated 16.02.2016. Being aggrieved, respondent No.5 assailed the same by way of filing the appeal under Section 13 of Punjab Revenue Act before the Commissioner. Learned Commissioner, Jalandhar heard both the sides and re-appreciated the *inter se* merits of both the candidates. However, finding no merit in the appeal, dismissed the same vide his order dated 13.12.2016 and thus, affirmed the order passed by the Collector in appointing the petitioner. Still aggrieved, respondent No.5 assailed the order passed by the Commissioner by way of filing the revision petition under Section 16 of the Punjab Land Revenue Act, 1887 before the Financial Commissioner, Punjab i.e. respondent No.1. Learned Financial Commissioner heard both the sides, however, finding merit in the revision petition, accepted the same vide order dated 09.12.2019 and thus, *set aside* both the orders passed by the learned Collector dated 16.02.2016 and the Commissioner dated 13.12.2016. Hence, petitioner is before this Court by way of filing the present petition.

It has been vehemently contended by counsel for the petitioner that on the comparison of the *inter se* merits of both the petitioner and respondent No.5, it is apparent that petitioner was younger in age and had served on a senior post than respondent No.5. He submits that petitioner was unanimously elected as Sarpanch of the Village and he served as the Sarpanch of the Village from 2008-13. He submits that on inviting the applications, *inter se* merits of all the candidates in the fray were considered and the SDM had recommended the name of the petitioner to be appointed as Lambardar of the Village. He submits that as per the settled proposition of law, the candidate younger in age should

be given the preference and as the petitioner was 12 years younger to respondent No.5, thus, he was rightly given the preference by learned Collector. Besides this, there was nothing adverse against the petitioner in the verification conducted by the respondents-authorities. He submits that the appointment made by the Collector was duly upheld by learned Commissioner while dismissing the appeal filed by respondent No.5. He submits that however, learned Financial Commissioner has miserably failed in appreciating the law settled. He submits that both the candidates i.e. petitioner and respondent No.5 are Ex-serviceman. He submits that learned Financial Commissioner has wrongly interpreted the law settled and thus, has given the preference to respondent No.5 considering him more mature than the petitioner. He submits that as per the law settled, the choice of the Collector cannot be interfered unless it suffers from serious illegalities. He further submits that as there was no perversity in the order passed by the Collector, there was no occasion for respondent No.1 to *set aside* the order in the absence of any patent illegality or perversity. Thus, the impugned order being unsustainable in the eyes of law, deserves to be *set aside*.

Learned counsel for respondent No.5 has opposed the submissions made by learned counsel for the petitioner. He submits that respondent No.5 has wrongly been taken to be a Constable in Army however, he retired as Subedar from Army. He further submits that the petitioner does not own any land in the Village. It is further submitted by him that respondent No.5 remained Panch of the Village from 1993-98; 1998-2003 and thereafter, from 2003-08 and later on, he was elected as Sarpanch of the Village as well. He submits that respondent No.5 is not

an illiterate as he is 7th Class pass from Government Senior Secondary School, Lamin, District Hoshiarpur. He submits that though respondent No.5 is elder to the petitioner, however, the same is not disqualification and thus, the view taken by the learned Collector being perverse in nature had been rightly *set aside* by learned Financial Commissioner. It is submitted that the impugned order suffers from no illegality and deserves to be upheld by dismissing the petition filed by the petitioner.

Heard. After hearing counsel for the parties and perusing the record, it is apparent that on comparison of the *inter se* merits of all the candidates in the fray, learned Collector found the petitioner to be more meritorious and thus, appointed him as Lambardar of the Village vide order dated 16.02.2016. It is apparent that petitioner was 12 years younger in age than respondent No.5. Both the petitioner and respondent No.5 are ex-serviceman and remained the Sarpanch of the Village as well. For consideration of the merits of the candidates for appointment of the Lambardar of the Village, the Rule 15 of Punjab Land Revenue Act is relevant. The petitioner was found more suitable in view of the parameters laid therein. It is further apparent that petitioner was retired from the senior post than that of respondent No.5 and was younger in age as well Hon'ble Supreme Court in *Mahavir Singh Vs. Khiali Ram, 2009 (1) RCR(Civil) 757* has held that if the *inter se* merits of the candidates are otherwise at par then the candidate younger in age should be preferred.

It is a settled proposition of law that the choice of the Collector cannot be interfered in a cavalier manner and the same has to be given weightage unless and until there are some serious discrepancies in

the appointment made by the learned Collector.

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 appointment made by the Collector was upheld by the Commissioner, however, the impugned order passed by the Financial Commissioner does not disclose any perversity in the order passed by the Collector. In the considered opinion, this Court finds the impugned order passed by the Financial Commissioner totally against the evidence on record and the law settled. Thus, the impugned order dated 09.12.2019 passed by the Financial Commissioner is *set aside*. Resultantly, the present petition is allowed.

29.01.2024
m. sharma

(RAJESH BHARDWAJ)
JUDGE

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