

220 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-9777-2023 (O/M)

Date of decision : 01.08.2024

Davinder Singh

..... Petitioner

Versus

Financial Commissioner (Appeals), Punjab and others Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Rajan Singh Dadwal, Advocate
for the petitioner.

Mr. Nirmaljit Singh Diwana, Senior DAG Punjab.

Mr. Vinay Bajaj, Advocate
for caveator-respondent No. 4.

-. -

-. -

HARSH BUNGER, J.

1. Petitioner (Davinder Singh) has filed the instant civil writ petition under Articles 226/227 of Constitution of India, seeking setting aside of order dated 06.02.2023 (Annexure P-4), passed by learned Financial Commissioner (Appeals), Punjab (in short 'Financial Commissioner'), whereby order dated 10.04.2018 (Annexure P-1), passed by learned District Collector, Moga (in short 'Collector'), appointing the petitioner (Davinder Singh) as Lambardar of village Kokri Kalan (Patti Nangal), Tehsil and District Moga, and also order dated 30.05.2019 (Annexure P-3), passed by learned Commissioner, Ferozepur Division, Ferozepur (in short 'Divisional Commissioner'), have been set aside and respondent No. 4 (Baljit Singh) has been appointed as Lambardar of the aforesaid village.

1.1 A further prayer has been made for upholding the order dated 10.04.2018 (Annexure P-1), passed by the concerned learned Collector, appointing the petitioner as Lambardar of village Kokri Kalan (Patti Nangal), Tehsil and District Moga.

2. Briefly, on demise of Shri Jaswant Singh, previous Lambardar of village Kokri Kalan (Patti Nangal), Tehsil and District Moga, proceedings were initiated for filling up the aforesaid vacancy. In pursuance to the proclamation carried out in the village for filling up the aforesaid vacancy, 4 candidates (including the petitioner and respondent No. 4) applied for the aforesaid post of Lamabardar. The antecedents of the candidates were got verified from the local police. The Tehsildar, Moga, as well as learned Sub Divisional Magistrate, Moga, recommended the name of respondent No. 4 (Baljit Singh) for appointment to the aforesaid vacancy of Lambardar, and the file was sent to learned District Collector, Moga.

2.1 The learned Collector, Moga, analyzed the merits of all the candidates and vide its order dated 10.04.2018 (Annexure P-1), appointed present petitioner (Davinder Singh) as Lambardar of village Kokri Kalan (Patti Nangal), Tehsil and District Moga.

2.2 Being dis-satisfied with the aforesaid order dated 10.04.2018 (Annexure P-1), respondent No. 4 (Baljit Singh), preferred an appeal before the learned Divisional Commissioner, who vide its order dated 30.05.2019 (Annexure P-3), dismissed the appeal of respondent No. 4.

2.3 Still dis-satisfied, respondent No. 4 preferred a revision petition (ROR-473-2019) before the learned Financial Commissioner, who vide its order dated 06.02.2023 (Annexure P-4), set aside the order dated 10.04.2018 (Annexure P-1), passed by learned Collector, Moga as

well as order dated 30.05.2019 (Annexure P-3), passed by learned Divisional Commissioner and appointed respondent No. 4 (Baljit Singh) as Lambardar of village Kokri Kalan (Patti Nangal), Tehsil and District Moga.

3. In the aforementioned circumstances, the petitioner has filed the instant civil writ petition before this Court, for the relief(s), as noticed above.

4. Learned counsel for petitioner submits that the learned Financial Commissioner has erred in law and facts in passing the impugned order dated 06.02.2023 (Annexure P-4), whereby he has set aside a well reasoned and justified order dated 10.04.2018 (Annexure P-1), passed by learned Collector, Moga, appointing the petitioner as Lambardar of village Kokri Kalan (Patti Nangal), Tehsil and District Moga and also order dated 30.05.2019 (Annexure P-3), passed by learned Divisional Commissioner. It is submitted that the learned Financial Commissioner has failed to consider and appreciate the well settled law that the choice of the Collector in the matter of appointment of Lambardar is not to be interfered with lightly unless there is some patent illegality or perversity. It is submitted that the petitioner is more meritorious than respondent No. 4 and had been rightly appointed by learned Collector, Moga and the said order of learned Collector, Moga, was further upheld by the learned Divisional Commissioner, therefore, there was no occasion for the learned Financial Commissioner to interfere with the choice of the learned Collector, Moga. It is further submitted that respondent No. 4 is working as a Typist in the Tehsil Complex, Jagraon, however, still he has been appointed as Lambardar of village Kokri Kalan (Patti Nangal), Tehsil and District Moga.

It is also submitted that respondent No. 4 has less land than the petitioner

and on that account as well, the petitioner deserves to be appointed as Lambardar of village Kokri Kalan (Patti Nangal), Tehsil and District Moga. It is next submitted that the petitioner has been non-suited by the learned Financial Commissioner on the ground that the petitioner was convicted under Section 323 read with Section 149 IPC in a complaint case, however, it is submitted that the petitioner was released on probation and the said fact has not been considered by the learned Financial Commissioner. It is submitted that the learned Financial Commissioner has not pointed out any illegality or perversity in the order dated 10.04.2018 (Annexure P-1), passed by learned Collector, Moga, therefore, the impugned order is liable to be set aside. With the aforesaid submissions, learned counsel for the petitioner has prayed that the impugned order be set aside and the learned Collector's order dated 10.04.2018 (Annexure P-1), appointing the petitioner as Lambardar of village Kokri Kalan (Patti Nangal), Tehsil and District Moga, be restored.

6. Per contra, learned counsel appearing for caveator-respondent No. 4 has opposed the submissions made on behalf of the petitioner by submitting that the learned Financial Commissioner has passed a detailed, well reasoned and justified order, which does not call for any interference by this Court. It is further submitted that the learned Financial Commissioner has considered the relative merits of the candidates and finding respondent No. 4 as more suitable candidate, appointed him as Lambardar of village Kokri Kalan (Patti Nangal), Tehsil and District Moga. It is next submitted that respondent No. 4 is more meritorious than the petitioner inasmuch as respondent No. 4 is younger in age and is more educated than the petitioner. It is also submitted that the name of

respondent No. 4 was recommended by the Tehsildar, Moga, as well as Sub Divisional Magistrate, Moga, for appointment to the vacant post of Lambardar, which is a very material consideration.

6.1 Learned counsel for respondent No. 4 has placed reliance upon judgment rendered by a Division Bench of this Court in the case of ***Tak Ram Versus Financial Commissioner (Revenue), Haryana***; 1998 (3) RCR (Civil) 90; to contend that in the matter of appointment of Lambardar, the appellate authority as well as revisional authority can pass same order as passed by the learned Collector. It is also submitted that the petitioner does not have clean antecedents and has a blemished record as he was convicted under Section 323 read with Section 149 IPC in a complaint case, although, he was ordered to be released on probation.

6.2 As regards the contention of learned counsel for petitioner that respondent No. 4 was working in Tehsil Complex, Jagraon, as a Typist, it is submitted that respondent No. 4 was only learning the work of typing temporarily with his relative Ex. Subedar Ajaib Singh, who was working as a Typist in Tehsil Complex, Jagraon, whereas respondent No. 4 never worked there permanently. It is further submitted that even otherwise village Kokri Kalan (Patti Nangal), Tehsil and District Moga is quite near to Jagraon Tehsil i.e. 3-4 kilometers away, therefore, it cannot be said that respondent No. 4 would not be available to the villagers at the time of their need. It is also contended that Sanad Lambardari has already been issued in the name of respondent No. 4 on 02.05.2023 and he is already performing the duties of Lambardar of village Kokri Kalan (Patti Nangal), Tehsil and District Moga. With the aforementioned submissions, prayer for dismissal of the instant civil writ petition has been made.

7. I have heard learned counsel for the parties and have also perused the paper book with their able assistance.

8. In the instant case, the learned Financial Commissioner, vide impugned order dated 06.02.2023 (Annexur P-4), held as under :-

“I have heard Ld. Counsel for both the parties, gone through their submissions and perused the order of the courts below. Rule 15 of the Punjab Land Revenue Rules provides that at the time of appointment of lambardar, regard shall be had to the various matters such as his age, personal influence, character, ability etc. In the present case, petitioner is younger in age. In the case of Mahavir Singh versus Khiali Ram and others, 2009 (1) RCR (Civil) 757; 2009 (3) SCC (Civil) SCC 439 the Hon'ble Supreme Court of India has held that “it is now a well-settled principle of law, keeping in view the decision in regard to the appointment of Lambardar in the State of Punjab, that age of candidate is a relevant fact”. Insofar as the issue regarding age is concerned, the Supreme Court in Mahavir Singh's case (supra) has though observed that the age of a candidate is a relevant factor and the Hon'ble Punjab and Haryana High Court in the case Sudharshan Kumar v. Financial Commissioner, Haryana reported in 2013 (3) RCR (Civil) 347 has also observed that a person younger in age has more energy and potentiality to render the assistance to the villagers viz-a-viz the old age persons and held that revenue authorities preferring a persons of 75 years of age in comparison to the petitioner, who was about 48 years of age, have committed serious error of law while appointing the respondent as lambardar”. In the present case, the petitioner was ignored by District Collector as well as Commissioner on the ground that he is working as a typist in Tehsil Jagraon. In this regard, the petitioner contend that he used to go in

Tehsil Complex, Jagraon temporarily just to learn type enabling him to earn his livelihood with his relative Ex. Subedar Ajaib Singh working as typist, the petitioner was neither working permanently/regularly nor is still working as typist in Tehsil Complex, Jagraon, otherwise he must have obtained permission from the competent authorities to work as typist in the Tehsil Complex, Jagraon. In this regard, I am of the view that the Lambardar is not supposed to be a jobless person. Everybody is supposed to do some work to earn his livelihood. The lower revenue authorities i.e. SDM as well as Tehsildar found the petitioner as suitable candidate for the post of Lambardar and recommended his name for the post of lambardar. The Commissioner as well as District Collector has failed to consider that name of the petitioner is recommended by the lower revenue authorities i.e. Tehsildar and SDM and no reason of difference with the recommendations of the lower revenue officers have given. If reports of the revenue officers are to be discarded without assigning any reason then the entire exercise of getting reports from the revenue officers becomes meaningless. Hon'ble High Court in the case of Amrik Singh vs State of Punjab reported in 2018 (3) RCR (Civil) 290, the same view has been taken and in the case of Rattan Singh versus Financial Commissioner Haryana and others reported in 2020 (1) RCR (Civil) 663, in which the Hon'ble High Court held that lower revenue authorities are eyes and ears of the Collector as they are in the field and, therefore, put in their inputs and valuable suggestions to be taken into consideration by the Collector while taking an independent decision to assess the eligibility and suitability of a candidate. It has been further held that "as regards the contention of learned counsel for the petitioner that the Collector cannot rely upon the opinion of the

recommendation of the subordinate revenue officers, again cannot be accepted as the revenue officers remain in constant touch with not only the public at large but the prominent persons of the area while performing their administrative duties and, therefore, get opportunity to closely watch the conduct and demeanour of the candidates. They can be said to be the eyes and ears of the Collector as they are in the field and, therefore, put in their inputs and valuable suggestions to be taken into consideration by the Collector while taking an independent decision to assess the eligibility and suitability of a candidate. Thus, the reliance of the Collector on their recommendations can be a relevant factor and cannot be said to be unacceptable. In case the consideration of those Assistant Collector, on recommendations apart from his own assessment, comes to an opinion about a particular candidate, the same cannot be said to be unjustified or without any basis.” In the present case, the respondent is also suffering from criminal allegations. An accused who has been tried in a criminal case and thereafter acquitted is yet to carry the stigma of being tried in a criminal case, depend on each case. These are circumstances which would require serious consideration by the authorities. The circumstances leading to acquittal and whether the same would yet entail a stigma are to be considered in each case on the basis of material on record. However, when another contesting candidate younger in age, enjoying clean image is available, he should be preferred. If a person with criminal background is appointed, it would amount to contravention of Rule 15 which requires several factors including the age, reputation and character of the person to be appointed as lambardar. It is the duty of the revenue authorities that only a suitable candidate should be appointed for the post of Lambardar. The

Hon'ble High Court in the case titled as Mohinder Pal versus The Financial Commissioner, Haryana and others reported as 2013 (3) L.A.R. 95 (P/H) has held that "Endeavour of the revenue authorities should be to appoint a person of clean image and most suitable out of the contesting candidates. Therefore, I find the petitioner more meritorious than respondent and the courts below i.e. Commissioner and District Collector failed to examine his comparative merits. Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the impugned orders passed by the Commissioner as well as District Collector are not sustainable in law.

7. Therefore, keeping in view the aforesaid facts and circumstances of the case and in order to end the prolonged litigation and after going into the law settled in Hon'ble High Court in the case of Tek Ram versus Financial Commissioner Revenue, Haryana and others 1998 (3) RCR (Civil) 90 has held that the appellate or revisional authority has the same right to pass the same order that can be passed by the Collector, I accept the present revision petition and order dated 30.05.2019 passed by Commissioner, Ferozepur Division, Ferozepur and order dated 10.04.2019 passed by District Collector, Moga is set aside. The petitioner Sh. Baljit Singh is appointed as lambardar of village Kokri Kalan, Tehsil and District Moga. District Collector, Moga is directed to issue 'Sanad Lambardari' in his favour. Copy of this order be communicated to the courts below. Record be returned. File be consigned to the record room."

9. Considering the reasoning rendered by learned Financial Commissioner, it would be apposite to state the relative merits of the candidates, which can be summed up as under :-

Sr. No.	Particulars	Petitioner (Davinder Singh)	Respondent No. 4 (Baljit Singh)
1.	Age	59	39
2.	Educational Qualification	Matric	10+2 and Diploma in Software Technology
3.	Land holding	35 Kanal 13 M	8 Kanal
4.	Recommended by	---	Tehsildar, Moga and Sub Divisional Magistrate, Moga
5.	Remarks	Convicted u/s 323 read with Section 149 IPC in a complaint case, vide judgment dated 31.03.2016 (Annexure P-5), however, he was ordered to be released on probation	

9.1 A perusal of the above referred comparison would reveal that respondent No. 4 is younger in age and more educated than the petitioner. Moreover, the name of respondent No. 4 was recommended by Tehsildar, Moga and Sub Divisional Magistrate, Moga.

10. *In Mahavir Singh Versus Khiali Ram and Others*, 2009(1) RCR (Civil) 757, Hon'ble the Supreme Court held that with regard to the appointment of a Lambardar in the State of Punjab, age of a candidate is a relevant factor.

10.1 As far as the recommendations by the lower Revenue Officer is concerned, although, the Collector is not bound by the recommendation made by the Revenue Authorities in favour of a candidate; however, due consideration is to be accorded to such recommendations as they are in a position to assess the suitability of a candidate and such recommendation would have some persuasive value. In this regard, reference can be made to the observations made in the case of *Hakam Singh Versus Financial Commissioner (Revenue), Punjab*, 2016(4) RCR (Civil) 335 and *Atma*

Singh Versus The Financial Commissioner, Revenue, Punjab, 2016(1) LAR 592.

10.2 Although, petitioner owns more land than respondent No. 4; however, it is observed that as far as holding of land is concerned, same is taken into consideration only for the purpose of security towards government revenue collected by the Lambardar. Respondent No. 4 has about 8 kanal of land, which is sufficient to be taken into consideration for the purpose of security of revenue, collected by the Lambardar. Moreover, in case of ***Gurpreet Singh Versus Financial Commissioner (Revenue), Punjab***, 2017(1) RCR (Civil) 233, this Court has observed that land revenue stood abolished in both the State of Punjab and Haryana, long back, thus owning land by the candidates for the post of Lambardar would not be of much significance any further.

10.3. Considering the totality of the circumstances, I am of the considered view that respondent No. 4 has a clear edge over the petitioner.

11. Further, as regards jurisdiction/competence of appellate authority and revisional authority to appoint Lambardar is concerned, a Division Bench of this Court in ***Tak Ram's*** case (supra), held as under :-

“...The other contention of the learned counsel that the Commissioner or the Financial Commissioner had no jurisdiction to select a Village Headman-cum-Lambardar again cannot be accepted. The appellate or the Revisional Authority has a right to pass the same order that can be passed by the Collector. Thus the selection of Village Headman-cum-Lambardar by the Financial Commissioner cannot be set aside on that ground..”

11.1 Further, in ***Gurnam Ram Versus Financial Commissioner, Punjab***, 2005(2) RCR (Civil) 553; Hon'ble the Supreme Court of India,

while dealing with a case of appointment of Lambardar, has observed that if Financial Commissioner was dis-satisfied with the Commissioner's reasoning, no doubt it was open to the Financial Commissioner to re-decide the matter on merits; accordingly, the matter was remanded back to the Financial Commissioner for re-deciding the issue.

12. In view of the aforementioned facts and circumstances, it is concluded that learned Financial Commissioner, Punjab has rightly appointed respondent No. 4 as Lambardar of village Kokri Kalan (Patti Nangal), Tehsil and District Moga. Accordingly, there is no scope for any interference in the impugned order dated 06.02.2023 (Annexure P-4), passed by learned Financial Commissioner, Punjab.

13. Resultantly, the instant civil writ petition fails and the same is accordingly dismissed.

14. Pending application (s), if any, shall also stand closed.

(HARSH BUNGER)
JUDGE

01.08.2024
sjks

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