

2024:PHHC:138730



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

**CWP-9815-2023 (O&M)
Date of Decision: 22.10.2024**

Harmesh Singh

..... Petitioner

Versus

Financial Commissioner (Revenue), Punjab and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Chetan Bansal, Advocate
for the petitioner.

Mr. Nirmaljit Singh Diwana, Senior DAC, Punjab.

Mr. A.S. Bhatti, Advocate
for respondent No.4.

HARSH BUNGER J. (ORAL)

Petitioner (Harmesh Singh) has filed the instant writ petition under Articles 226/227 of the Constitution of India, *inter alia*, seeking a writ in the nature of Certiorari to set aside order dated 14.11.2022 (Annexure P-5) passed by the learned Financial Commissioner (Appeals), Punjab; whereby appointment of petitioner as Lambardar (Scheduled Caste) of Village Kadhalian, Tehsil Dasuya, District Hoshiarpur, has been set aside and respondent No.4 (Pardip Singh) has been appointed as Lambardar (Scheduled Caste) of Village Kadhalian.

2. Briefly, on account of demise of Sh. Ratan Chand, previous Lambardar of Village Kadhalian, Tehsil Dasuya, District Hoshiarpur, on 07.06.2017; proceedings for filling up the said vacancy were initiated. In pursuance to the proclamation carried out for filling up the aforesaid vacancy, eight applications (including the one submitted by the petitioner and another by respondent No.4) were received.

2.1 The learned Tehsildar, Dasuya as well as learned Sub Divisional Magistrate, Dasuya recommended the name of present petitioner for appointment to the post of Lambardar (Scheduled Caste).

2.3 The learned Deputy Commissioner-cum-District Collector, Hoshiarpur, vide order dated 17.05.2018 (Annexure P-1), appointed the present petitioner as Lambardar (Scheduled Caste) of Village Kadhalian.

3. Being dissatisfied with the aforesaid order (Annexure P-1), respondent No.4 preferred an appeal before the learned Commissioner, Jalandhar Division, Jalandhar; which came to be dismissed vide order dated 23.09.2020 (Annexure P-3).

4. Still aggrieved, respondent No.4 preferred a revision petition (ROR No.83 of 2021) before the learned Financial Commissioner (Appeals), Punjab; which was allowed vide order dated 14.11.2022 (Annexure P-5), whereby order dated 17.05.2018 (Annexure P-1) passed by learned Deputy Commissioner-cum-District Collector, Hoshiarpur and order dated 23.09.2020 (Annexure P-3) passed by learned Divisional Commissioner, Jalandhar were set aside; and respondent No.4 (Pardip Singh) was appointed as Lambardar (Scheduled Caste) of Village Kadhalian.

5. In the aforementioned circumstances, petitioner has filed the present writ petition before this Court, seeking relief(s) as notice hereinabove.

6. Heard.

7. Concededly, the petitioner was appointed as Lambardar (Scheduled Caste) of Village Kadhalian by the learned Deputy Commissioner-cum-District Collector, Hoshiarpur vide order dated 17.05.2018 (Annexure P-1) and the said order was further affirmed by the learned Divisional Commissioner, Jalandhar vide its order dated 23.09.2020 (Annexure P-3). However, the learned Financial Commissioner (Appeals), Punjab set aside the petitioner's appointment as Lambardar (Scheduled Caste) of Village Kadhalian, on three counts, namely:-

- a) respondent No.4 is younger in age than the petitioner;
- b) respondent No.4 is more educated than the petitioner; and
- c) respondent No.4 has hereditary claim.

8. Considering the totality of circumstances, in my considered view, the learned Financial Commissioner has erred in upsetting the appointment of petitioner as Lambardar (Scheduled Caste) of Village Kadhalian for more than one reason.

8.1 Firstly, the learned Financial Commissioner has failed to consider and appreciate that in the matter of appointment of Lambardar, the choice of learned Collector is not to be lightly interfered with, even if two views are possible; as held by a Division Bench of this Court in ***“Kuldip Singh vs Financial Commissioner, Appeals-II, Punjab”, 2016(1) RCR (Civil) 273.***

8.2 Secondly, no doubt, the age of a candidate is a relevant factor for appointment to the post of Lambardar and the Hon'ble Supreme Court in ***“Mahavir Singh v. Khiali Ram and others”, 2009(1) RCR (Civil) 757***, has also held that age of a candidate is a relevant factor; 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. There is nothing on record suggestive of the fact that any complaint was made against him that he is not able to render his services properly owing to his old age. In this scenario, rejecting the claim of petitioner on the ground that he is older than respondent No.4, especially when he was appointed as Lambardar by the learned Collector and further affirmed by the learned Commissioner; may amount to injustice to him. 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.***

8.3 Thirdly, as regards the educational qualification is concerned, it is observed that petitioner has studied up to 10th Standard, whereas, respondent No.4 has studied up to 12th Standard. It is not a case where the petitioner is an illiterate. In my considered view, petitioner is sufficiently educated.

8.4 Fourthly, petitioner has rendered services to the State, being an ex-serviceman, which is a very relevant consideration.

8.5 Fifthly, petitioner's name was recommended by the lower revenue officials, which is also a relevant consideration, as such recommendations have a persuasive value.

8.6 Sixthly, as regards the hereditary claim of respondent No.4 is concerned, the same offends Article 14 of the Constitution of India, as has been held by a Division Bench of this Court in ***“Karnail Singh v. The State of Haryana etc.”, 1973 PLJ 676’.***

9. That apart, I have also gone through order dated 17.05.2018 (Annexure P-1) passed by the learned Deputy Commissioner-cum-District

Collector, Hoshiarpur; the relevant extract whereof reads as under:-

“ - x - x -

I have carefully perused the file relating to this case. I have heard the candidate personally. Candidate Paramjit Singh works as a mason. He cannot devote more time to public revenue works. Candidate Harvinder Kaur is the current Panch. So it is impossible to work on two seats. A case No.33 dated 19-6-2012 against candidate Pardeep Singh under sections 307, 341, 323, 148, 149, 506 I.P.C. was registered Police Station Gaddiwala from which he has been acquitted by way of compromise. Mr. Harmesh Singh is a more qualified candidate than other candidates. Harmesh Singh is 51 years old and has passed 10th class. He has 2 Kanal 7 Marlas land in his name. He has retired from the Army as Subedar and draws pension. Now he lives in the village. He has a good influence in the village. He actively participates in development work. The village people have given major name in his name. The lower courts have also recommended his name. Therefore, Mr. Harmesh Singh son of Mr. Bhagat Singh, who is a qualified candidate for lambardar, is appointed lambardar of village Kandhalian, Tehsil Dasuya, District Hoshiarpur.”

9.1 A perusal of the order (Annexure P-1) shows that the learned Deputy Commissioner-cum-District Collector, Hoshiarpur has referred to the relative merits and de-merits of the petitioner as well as respondent No.4, and thereafter, he has proceeded to highlight the better merits of the petitioner and accordingly, appointed the petitioner as Lambardar (Scheduled Caste) of Village Kadhalian.

9.2 In my opinion, the order dated 17.05.2018 (Annexure P-1) passed by the learned Deputy Commissioner-cum-District Collector, Hoshiarpur is well reasoned and justified, which does not call for any interference. Moreover, the aforesaid order (Annexure P-1) was further upheld by the learned Divisional Commissioner, Jalandhar.

10. In view of the aforementioned facts and circumstances, the order dated 14.11.2022 (Annexure P-5) passed by the learned Financial Commissioner (Appeals), Punjab is unsustainable and the same is accordingly set aside. Resultantly, the instant writ petition is allowed and order dated 17.05.2018 (Annexure P-1) passed by learned Deputy Commissioner-cum-District Collector, Hoshiarpur, appointing the petitioner as Lambardar (Scheduled Caste) of Village Kadhalian, Tehsil Dasuya, District Hoshiarpur; is upheld.

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

22.10.2024
Apurva

(HARSH BUNGER)
JUDGE

- 1. Whether speaking/reasoned : Yes/No
- 2. Whether reportable : Yes/No