

2024:PHHC:128607



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

CWP-14194-2022 (O&M)
Date of decision :27.09.2024

SURJIT SINGH

...Petitioner

Versus

**THE FINANCIAL COMMISSIONER (APPEALS), PUNJAB AND
OTHERS**

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Sarju Puri, Advocate
for the petitioner.

Mr. Navneet Singh, Sr. D.A.G., Punjab.

Mr. Parminder Singh Kanwar, Advocate
for respondent No.4.

HARSH BUNGER, J. [ORAL]

Prayer in the present petition filed under Articles 226/227 of the Constitution of India, is for issuance of a writ in the nature of *certiorari* seeking quashing of order dated 16.04.2018 (Annexure P-2) passed by learned Commissioner, Jalandhar Division, Jalandhar (in short 'the Divisional Commissioner'), whereby an order dated 19.01.2016 (Annexure P-7) passed by learned District Collector, Hoshiarpur (in short 'the Collector'), appointing petitioner as *Lambardar* of Village Denowal

Khurd, Tehsil Garhshankar, District Hoshiarpur, was set aside and the matter was remanded to the learned Collector, for fresh decision.

A further prayer has been made for setting aside the order dated 04.10.2021 (Annexure P-1) passed by the learned Financial Commissioner, Punjab; whereby the appeal filed by the petitioner against Commissioner's order dated 16.04.2018 (Annexure P-2), was dismissed.

2. Briefly, on account of demise of Sh. Gurdev Singh, previous *Lambardar* of Village Denowal Khurd, Tehsil Garhshankar, District Hoshiarpur; proceedings for filling up the said vacancy were initiated. In pursuance to the proclamation carried out for filling up the afore-said vacancy, nine applications (including the one submitted by the petitioner-Surjit Singh and another by respondent No.4-Jaswinder Singh) were received and thereafter, their antecedents were got verified from the local police.

2.1 The learned Tehsildar, Garhshankar as well as learned Sub Divisional Magistrate, Garhshankar recommended the name of present petitioner for appointment to the post of *Lambardar* and forwarded the file to learned Collector, Hoshiarpur.

2.3 The learned Collector, Hoshiarpur, vide order dated 19.01.2016 (Annexure P-7) appointed the present petitioner as *Lambardar* of village Denowal Khurd, Tehsil Garhshankar, District Hoshiarpur.

3. Being dissatisfied with the Collector's order (Annexure P-7), respondent No.4 preferred an appeal before the learned Divisional Commissioner, which came to be decided vide order dated 16.04.2018 (Annexure P-2), whereby the matter was remanded to the learned Collector, for fresh decision with a further direction that till the date of passing of

fresh order by the learned District Collector, the petitioner shall continue to function as *lambardar*.

4. Feeling aggrieved against the Commissioner's order dated 16.04.2018 (Annexure P-2), petitioner preferred an appeal (ROA No.73 of 2018) before the learned Financial Commissioner, Punjab; which was dismissed vide order dated 04.10.2021 (Annexure P-1) and the Commissioner's order was upheld.

5. In the afore-mentioned circumstances, the petitioner has filed the present petition before this Court.

6. Reply filed on behalf of respondent No.4 is already on record. However, since it has not been filed within the stipulated period, as directed by this Court vide order dated 02.08.2024, the same has been accepted by the Registry of this Court with a cost of Rs.5,000/-. A photocopy of the receipt thereof has been handed over in the Court today and the same is taken on record and marked as 'Mark A'.

7. Learned counsel for the petitioner submits that the learned Commissioner as well as learned Financial Commissioner have erred in law and fact in passing the impugned orders without appreciating the well settled position in law that in the matter of appointment of *Lambardar*, the choice of learned Collector is not to be lightly interfered with unless there is patent illegality or perversity therein. It is submitted that the learned Collector had appointed the petitioner as *Lambardar* after considering the relative merits and de-merits of the candidates, however, the learned Commissioner, without setting aside the appointment of the petitioner as *Lambardar*, has simply remanded the case to the learned Collector for fresh decision, which is more in the nature of making a roving enquiry into the matter without indicating the necessity to do so. It is further submitted that

the learned Financial Commissioner, has wrongly upheld the Commissioner's order on the premise that the petitioner has been appointed as *Lambardar* only on the ground of his hereditary claim. It is submitted that the petitioner was appointed as *Lambardar* after considering various merits and not on the ground of hereditary claim alone; therefore, to that extent, the order of learned Financial Commissioner, is factually incorrect. It is, further, contended that the respondent No.4 had not come to the Court with clean hands and had made false statements before the Revenue Authorities below, as regards his land holding is concerned. While referring to Annexure P-3, which is an application submitted by respondent No.4 for the post of *Lambardar*, it is pointed out that the respondent No.4 claim to be having approximately 9 acres of land, whereas, on the said date, he was having no land holding. Accordingly, it is contended that for the post of *Lambardar*, a person with clean character, is required to be appointed, which quality is apparently lacking in respondent No.4. With the afore-said submissions, it is prayed that the petitioner is more meritorious than respondent No.4 and was rightly appointed by the learned Collector, which is required to be maintained by setting aside the impugned orders.

8. Per contra, learned counsel appearing on behalf of respondent No.4 opposes the submissions made on behalf of the petitioner and submits that the learned Commissioner has rightly passed the impugned order dated 16.04.2018 (Annexure P-2), whereby the matter was remanded to the learned Collector, for fresh decision; as the learned Collector, had not considered the fact that respondent No.4 is younger in age and more educated than the petitioner. Reference was made to the judgment rendered by Hon'ble Supreme Court in case of '*Mahavir Singh v. Khiali Ram and others*', 2009(1) RCR (Civil) 757. It is further submitted that even the issue

of land holding of respondent No.4 was required to be gone into, which necessitated the remand of the matter. It is still further submitted that the Commissioner's order has been further upheld by the learned Financial Commissioner, therefore, there is no scope for any interference by this Court. Accordingly, prayer for dismissal of the writ petition has been made.

9. I have heard learned counsel for the respective parties and perused the paper-book with their able assistance.

10. In the present case, the petitioner was appointed as Lambardar by the learned Collector, Hoshiarpur, by observing as under:-

"I have perused the case file of this case carefully and heard the candidates. The candidate Jaswinder Singh Sahota is 36 years old and has passed 10th class. His father is residing in a foreign country. The land in the name of his father measuring 16 Kanal at village Denowal has been equally divided amongst both the brothers on which he is doing agriculture. He is residing in the village, but as per Naksha Lambardari, there was no land in his name earlier and his father has divided the property during the proceedings of Lambardari which cannot be considered. The candidate Santokh Singh is 43 years and has passed 7th class. He owns 2 Kanal land in the village, which is less than the land holding of the candidate Jaswinder Singh and has no experience of work of Lambardari. The candidate Surjit Singh is 65 years old and has passed 7th class. As per Naksha Lambardari, land measuring 3 Acre 3 Kanal 7 Marla stands in his name. He submitted an application along with Fard Jamabandi as per which land measuring 38 Kanal 2 Marla has been mentioned against his name. The deceased Lambardar was his uncle. Prior to deceased Gurdev Singh Lambardar, his father Dilbagh Singh was the Lambardar. He is fully aware of the work of Lambardar. He is an

ex-serviceman and drawing pension. The Lower Courts have also recommended his name for appointment as Lambardar. Therefore, Sh. Surjit Singh son of Dilbagh Singh is appointed as Lambardar of village Denowal, Tehsil Garhshankar, District Hoshiarpur. Order pronounced. The file be consigned after compliance.”

10.1 From a perusal of above extracted findings of learned collector, the comparative merits of the candidates (petitioner and respondent No. 4) can be summed up as under:-

<i>S. No.</i>	<i>Particulars</i>	<i>Petitioner (Surjit Singh)</i>	<i>Resp. No.4 (Jaswinder Singh)</i>
<i>1</i>	<i>Age</i>	<i>65 years</i>	<i>36 years</i>
<i>2</i>	<i>Educational qualification</i>	<i>7th standard</i>	<i>Matric</i>
<i>3</i>	<i>Land holding/s</i>	<i>38K-2M</i>	<i>No land at the time of applying for the post.</i>
<i>4</i>	<i>Occupation</i>	<i>Agriculturist</i>	<i>-----</i>
<i>5</i>	<i>Other merits</i>	<i>Ex-serviceman. Awarded Army Medal.</i>	<i>-----</i>
<i>6</i>	<i>Recommended by</i>	<i>Tehsildar, Sub-Divisional Magistrate.</i>	<i>-----</i>

10.2 From the above referred comparison, it is made out that although the respondent no. 4 is younger in age than the petitioner and in case of ***Mahavir Singh (supra)***, it was held by Hon'ble Supreme Court that the age of a candidate is a relevant factor for appointment to the post of Lambardar; however it is also not disputed that 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. Petitioner started performing his duties as Lambardar on the basis of his appointment by the District Collector. 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.

Admittedly, petitioner is an ex-serviceman and invariably, the retired/discharged members of the Armed Forces are physically fit, energetic and agile. Similar view was taken by a Division Bench of this court in *Ram Kumar v. Financial Commissioner, Haryana, 2013(2) RCR (Civil) 1038*.

10.3 Further, no doubt respondent No. 4 is more qualified being Matric pass than the petitioner who is 7th class pass, however, petitioner was not ineligible or disqualified on account of his less educational qualification.

10.4 Admittedly, petitioner is an ex-serviceman and has rendered service to the nation, which is a relevant consideration. Moreover, the name of the petitioner was recommended by the lower revenue official, which is to be accorded due consideration as such official are in a position to assess the suitability of a candidate and such recommendation(s) do have a persuasive value. In this regard, reference can be made to the observations made in the case of *Hakam Singh vs Financial Commissioner (Revenue), Punjab, 2016(4) RCR (Civil) 335* and *Atma Singh vs The Financial Commissioner, Revenue, Punjab, 2016(1) LAR 592*. Above all, learned Collector had appointed petitioner as the Lambardar. In the case of *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, unless there is any patent illegality or perversity therein. It is also well established that the learned Collector is the main authority for appointment of the Lambardar. It is the Collector, 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, is not to be lightly ignored.

10.5 However, learned Commissioner has simply remanded the case to learned collector for fresh re-examination of all material facts and for fresh decision; whereas the learned Financial Commissioner has upheld commissioner's order by assuming that the Collector had appointed petitioner as Lambardar only on the basis of this hereditary claim, which is factually incorrect.

11. Furthermore, the learned Divisional Commissioner, while remanding the matter to the learned Collector for fresh decision, did not set aside the order dated 19.01.2016 (Annexure P-7), whereby petitioner was appointed as Lambardar. Therefore, according to the judgment in case of ***Khajan Singh Versus Shamsher Singh, 1998 (3) RCR (Civil) 634***, the order dated 19.01.2016 (Annexure P-7) passed by learned Collector, has become final. Thus, the learned Financial Commissioner was not justified in upholding the order of the learned Divisional Commissioner.

12. That apart, it is noticed that respondent No.4, while applying for the post of *Lambardar*, made a misleading statement in his application that he owns approximately 9 acres of land, whereas on the said date, concededly he had no land in his name. Therefore, the conduct of respondent No.4 is not above board.

13. Considering the totality of circumstances, I am of the considered view that the order passed by the learned Collector, is well reasoned and justified, which does not call for any interference, however, the learned Commissioner wrongly remanded the matter to learned Collector. Accordingly, order dated 16.04.2018 (Annexure P-2) passed by learned Commissioner, Jalandhar Division, Jalandhar as well as the order

dated 04.10.2021 (Annexure P-1) passed by learned Financial Commissioner, Punjab, are unsustainable and the same are accordingly set aside. Resultantly, the instant writ petition is allowed and the order dated 19.01.2016 (Annexure P-7) passed by learned Collector, Patiala, appointing the petitioner as Lambardar of Village Denowal Khurd, Tehsil Garhshankar, District Hoshiarpur, is maintained.

14. All pending applications (if any) shall also stand closed.

September 27, 2024
gurpreet

(HARSH BUNGER)
JUDGE

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