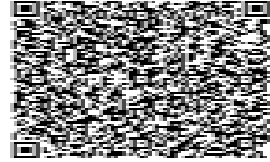


2024-PHHC-109341-DB



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

LPA-1366-2024 (O&M)

Reserved on: 13.08.2024

Pronounced on: 23.08.2024

Joga Singh

.....Appellant (s)

Versus

Financial Commissioner (Appeals) Punjab & others

.....Respondent(s)

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MRS.JUSTICE MEENAKSHI I. MEHTA**

Present:- Mr.C.L.Verma, Advocate for the appellant (s).

Ms.Arundhati Kulshreshtha, AAG, Punjab.

Mr.M.S.Rana, Advocate, for respondent No.6.

G.S. Sandhawalia, J. :

1. Consideration in the present appeal, filed by the non-appointee to the post of Lambardar, is to the judgment dated 06.05.2024 of the Learned Single Judge passed in CWP-19437-2023 whereby the Learned Single Judge chose to interfere in the order of the Financial Commissioner dated 27.07.2023 (Annexure P-5) who had remanded the matter and set aside the appointment order dated 04.12.2019 (Annexure P-3) passed by the Collector and the order dated 07.06.2022 (Annexure P-4) passed by the Commissioner, which had upheld the said order. The Financial Commissioner directed that the Collector would appoint the most meritorious candidate after re-considering the inter se merits of both the candidates by passing appropriate order.

2. The Learned Single Judge, in the writ petition filed by respondent No.6-Surjit Singh, set aside the order passed by the Financial

Commissioner primarily on the ground that the Collector is the prime authority and choice of the Collector is not to be interfered unless it suffers from perversity. Resultantly, the appointment of Surjit Singh was upheld. The Learned Single Judge noticed that there were 8 applications received for the post of Lambardar for Village Nai Mazra, District Nawanshahar and there was very little difference inter se the merits of the candidates, the writ petitioner-Surjit Singh being Matric pass, was held to be more educated in comparison to the present appellant-Joga Singh, who is 5th class pass. Despite of the present appellant having more land, it was held that since Surjit Singh was more educated, he should be preferred. The allegations regarding encroachment of the land was brushed aside on the ground that during the pendency of the proceedings, on 26.04.2024, report had come from the Sub-Divisional Officer that there was no illegal possession of the writ petitioner on the land of the Canal Department. In such circumstances, by falling back on the judgment rendered by a Single Bench of this Court in **Sukhjinder Pal Singh Vs. State of Punjab & others, 2016 (3) RCR (Civil) 725**, approval was given to the appointment of Surjit Singh on the ground that the Collector's choice is not to be interfered with.

3. We are inclined to accept the appeal, solely on the ground that there were allegations of illegal possession on the land of the Canal Department by Surjit Singh, which would be clear from the letter dated 20.11.2019 (Annexre R-6/1) written by the Sub-Divisional Officer, Alawalpur, Sub-Division Garhshankar which weighed with the Financial Commissioner. The said issue had also been raised before the Collector and in such a background the Financial Commissioner had remanded the

matter for fresh consideration after re-considering the inter se merit of both the candidates. The reasoning of the Learned Single Judge was that the report dated 26.04.2024 has been received that there is no illegal encroachment. The said report was during the pendency of the proceedings and has apparently been placed on record by way of filing replication by the writ petitioner, Surjit Singh. A perusal of the replication would go on to show that it was pleaded that he had no knowledge about the letter appended with the reply dated 20.11.2019 as neither any notice had been issued to him nor he had joined any proceedings and thus, reliance has been placed upon the report dated 26.04.2024 given now.

4. We are of the considered opinion that the relevant date whether there was any unauthorized occupation or not would be the date of appointment and not at this point of time. The Co-ordinate Bench in **Gurpreet Singh Vs. State of Punjab, 2001 (3) PLR 655**, while placing reliance upon the judgment of the Apex Court in **Inderaj Vs. Financial Commissioner, 1994 PLJ 473**, held that the disqualification has to be seen on the date of appointment. Rule 15 of the Punjab Land Revenue Rules, 1909 (for short, the 'Rules') provides that the matter is to be considered at the point of first appointment which includes the candidate's personal influence, character, ability and freedom from indebtedness.

5. A perusal of the paperbook would go on to show that the earlier Lambardar had passed away on 18.09.2015 and letter was written on 03.12.2015 to initiate the process for appointment of new Lambardar. The Tehsildar had recommended the name of the private-respondent, Surjit Singh and resultantly, his name was forwarded by the SDM to the Collector by noting that 4 persons had been proceeded ex-parte out of the

8 candidates and 2 candidates had withdrawn their name in favour of Surjit Singh. It is not disputed that before the Collector himself on 04.12.2019, the present appellant had presented an application that Surjit Singh had illegally taken possession of 2.5 kanals abutting to canal and installed a submersible motor. The same had been refuted by the appointee, Surjit Singh that he had not been issued any notice or letter by the Irrigation and Canal Department and resultantly, the Collector noticed vide order dated 04.12.2019 that the present appellant, Joga Singh was directed to produce documents that Surjit Singh was in unauthorized occupation. It was also noticed that on 27.11.2019, he had presented the letter 20.11.2019 (Annexure R-6/1) wherein the SDO had written to the SHO regarding the unauthorized occupation by Surjit Singh.

6. The Learned Collector, however, recorded that he had not complied with the order dated 23.10.2019 and not presented any evidence despite sufficient material being available in the form of an official communication between the two authorities. The Collector could have easily, at that point of time, confirmed the said fact from the concerned authorities and got it verified since the allegation were of taking possession of 2.5 kanals of land and also digging a borewell. The onus being put upon the present appellant was, thus, unjustified. Apart from the bald denial, the private-respondent could not explain as to in what circumstance the Government official would write to the SHO regarding the unauthorized occupation and why his name would have found mention in the said communication.

7. Thus, it is apparent that at the time of appointment on 04.11.2019, there was a serious issue regarding the unauthorized

occupation against Surjit Singh. Only on the ground that he was matriculate in preference to the 5th class pass qualification of the appellant-Joga Singh, who is also owner of more land measuring 25 kanals in comparison to the appointee who had 8 kanals 12 marlas of land, he was appointed. This aspect of the Collector not checking up the record and getting the factum confirmed despite the material being brought to his notice, is a perversity which has occurred. The said issue had also been raked up before the Commissioner by the present appellant by filing the necessary appeal, but of no avail, who had proceeded to dismiss the said appeal on 07.06.2022 (Annexure P-4), which error had been rectified by the Financial Commissioner. The writ petitioner, Surjit Singh also referred in the writ petition to the letter written by the SDO to the SHO but further pleaded about some endorsement dated 27.11.2019 that there was some report that there was no such encroachment.

8. Thus, it cannot be said that there was no allegation regarding the unauthorized occupation before the Collector and the said authority has conveniently side-stepped the issue by putting the onus upon the present appellant. Rather specific finding should have been given whether possession was unauthorized or not and what is the reason for the subsequent communication to be addressed to Surjit Singh by the Sub-Divisional Officer that on spot inspection dated 26.04.2024 (Annexure P-7), there was no illegal possession found. This factual matrix having not been cleared, the Financial Commissioner, in such circumstances, rightly ordered the remand, as such.

9. In **Dilbag Singh Vs. State of Haryana & others, 2012 (2)**

LAR 247, it was held that once there is encroachment upon the common

land, it would not behove if such a person is appointed as Lambardar once the credentials were not upto the mark. The clean image of the candidate and the character of the candidate has to be seen as per Rule 15(d) of the Rules and this aspect had to be kept in mind by the Collector. It is in such circumstances, the Financial Commissioner had remanded the matter for fresh consideration for which no fault can be found and the Learned Single Judge was not justified in allowing the writ petition, in the peculiar facts and circumstances.

10. Resultantly, we have no other option but to allow the present appeal and set-aside the judgment of Learned Single Judge dated 06.05.2024 and uphold the order of Financial Commissioner dated 27.07.2023 (Annexure P-5). The Collector shall necessarily comply with the directions issued by the Financial Commissioner. Needless to say that we have not commented upon the veracity of the encroachment at the time of consideration of appointment and left it open for the authorities to verify and take a call, keeping in view the observations made herein. All pending application(s) also stand disposed of.

(G.S. SANDHAWALIA)
JUDGE

23.08.2024
Sailesh

(MEENAKSHI I. MEHTA)
JUDGE

Whether speaking/reasoned :	Yes	
Whether Reportable :	Yes	