

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-11439-2015 (O/M)

Date of decision : 23.07.2024

Amrik Singh

..... Petitioner

Versus

The Financial Commissioner (Appeals), Punjab and others Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. S.S. Sidhu, Advocate
for the petitioner.

Mr. Nirmaljit Singh Diwana, Senior DAG Punjab.

Mr. Rohit Sapehiya, Advocate for
Mr. Rai Singh Chauhan, Advocate
for respondent No. 4.

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HARSH BUNGER, J.

1. Petitioner (Amrik Singh) has filed the instant civil writ petition under Articles 226/227 of Constitution of India, seeking setting aside of order dated 18.08.2011 (Annexure P-2), passed by learned District Collector, Amritsar (respondent No. 3), whereby respondent No. 4 (Resham Singh) was appointed as Lambardar of village Dhande, Tehsil and District Amritsar.

1.1 A further prayer has been made for setting aside the order dated 10.12.2013 (Annexure P-3), passed by learned Commissioner, Jalandhar Division, Jalandhar and order dated 12.09.2014 (Annexure P-4), passed by learned Financial Commissioner (Animal Husbandry), Punjab, whereby the appeal as well as the revision filed against the learned Collector's order dated 18.08.2011 (Annexure P-2), were dismissed, respectively.

2. Briefly, upon demise of previous Lambardar of village Dhande, namely, Harnam Singh; proceedings were initiated for filling up the vacant post of Lambardar. In pursuance to the proclamation issued for filling up the said vacant post, petitioner as well as respondent No. 4 and another candidate applied for the said post of Lambardar. The learned Sub Divisional Magistrate, Amritsar-II, recommended the candidature of respondent No. 4 (Resham Singh) for appointment to the aforesaid post and forwarded the case file to the learned District Collector, Amritsar.

2.1 It transpires that the learned District Collector, Amritsar, vide its order dated 13.10.2009, appointed the petitioner as Lambardar, however, the said appointment was challenged by respondent No. 4 before the learned Commissioner, Jalandhar Division, Jalandhar, who vide its order dated 17.01.2011, remanded the case to the learned Collector, Amritsar, for afresh decision.

2.2 Upon remand, the learned Collector, Amritsar, vide its order dated 18.08.2011 (Annexure P-2), appointed respondent No. 4 as Lambardar of village Dhande, Tehsil and District Amritsar, by observing as under :-

“6. After hearing the arguments of counsels for both the parties and from the copy of Khasra Girdwari for the year 2009-10 produced by counsel for the applicant, it is found that respondent Amrik Singh is in possession of Panchayat land and entries in Girdwari of 2005 is in his name till today. The counsel for the respondent Amrik Singh orally submitted that at present respondent is not in possession of Panchayat land and entries in Girdwari is wrong but respondent failed to prove by producing documents in his favour in this regard. Whereas as per

khasra Girdwari produced by applicant party, it is proved that respondent is in possession of Panchayat land. The candidate Resham Singh is 12th class pass and as per map of Numberdari contained in file, he is the owner of 109 kanal land. This candidate is more educated than respondent Amrik Singh and he is the owner of more land. Therefore, the applicant Resham Singh son of Balbir Singh being suitable candidate for Numberdari is appointed as Numberdar of Village Dhande, Tehsil Amritsar-2 in place of deceased Numberdar Harnam Singh son of Kesar Singh. Sanad Numberdari be issued. The copy of order be sent to Sub Divisional Magistrate, Amritsar-2 for information and for correction in revenue record. The file be consigned to record room after compliance.”

2.3 The aforesaid order dated 18.08.2011 (Annexure P-2) was challenged by the petitioner before the learned Commissioner, Jalandhar Division, Jalandhar, however, the same was dismissed, vide order dated 10.12.2013 (Annexure P-3).

2.4 Still aggrieved, the petitioner preferred a revision petition (ROR-434-2014) before the learned Financial Commissioner (Animal and Husbandry) Punjab, which was also dismissed, vide order dated 12.09.2014 (Annexure P-4) by observing as under :-

“5. I have considered the arguments advanced by the counsel for the petitioner and gone through the record available on file. The District Collector has appointed Resham Singh as new Lambardar of village Dhande because he is 12th pass and owns 109 kanals of land. He is more educated than Amrik Singh and also owns more land. On the other hand Amrik Singh is in illegal possession of gram panchayat land and is 70 years old. The Commissioner has upheld the order of Collector. In

Parkash Chand Versus State of Haryana cited
in (2013-2) PLR 66 has been held as under :

“(i) Lambardar: Appointment-choice of the Collector, though not an absolute rule in every situation, yet it cannot be upset lightly by the higher revenue authorities in the hierarchy – in the present case, since the order passed by learned Collector was not suffering from any patent illegality, perversity or jurisdictional error, the impugned order passed by learned Commissioner as well as by learned Financial Commissioner are not sustainable in law.”

Hence the revision is dismissed in limine, being devoid of any merit.”

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 concerned learned Collector as well as the appellate and revisional authorities have erred in appointing respondent No. 4 as Lambardar by ignoring the merits of the petitioner. It is submitted that the petitioner is the son of deceased Lambardar and, therefore, he had a hereditary claim. It is further submitted that the petitioner is sufficiently educated upto 10th standard and he owns around 96 kanal of land and being the son of deceased Lambardar, he had gained knowledge and experience of work of Lambardar. It is next submitted that the revenue authorities below have wrongly non-suited the petitioner on the ground that he had encroached upon the gram panchayat land, whereas he had never remained in possession of any gram panchayat

property. Accordingly, it is submitted that the petitioner is more meritorious than respondent No. 4 and is required to be appointed as Lambardar.

4.1 With the aforesaid submissions, learned counsel for petitioner prayed that the impugned orders be set aside and the petitioner be appointed as Lambardar of village Dhande, Tehsil and District Amritsar.

5. Per contra, learned counsel appearing for respondent No. 4 has opposed the submissions made on behalf of the petitioner by submitting that the revenue authorities below have considered the relevant merits and demerits of the candidates and has rightly appointed respondent No. 4 as Lambardar. It is submitted that the choice of concerned learned Collector in the matter of Lambardar is to be taken as final unless there is patent illegality or perversity. It is contended that respondent No. 4 is more meritorious than petitioner and there is no scope for any interference in the impugned orders. Accordingly, prayer for dismissal of the instant civil writ petition has been made.

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

7. The merits and demerits of the candidates can be summarized in the following tabular chart :-

Sr. No.	Particulars	Petitioner (Amrik Singh)	Respondent No. 4 (Resham Singh)
1.	Age	80 years	45 years
2.	Educational Qualification	10 th	12 th
3.	Land Holding	96 kanal	109 kanal
4.	Recommended by	---	S.D.M. Amritsar-2

7.1 A bare perusal of the above comparative chart of the candidates would show that respondent No. 4 is younger in age, he holds more land, he is more educated than the petitioner and even the lower revenue officer (SDM, Amritsar) had recommended his name for appointment as Lambardar. Evidently, respondent No. 4 has an edge over the petitioner.

7.2 As regards the contention of learned counsel for the petitioner that the petitioner should be appointed as Lambardar being son of deceased Lambardar, it is observed that in the case, such plea is to be accepted then the same shall amount to giving effect to the hereditary claim, which has already been held to be ultra vires to the Constitution by a Division Bench of this Court in the case of ***Karnail Singh Versus The State of Haryana etc.***, 1973 PLJ 676, wherein it was held as under :-

“4. It may appear obvious that Rule 15 (supra) applies only at the time of all first appointments of village Headman or Lambardars. Clauses (e) and (f) laying down two further criteria for consideration in the matter of selection of an incumbent to this office were added afterwards in the years 1945 and 1954, respectively. The paragraph under the clauses was added by the Government of Punjab (India) on 14th July, 1954. The last two sentences in this paragraph may seem to lay further emphasis on heredity or family connections. The criteria mentioned in the various clauses of Rule 15 can be taken into consideration under sub-rule (i) of Rule 17 where a successor to the office of village Headman has to be selected in an estate, or sub-division thereof, owned chiefly or in its entirety by the Government. In all other estates or villages or their sub-divisions, the successor has to be appointed under sub-rule (ii) of

Rule 17 and the criteria mentioned in Rule 15 do not seem to come in. The sub-rule on the other hand says that the successor shall be appointed by the rule of primogeniture unless some social custom of succession is proved. In such exceptional circumstances also the appointment is to be confined to a collateral of the fourth or nearer degree. In making the appointment of respondent No. 4 in Civil Writ No. 1048 of 1967 and the other private respondents in Civil Writ Nos. 666 and 696 of 1970, Rule 17(ii) has been invoked and the person appointed is either the son or the grandson of the deceased Lambardar. The claim of heredity may appear to have prevailed as against all other considerations. It is true that some additional qualifications of the heir appointed have also been mentioned at places but there has been no judging of the claims of the rival candidates by making a comparison of their respective qualifications. The main consideration that may appear to have prevailed is that the person selected was connected by ties of blood or heredity with the last incumbent. Shri Naubat Singh, the learned District Attorney for the State of Haryana, has argued that in actual practice other qualifications are also taken into consideration and the appointments are not made in all cases on the grounds only of heredity. Practice apart, Rule 17(ii) may seem to attach too much importance to the claim of heredity and the selection of the successor is sought to be confined to a male lineal descendant or the nearest collateral. Rule 17(ii) may seem to make discrimination or distinction on the ground of heredity or family connections. This rule may, therefore, appear to be

violative of the fundamental rights guaranteed by Articles 14, 15 and 16 of the Constitution of India. Reference could in this connection be made to the Supreme Court rulings in Gazula Dasaratha Rama Rao v. State of Andhra Pradesh and others, AIR 1961 Supreme Court 564, and The State of Assam and others v. Kanak Chandra Dutta, AIR 1967 Supreme Court 884. Shri Naubat Singh has cited before us a Divisional Bench ruling of the Madras High Court in Rishikesavan Naidu v. S. Srinivasa Reddiar, AIR 1965 Madras 178, but the facts in that case were altogether different. The person who had been selected to the hereditary office in that case had no other rival in the field. He would have been selected un-opposed independently of his family connections that heredity was no disqualification for being selected to a particular post or appointment.

5. For reasons given above, we declare sub-rule (ii) of Land Revenue Rule 17 to be ultra vires and unconstitutional. The appointments under this sub-rule of respondent No. 4 in Civil Writ No. 1048 of 1967, respondent No. 3 in Civil Writ No. 696 of 1970 and respondent No. 4 in Civil Writ No. 666 of 1970 is quashed and the State Government is directed to make fresh appointments after considering the claims of all the contesting candidates....”

7.3 It is also observed that at presently, the petitioner is more than 80 years of age. Hon'ble the Supreme Court in the case of ***Mahavir Singh Versus Khiali Ram and Others***, 2009(1) RCR (Civil) 757, held that in the matter of appointment of Lambardar, the age is a relevant factor. Moreover, it is well established that the choice of the Collector is not to be lightly interfered with even if two views are possible. In this regard,

reference can be made to judgment rendered by a Division Bench of this Court in the case of ***Kuldip Singh Versus Financial Commissioner, Appeals-II, Punjab***, 2016(1) RCR (Civil) 273.

14. Keeping in view the totality of facts and circumstances, I do not find any illegality or perversity in the impugned orders. Resultantly, the instant civil writ petition fails and the same is accordingly dismissed.

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

(HARSH BUNGER)
JUDGE

23.07.2024

sjks

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No