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

CWP-12536-2016 (O&M)
Date of decision :17.07.2024

VIJAY KUMAR

…Petitioner

Versus

FINANCIAL COMMISSIONER (APPEALS), PUNJAB,
PUNJAB CIVIL SECRETARIAT CHANDIGARH AND OTHERS

…Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Dheeraj Mahajan, Advocate
for the petitioner.

Mr. Ajaypal Singh Rihan, Advocate
for respondent No.5.

HARSH BUNGER, J. [ORAL]

1. Petitioner (Vijay Kumar) 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 for setting aside the order dated 27.05.2010 (Annexure P-1) passed by learned District Collector, Gurdaspur; whereby, respondent No.5 (Anchal Singh) was appointed as *Lambardar* of Village Behrampur, Tehsil and District Gurdaspur.

1.1 A further prayer has been made for setting aside the order dated 30.03.2016 (Annexure P-3) passed by the learned Financial Commissioner (Appeals) Punjab; whereby, order dated 20.01.2014 (Annexure P-2) passed by the learned Commissioner, Jalandhar Division, Jalandhar, has been set aside and the order of learned District Collector, appointing respondent No.5 as *Lambardar*, has been restored.

2. Briefly, on account of demise of Rattan Singh, previous *Lambardar* of Village Behrampur, Tehsil and District Gurdaspur, the proceedings for filling up the afore-said vacancy to the post of *Lambardar* were initiated. In pursuance to the proclamation carried out for filling up the afore-said vacancy, petitioner along with respondent No.5 and few other candidates applied for the vacant post. The learned Assistant Collector IInd Grade, Dinanagar recommended the name of one Bikram Singh for appointment as *Lambardar* of Village Behrampur and forwarded the case to the learned Tehsildar, Gurdaspur, who in turn, recommended the name of respondent No.5 for appointment to the afore-said vacancy and the file was forwarded to the learned Assistant Collector Ist Grade, Gurdaspur. The learned Assistant Collector Ist Grade, Gurdaspur, also recommended the name of respondent No.5 for the afore-said vacancy and the matter was sent to the Court of learned District Collector, Gurdaspur.

3. The learned District Collector, Gurdaspur, vide his order dated 27.05.2010 (Annexure P-1) appointed respondent No.5 as the *Lambardar* of Village Behrampur, by observing as under :-

> *"After hearing all the three applicants and perusing the file, it has been found that so far as age and educational qualifications are concerned all the three applicants are eligible but Bikram Singh is having much less land than the other two applicants and Anchal Singh being the son of the deceased Lamberdar is having hereditary claim for Lamberdari, although Anchal Singh is working as Vasika Nawis in Dina Nagar i.e. outside the village but he works in Sub Tehsil Complex Dinanagar so he can be available all the times. So far as the enquiry*

against Anchal Singh is concerned that has been consigned and Anchal Singh has been acquitted from the case. No submission was made by the opponent of Anchal Singh in this regard and in reply to the query raised, regarding the works of Lamberdar, Anchal Singh has given effective answer, therefore, Anchal Singh is the first person to be appointed as Lamberdar. Therefore, while agreeing with the recommendations of the Asstt. Collector Ist Grade, Sh. Anhcal Singh son of Rattan Singh is appointed as Lamberdar for the village Behrampur, Hadbast No.271, Tehsil and District Gurdaspur which falls vacant on account of the death of deceased Lamberdar Shri Rattan Singh son of Shri Amar Singh. Sanad be issued and file after necessary action be sent to Asstt. Collector Ist Grade for further proceedings."

4. Against the afore-said order dated 27.05.2010 (Annexure P-1), two appeals were filed i.e. one by Bikram Singh (respondent No.6) and another by the present petitioner (Vijay Kumar). Both the afore-said appeals came to be decided by the learned Commissioner, Jalandhar Division, Jalandhar, vide common order dated 20.01.2014 (Annexure P-2); whereby, the learned Collector's order dated 27.05.2010 (Annexure P-1) was set aside and the present petitioner (Vijay Kumar) was appointed as the *Lambardar* of Village Behrampur.

5. Being aggrieved against the afore-said order dated 20.01.2014 (Annexure P-2), the respondent No.5 preferred a revision petition (ROR No.361 of 2014) before the learned Financial Commissioner (Appeals) Punjab, who vide his order dated 30.03.2016 (Annexure P-3) allowed the revision petition and set aside the order passed by the learned Commissioner and further restored the Collector's order dated 27.05.2010 (Annexure P-1) appointing respondent No.5 as the *Lambardar* of Village Behrampur.

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

7. Learned counsel for the petitioner submits that the learned District Collector, Gurdaspur, as well as the learned Financial Commissioner (Appeals), Punjab have erred in law and fact in appointing respondent No.5 as the *Lambardar* while ignoring the better merits of the petitioner. It is submitted that respondent No.5 is working as a Deed Writer in the Tehsil Complex and is not readily available to the villagers, which is a very important factor as regards the appointment of *Lambardar* is concerned. It is further submitted that the conduct of respondent No.5 is not above board as there are various complaints against him for scribing under value documents. It is contended that respondent No.5 has wrongly been given preference on account of his hereditary claim, although, such claims have been held to be *ultra-vires* the Constitution of India. It was further submitted that against the learned Commissioner's order dated 20.01.2014 (Annexure P-2), respondent No.5 had preferred a revision petition before the learned Financial Commissioner (Appeals) Punjab, whereas he was required to file an appeal and on this account itself, the impugned order passed by the learned Financial Commissioner, is liable to be set aside. It is further submitted that there was delay of 58 days in filing the revision petition and the learned Financial Commissioner has wrongly passed the impugned order without condoning the delay.

7.1 With the afore-said submissions, prayer has been made by learned counsel for the petitioner for setting aside the impugned orders and for upholding the order passed by the learned Commissioner, Jalandhar Division, Jalandhar.

8. Per contra, learned counsel appearing for respondent No.5 has opposed the submissions made on behalf of the petitioner, by submitting that the learned Collector, Gurdaspur had appreciated the relative merits and de-merits of the candidates and appointed respondent No.5 as the *Lambardar*. It is submitted that as per the well settled position, the choice of Collector is not to be lightly interfered with unless there is patent illegality or perversity. It is contended that there was no scope for any interference in the order passed by the learned District Collector, Gurdaspur, however the same was wrongly set aside by the learned Commissioner, Jalandhar Division, Jalandhar, on irrelevant considerations; but the learned Financial Commissioner (Appeals) Punjab, has rightly restored the Collector's order appointing respondent No.5 as the *Lambardar*. Learned counsel for respondent No.5 submitted that even otherwise, the respondent No.5 is more meritorious than the petitioner.

8.1 As regards the contention of the petitioner that against the order passed by the learned Commissioner, Jalandhar Division, Jalandhar only an appeal was maintainable, it is submitted that the Punjab Land Revenue Act, 1887; provides for the remedies of appeal as well as revision, in terms of Sections 13 and 16 of the Act. It is, thus, contended that the learned Financial Commissioner (Appeals) Punjab, has rightly exercised his jurisdiction and upheld the order passed by the learned District Collector, Gurdaspur.

8.2 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. Here it would be apposite to give a brief comparison of the

merits of the petitioner as well as respondent No.5, which is as under :-

S. No.	*Particulars*	*Petitioner*	*Resp. No.5*
1.	***Age***	*43 years*	*43 years*
2.	***Educational qualification***	*Matric*	*Matric*
3.	***Land holding/s***	*33 Kanal – 2 Marla*	*36 Kanal – 5 Marla*
4.	***Recommended by***		*Tehsildar, Gurdaspur Assistant Collector Ist Grade, Gurdaspur*

10.1 A perusal of the afore-said comparison would clearly indicate that so far as the age and educational qualification of the parties is concerned, both are of the same age and having same qualification and even the land holding/s is/are somewhat similar. It is required to be noticed that the name of respondent No.5 was recommended by the learned Tehsildar, Gurdaspur as well as the Assistant Collector Ist Grade, Gurdaspur. Although, the Collector is not bound by the recommendation made by the lower 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 vs Financial Commissioner (Revenue), Punjab, 2016(4) RCR (Civil) 335*** and ***Atma Singh vs The Financial Commissioner, Revenue, Punjab, 2016(1) LAR 592***.

10.2 The learned Collector had considered the candidature of the petitioner as well as respondent No.5 and thereafter, while concurring with the recommendations made by the lower Revenue Officers and also finding that respondent No.5 gave effective answers regarding works of *Lambardar*, learned Collector appointed respondent No.5 as *Lambardar.*

10.3 The Collector's order appointing respondent No.5 as the *Lambardar* was set aside by the learned Commissioner, Jalandhar Division, Jalandhar, vide its order dated 20.01.2014 (Annexure P-2) by observing as under :

> *"Appellant Vijay Kumar and respondent Anchal Singh merits are the same w.r.t. their education qualifications, age and land holding in the village. The respondent Anchal Singh was made Lamberdar being son of deceased Lamberdar. Even though this is one of the qualifications for appointment but the same has been declared Ultra vires by the Apex Court. The respondent is working as a Deed Writer in Tehsil Complex and as such not available in the village. Moreover, there were criminal cases and other complaints of preparing wrong and less value sale deeds against the respondent. With these observations, I set aside the order of Collector on 27.5.2010 and appoint Sh. Vijay Kumar, appellant as Numberdar of village Behrampur, tehsil and Distt. Gurdaspur."*

10.4 However, the learned Financial Commissioner, Punjab, vide its order dated 30.03.2016 (Annexure P-3) has set aside the Commissioner's order and upheld the Collector's order dated 27.05.2010 (Annexure P-1) by observing as under :-

> *"I have heard both the parties in this regard. What is important to see the grounds on which Learned Commissioner has passed orders. This is important because in this case the District Collector has passed a detailed order after considering the merits and demerits of all the 6 candidates which were available in this case. The Ld. Commissioner has passed his order primarily on the two grounds that the petitioner is a Deed Writer in Tehsil complex and as such not available in the village and secondly there were criminal case and other*

complaints of preparing wrong and less valued sale deeds against the respondent (present petitioner). Going by the orders of the District Collector, he has clearly mentioned that the petitioner Anchal Singh is Deed Writer at Sub Tehsil, Dina Nagar and people of the village come in connection with their Administrative matter at the Sub-Tehsil can be helped in better manner and he is available to the village community. As regards to FIR, admittedly by both the parties the petitioner Anchal Singh has been acquitted in this case as on today. The Collector has seen almost all the aspects in respect of all the candidates and after evaluating the merits and demerits has passed the detailed order. Resultantly I do not find that the order of the Learned Commissioner for setting aside the order of the District Collector, Gurdaspur is based on sound reasoning. The orders of the District Collector should not be interfered unless any major irregularities are found. Undoubtedly, it has to be accepted that when the merit of a person for being appointed as Lambardar are well assessed by the Ground level Revenue Officials as they have better understanding and information at the ground level and are aware of the reputation, working and eligibility to shoulder the responsibility in a better manner. Unless there are legal irregularities or decisions are based on wrong facts or are violative of any law, interference from the higher authorities or courts are not desirable in such cases.

In view of these reasons, I set aside the order of the Ld. Commissioner and sustain the order of District Collector dated 27.05.2010 vide which the petitioner has been appointed as Lambardar."

10.5 A perusal of the order dated 30.03.2016 passed by the learned Financial Commissioner, Punjab, would manifest that he has dealt with the grounds noticed by the learned Commissioner, while appointing the petitioner as *Lambardar* and thereafter, learned Financial Commissioner has appointed respondent No.5 as *Lambardar* of Village Behrampur.

11. In the attending circumstances, the order passed by the learned Financial Commissioner, appears to be justified, especially in view of the well settled law that there should be no interference in the choice made by the Collector in the matter of appointment of *Lambardar*, even if, two views are possible. In this regard, reference can be made to the judgment passed by the Division Bench of this Court in ***Kuldip Singh vs Financial Commissioner, Appeals-II, Punjab, 2016(1) RCR (Civil) 273.***

12. As regards the contention of the petitioner regarding non-maintainability of the revision petition before the learned Financial Commissioner is concerned, suffice it to say that the statutory remedy of appeal, review and revision cannot be assumed by any authority until and unless they are provided in the Act. Under the Punjab Land Revenue Act, 1887 (in short "***1887 Act***"), Chapter II, consists of Sections 6 to 27, dealing with several matters under different headings. Sections 6 to 10 are grouped under the heading, "Revenue Officers" and sub-heading "Class and Powers". Sections 11 and 12 find place under the heading "Administrative Control." Sections 13 to 16 occur under the heading "Appeal, Review and Revision". Sections 17 to 22 form a fasciculus under the heading "Procedure". Sections 23 to 27 are clubbed together under the heading "Supplemental Provisions." The arrangement of these various sections under different headings and the conferment of distinct powers thereunder on different authorities and, more particularly, the placement of Sections 11 and 12 under the heading "Administrative Control" and Sections 13 to 16 under the heading "Appeal, Review and Revision", bring out the legislative intention of maintaining a clear demarcation between the different powers

exercisable by superior Revenue Officers over inferior Revenue Officers in varying context, circumstances and situations and of separately categorising those powers according to their nature, character and content. It is manifest that whereas the powers under Sections 11 and 12 are administrative or executive in character, those under Sections 13 to 16 are quasi-judicial in nature.

13. In the instant case, since the revision petition came to be filed before the learned Financial Commissioner (Appeals), Punjab, in the year 2014, accordingly the then existing provisions of Sections 13, 14 and 16 of the 1887 Act, as amended/notified on 28.01.2013, would be relevant for the purposes of this case. At the same time, a reference to the provisions contained in Sections 11 and 12 of the 1887 Act would also be required. Sections 11, 12, 13, 14 and 16 (as amended/notified on 28.01.2013) of the 1887 Act, are reproduced herein-as-under:-

> ***11. Superintendence and control of Revenue-officers.—****(1) The Financial Commissioner shall subject to the control of the {State Government}.*
>
> *(2) The general superintendence and control over all other Revenue –officers shall be vested in, and all such officers shall be subordinate to the Financial Commissioner.*
>
> *(3) Subject to the general superintendence and control of the Financial Commissioner, a Commissioner shall control all other Revenue-officers in his division.*
>
> *(4) Subject as aforesaid and to the control of the Commissioner, a Collector shall control all other Revenue-officers in his district.*
>
> ***12. Power to distribute business and withdraw and transfer cases.—***
>
> *(1) The Financial Commissioner or a Commissioner or Collector may by written order distribute, in such manner*

as he thinks fit, any business cognizable by any Revenue-officer under his control.

(2) The Financial Commissioner or a Commissioner or Collector may withdraw any case pending before any Revenue-officer under his control, and either dispose of it himself, or by written order refer it for disposal to any other Revenue-officer under his control.

(3) An order under sub-section (1) or sub-section (2) shall not empower any officer to exercise any powers or deal with any business which he would not be competent to exercise or deal with within the local limits of his own jurisdiction."

*"**13. Appeals**. - Save as otherwise provided by this Act, an appeal shall lie from an original or appellate order of a Revenue-officer as follows, namely:-*

(a) to the Collector when the order is made by an Assistant Collector of either grade;

(b) to the Commissioner when the order is made by a Collector;

(c) to the Financial Commissioner when the order is made by a Commissioner:

Provided that-

(i) when an original order is confirmed on first appeal, a further appeal shall not lie;

(ii) when any such order is modified or reversed on appeal by the Collector, the order made by the Commissioner on further appeal, if any, to him shall be final.

(iii) no authority, except the first appellate authority, shall remand the case to the lower authority to decide the case afresh; and

(iv) no appeal shall lie against any interim order passed by a Revenue Officer under this Act.

*14. **Limitation for Appeals.** - Save as otherwise provided by this Act, the period of limitation for an appeal under the last foregoing section shall run from the date of the order appealed against, and shall be as follows, that is to say -*

(a) when the appeal lies to the Collector – thirty days;

(b) when the appeal lies to the Commissioner – sixty days;

(c) when the appeal lies to the Financial Commissioner – ninety days.

xxx xxx xxx

16(1) Except a case pertaining to question of division of property or the mode of making a partition under section 118:-

Power to call for examine and revise proceedings of Revenue Officers.

(i) The Financial Commissioner may, it any time, call for the record of any case pending before or disposed of by any Revenue Officer subordinate to him; and

(ii) A Commissioner or Collector may call for the record of any case pending before or disposed of by any Revenue Officer under his control.

(2) If any case in which a Collector has called for a record and he is of the opinion that the proceedings taken or order made should be modified or reversed, he shall report the case with him opinion thereon for the orders of the Commissioner whose decision shall be final.

(3) The Financial Commissioner or Commissioner may, in any case called for by himself under sub-section (1) or under sub-section (2), as the case may be, pass such orders as he thinks fit:

Provided that he shall not under this section pass an order reversing or modifying any proceeding or order of a subordinate Revenue Officer and affecting any question of right between private persons without giving those person an opportunity of being heard.

(4) Notwithstanding anything contained in this section, the cases called for by the Commissioner or Collector, as the case may be, under sub-section (1) and (2) as it existed prior to the commencement of the Punjab Land Revenue (Amendment) Act, 2012, shall be decided by them as heretofore."

13.1 From the above extracted provisions, it is evident that by and large, the same set of superior Revenue Officers are conferred with the

Appellate jurisdiction as well as revisional jurisdiction over Revenue Officers placed lower in hierarchy. However, there is a basic and essential distinction between the nature and character of such powers, especially the revisionary power and the occasions/conditions for its exercise are governed by different prescriptions.

14. Under sub-section (1) of Section 16 read with sub-section (3) of Section 16, the Financial Commissioner is indubitably empowered to call for the record of any case pending before or disposed of by any Revenue Officer subordinate to him, at any time and pass such orders as he thinks fit. The expression "*may call for the record of any case*" has acquired a well defined meaning in legal parlance. The expression conveys the exercise of revisional powers. However, the only condition for exercising such revisional jurisdiction is found in the first proviso to Section 16(3), which provides that the Financial Commissioner under this section shall not pass an order, reversing or modifying any proceeding or order of a subordinate Revenue Officer and affecting any question of right between private persons without giving those persons an opportunity of being heard.

14.1 In my considered view, if the Revenue Officer has acted without or in excess of jurisdiction or has committed an illegality or irregularity in the exercise of his jurisdiction, such excess, error or irregularity is curable in exercise of revisional powers conferred by Section 16 of the Act.

15. In the present case, if the respondent No.5 had challenged the order passed by the learned Commissioner, by filing a revision petition before the learned Financial Commissioner, which was entertained and decided, accordingly, the same be taken to have been done under the powers conferred upon the learned Financial Commissioner under the said

Section 16 and the said order cannot be said to be beyond jurisdiction or powers excisable by Financial Commissioner. It is also noticed that under Section 16 which provides for exercise of revisional jurisdiction, no limitation, as such, has been prescribed.

15.1 However, in ***Loku Ram v. State of Haryana, 2000(1) RCR (Civil) 141***; Hon'ble Supreme Court while considering the expression "***at any time***" as under in Section 18(6) of the Haryana Ceiling on Land Holdings Act, 1972; observed as under:-

> “4. Section 18(6) of the Act reads thus :-
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> > *"Section 18(6).* - Notwithstanding anything contained in the foregoing sub-sections, the Financial Commissioner may *suo motu* at any time call for the record of any proceedings or order of any authority subordinate to him for the purpose of satisfying himself as to the legality or propriety of such proceedings or order, and may pass such order in relation thereto as he may deem fit."
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> 5. No doubt, the section uses the expression "at any time" but it cannons be indefinite. The power has to be exercised within a reasonable time. While construing the expression "at any time", this court in ***State of Gujarat v. P. Raghav, AIR 1969 Supreme Court 1297*** has stated the law thus :-
>
> > "11. The question arises whether the Commissioner can revise an order made under Section 65 at any time. It is true that there is no period of limitation prescribed under Section 211, but it seems to us plain that this power must be exercised in reasonable time and the length of the reasonable time must be determined by the facts of the case and the nature of the order which is being revised."
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> 6. Section 18(2) of the Act prescribed a period of 15 days for filing an appeal and Section 18(4) prescribes a period of 30 days for filing a revision before the Commissioner. When the two Sub-Sections prescribed a very short period of 15 and 30

days respectively, it will be unreasonable to hold that the Financial Commissioner has unlimited power to entertain a revision after a lapse of several years.

7. The test prescribed by this Court in Raghav's case has been ignored by the Financial Commissioner in the present case. His order does not disclose any reason to hold that a period of nearly seven years is reasonable on the facts of the case. Nor has the High Court gone into the question and decided whether the power has been exercised on the facts and circumstances within a reasonable period. Hence we allow the appeal and set aside the order of the High Court…"

15.2 Keeping in view the observations made by Hon'ble the Apex Court in case of ***Loku Ram (supra)***, even if the plea of the petitioner that there was a delay of 58 days in filing of revision petition by the respondent No. 5 is considered, in my view the same cannot be said to be unreasonable and in the facts and circumstances of this case, it is held that the learned Financial Commissioner has exercised his power under section 16 of the Punjab Land revenue Act within a reasonable period.

15.3 That apart, it is also well settled that where substantial justice and technicalities are pitted against each other then it is always the cause of substantial justice, which is to be preferred.

16. No other argument was raised.

17. In view of the afore-said discussion, I find no merit in the present petition and the same is accordingly dismissed.

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

July 17, 2024 **(HARSH BUNGER)**
gurpreet **JUDGE**

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