

2024:PHHC:084713



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

CWP-14401-2024 (O&M)
Date of decision : 09.07.2024

HARBHAJAN SINGH

...Petitioners

Versus

**FINANCIAL COMMISSIONER REVENUE (APPEALS),
PUNJAB, CHANDIGARH AND OTHERS**

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Ishnoor Singh, Advocate
for Mr. Rajbir Singh, Advocate
for the petitioner.

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

Mr. N.P.S. Mann, Advocate
for respondent No.4/caveator.

HARSH BUNGER, J. (ORAL)

Petitioner (Harbhajan Singh) has filed the instant writ petition under Articles 226/227 of the Constitution of India seeking a writ in the nature of *Certiorari* for quashing the order dated 08.09.2017 (Annexure P-3) passed by the learned Commissioner, Rupnagar Division, Rupnagar, whereby respondent No.4 (Mangal Singh) was appointed as the Lambardar of Village Bhallan (Taraf Majra), Tehsil Nangal, District Rupnagar.

A further prayer has been made by the petitioner for quashing the order dated 18.01.2024 (Annexure P-7) passed by the Financial

Commissioner (Appeals), Punjab, whereby his appeal bearing ROA No.70 of 2017 against the aforesaid order dated 08.09.2017 (Annexure P-3) was dismissed.

Another prayer has been made by the petitioner for upholding the order dated 26.11.2012 (Annexure P-2) passed by learned Collector, Rupnagar; whereby, the petitioner was appointed as the Lambardar of Village Bhallan (Taraf Majra).

2. Briefly, the previous Lambardar of Village Bhallan (Taraf Majra), namely Bhagat Singh son of Puran Singh, expired on 24.10.2010 and thereafter, the proceedings were initiated for filling up the vacant post of Lambardar of the aforesaid village. After due proclamation for the aforesaid post of Lambardar, fifteen applications were received, including the application submitted by the present petitioner (Harbhajan Singh) and respondent No.4 (Mangal Singh). The character of the candidates was got verified from the local police, which was found to be in order. Lower Revenue Officers, i.e. Naib Tehsildar, Nangal and Sub Divisional Magistrate, Nangal recommended the name of petitioner (Harbhajan Singh) for appointment to the post of Lambardar of Village Bhallan (Taraf Majra). Thereafter, the matter was put up before the District Collector, Rupnagar, who afforded opportunity of hearing to the contesting parties.

3. As regards the petitioner (Harbhajan Singh), it was observed by the District Collector, Rupnagar that he was 65 years of age; having educational qualification upto 10th Standard. It was further observed that he is an Ex-sarpanch of the Village and had retired from Army as 'Subedar Major'. It was also observed that *Halqa Patwari* found 3 acres of land in

the name of the petitioner and four candidates had withdrawn their nomination in his favor.

3.1. On the other hand, as regards respondent No.4 (Mangal Singh), it was observed by District Collector, Rupnagar that he was 40 years of age; having educational qualification upto 10th Standard with I.T.I. Diploma. It was further observed that *Halqa Patwari* found 2 acres – 4 kanals of land in his name. It was also observed that his grandfather was a '*Freedom Fighter*' and villagers had consented in his favour.

3.2 It is noticed that before the learned Collector, the other candidates while speaking on demerits of the petitioner, stated that he has done illegal construction on *Panchayat* land and had also mishandled *panchayat* fund during his tenure as a *Sarpanch* and later he deposited Rs.7,664/-.

4. The learned Collector, Rupnagar vide order dated 26.11.2012 (Annexure P-2) appointed the present petitioner (Harbhajan Singh) as Lambardar of Village Bhallan (Taraf Majra).

5. Being aggrieved against the aforesaid order dated 26.11.2012 (Annexure P-2) passed by the learned District Collector, Rupnagar, Mangal Singh (respondent No.4) filed an appeal (Revenue Appeal No.72 of 2012) before the Divisional Commissioner, Rupnagar. Another appeal (Revenue Appeal No.75 of 2013) was filed by another candidate (Jujhar Singh). Both the aforesaid appeals came to be decided by the learned Commissioner vide a common order dated 08.09.2017 (Annexure P-3); whereby the appeal of the respondent No.4 was allowed and he was appointed as the Lambardar of Village Bhallan (Taraf Majra).

6. The aforesaid order dated 08.09.2017 (Annexure P-3) was challenged by the present petitioner (Harbhajan Singh) before the Financial Commissioner, Punjab by filing an appeal (ROA No.70 of 2014), which was allowed vide order dated 14.01.2020 (Annexure P-5) and the matter was remanded to the District Collector, Rupnagar, for deciding the case afresh.

7. It transpires that the present petitioner further challenged the orders passed by the learned Commissioner as well as the learned Financial Commissioner, before this Court in **CWP No.17713-2020**. Similarly, respondent No.4 (Mangal Singh) also challenged the order passed by the learned Financial Commissioner, by filing **CWP No.20317-2020**.

7.1 Both the afore-said writ petitions came to be decided by this Court vide common order dated 27.01.2023, which was primarily passed on the basis of consent of learned counsel appearing on behalf of both the parties i.e. the petitioner and respondent No.4, herein and the order dated 14.01.2020 (Annexure P-5) passed by the learned Financial Commissioner, was set aside; with a further direction to the learned Financial Commissioner, to decide the ROA No.70 of 2017, filed by the petitioner herein, afresh.

8. Thereafter, the learned Financial Commissioner, decided the appeal (ROA No.70 of 2017) vide order dated 18.01.2024 (Annexure P-7); whereby, the aforesaid appeal filed by petitioner was dismissed and the order dated 08.09.2017 (Annexure P-3) passed by the learned Commissioner, Rupnagar, appointing respondent No.4, as Lambardar of the afore-said Village, was upheld.

9. In the aforementioned circumstances, the petitioner (Harbhajan Singh) filed the instant writ petition before this Court.

10. Learned counsel for the petitioner submits that the learned Commissioner as well as the learned Financial Commissioner have erred in appointing respondent No.4 (Mangal Singh) as the Lambardar of Village Bhallan (Taraf Majra) by ignoring the relative merits of the petitioner. Learned counsel further submitted that the petitioner is a mature man, sufficiently educated, retired as a *Subedar Major* from Army and lower revenue officers had recommended his name, accordingly, learned Collector, Rupnagar had appointed him as the Lambardar of Village Bhallan (Taraf Majra). It is next submitted that the choice of Collector in the matter of appointment of Lambardar is not to be interfered lightly unless there is any illegality or perversity in the order. It is submitted that the Commissioner has wrongly non-suited the petitioner by observing that there are allegations that he is in un-authorized possession of village common land and had misappropriated the government funds, whereas from the receipt dated 13.09.2005 (Annexure P-8), it is not reflected that the petitioner has committed any embezzlement. It is further submitted that in the revenue record (Annexure P-9), petitioner's name is shown in the cultivation column against *Khasra No.21//15/2* and it does not prove that he is unauthorized occupant. Learned counsel for the petitioner contends that the learned Commissioner could not have passed the order dated 08.09.2017 (Annexure P-3), appointing Mangal Singh (respondent No.4) as Lambardar, rather he should have remanded the case to the Collector, for fresh decision.

10.1 With the aforesaid submissions, learned counsel for the petitioner submits that the impugned order dated 08.09.2017 (Annexure P-3) passed by the Divisional Commissioner, Rupnagar and impugned order dated 18.01.2024 (Annexure P-7) passed by the Financial Commissioner, Punjab be set aside; and the order dated 26.11.2012 (Annexure P-2) passed by learned Collector, Rupnagar; whereby, the petitioner was appointed as the Lambardar of Village Bhallan (Taraf Majra), be upheld.

11. Per contra, learned counsel for caveator/respondent No.4 has contested the claim of petitioner by submitting that the Collector, Rupnagar had wrongly appointed the petitioner (Harbhajan Singh) as Lambardar by passing a non-speaking order and without considering the merits and de-merits of the candidates. It is submitted that the order passed by learned Collector was perverse and he had simply placed reliance upon the recommendation made by the lower Revenue Officers and on no other factor. It is further submitted that respondent No.4 is younger than the petitioner and as per the Punjab Land Revenue Rules, age of the candidate is a relevant factor to be considered while making appointment to the post of Lambardar. It is further submitted that respondent No.4 is sufficiently educated, inasmuch as that he is equally qualified as that of the petitioner, i.e. matriculate but he also holds an ITI Diploma. It is still further submitted that respondent No.4 has sufficient land holding and his grandfather was a Freedom Fighter, who was granted '*Tamar Patar*' by Government of India, for participation in the freedom movement of India. It is next submitted that the learned Commissioner has rightly passed the order dated 08.09.2017 (Annexure P-3), appointing respondent No.4 as Lambardar, after

considering the relative merits and demerits of the candidates. It is contended that the petitioner is in un-authorized possession of *shamlat* land of the Village, whereas respondent No.4 is a person with clean antecedents, accordingly order passed by the Commissioner appointing Mangal Singh (respondent No.4) as Lambardar, and as upheld by the Financial Commissioner, is not required to be interfered with.

12. With the aforesaid submissions, learned counsel for respondent No.4 prays for dismissal of the present writ petition.

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

14. A reference to the relevant Rules 15 and 17 of the Punjab Land Revenue Rules (as applicable to Punjab), for appointment of Village Headman, would be beneficial to decide the instant case. The said rules read as under:-

"15. Matters to be considered in first appointments- In all first appointments of headman, regard shall be had among other matters to-

(a) his hereditary claims;

(b) the property in the estate possessed by the candidate to secure the recovery of land revenue;

(c) services rendered to the State by himself or by his family;

(d) his personal influence, character, ability and freedom from indebtedness;

(e) the strength and importance of the community from which selection of a headman is to be made;

(f) services rendered by himself or by his family in the national movements to secure freedom of India.

"17. Matters to be considered in appointment of successors-

(i) In an estate, or sub-division thereof, owned chiefly, or altogether by Government successor to the office of headman shall be selected with due regard to all the considerations, other than hereditary claims, stated in Rule 15;

(ii) In other estates for the appointment of successor to headman, regard shall be had to the matters contained in Rule 15; and

(iii) xxxx

(iv) Election shall not in any case be resorted to as an aid in making appointments under this rule and rule 14."

15. Now let us deal with the comparative merits of the petitioner and respondent No.4 in the light of Rules 15 and 17 of the Punjab Land Revenue Rules (as applicable to Punjab).

15.1 In the present case, it is not disputed that at the time of passing of order dated 26.11.2012 (Annexure P-2) by learned Collector, Rupnagar, the petitioner was about 65 years of age (presently around 77 years) and respondent No.4 was 40 years old (presently around 52 years). So far as the educational qualification of the petitioner and respondent No.4 is concerned, both are stated to have studied up to 10th Standard but respondent no. 4 is stated to also have an ITI Diploma. Both of them are having sufficient land holding. Petitioner had retired as *Subedar Major* from Army, whereas grandfather of the petitioner is stated to be a 'Freedom Fighter.'

15.2 Apart from the above referred merits of the candidates, it is found that petitioner is stated to be in unauthorized possession of *shamlat land* of village and there is also an allegation against him that he had mishandled *panchayat* fund during his tenure as a *Sarpanch* and later he deposited Rs.7,664/-.

16. From comparison of the relative merits and demerits of the petitioner as well as respondent No.4, it is borne out that Mangal Singh (respondent No.4) has an edge over the petitioner. As regards education, land holding and service(s) rendered to State; I find that both (petitioner as well as respondent No.4) are somewhat evenly placed; however respondent no. 4 is younger in age than the petitioner. As on date, petitioner has crossed 75 years and respondent No.4 is about 52 years of age. The petitioner is much older than respondent No.4 and, therefore, a young energetic person is to be preferred for the post of Lambardar. The Hon'ble Supreme Court in *Mahavir Singh v. Khialia Ram & Ors. 2009(1) RCR (Civil) 757* has held that age of a candidate is relevant factor in the cases of appointment to the post of Lambardar. The Hon'ble Supreme Court further held in *Mahavir Singh's case (supra)* that other things being equal, a candidate aged 36 years was rightly appointed as Lambardar in preference to a candidate aged 62 years.

16.1 Further, from the revenue record (Annexure P-9) attached to the writ petition, it is evident that the petitioner is in possession of *shamlat land*, whereas respondent No.4 is a person with clean antecedents.

17. As regards the plea of the petitioner that choice of the learned Collector is not to be lightly interfered with unless there is illegality or perversity in the order; suffice it to say that the learned Collector did not consider the relative merits and de-merits of the candidates, which would be apparent from the order itself, the relevant extract thereof reads as under :-

“3. After personal hearing and scrutinizing the record I have come to a conclusion and I agree with the recommendation of District Magistrate, Nangal/Tehsildar

Nangal and Naib Tehsildar Nangal and recommended Shri Harbhajan Singh as Nambardar. Agreeing to the report and recommendation of the courts below to appoint Sh. Harbhajan Singh as competent candidate for the post of Nambardar on account of death of deceased Nambardar Sh. Bhagta Singh son of Puran Singh (Nambardar Village Bhallan (Taraf Majra) Nangal, District Rup Nagar. Sh. Harbhajan Singh is appointed as new Nambardar. Record be consigned to the record.”

From the above extracted para, it is evident that the Collector had appointed the petitioner only on the basis of the recommendation made by the lower Revenue Officer. Even while doing so, the learned Collector has not discussed the recommendations made by the lower Revenue Officer *viz-a-viz* the merits/de-merits of the contesting candidates. There is no discussion as regards the suitability of the petitioner or for that matter, non-suitability of other candidates for the post of *Lambardar* in question.

18. In my considered view, the order passed by the learned Collector was clearly perverse and the same has been rightly set aside by the learned Commissioner.

19. As regards the contention of learned counsel for the petitioner that the learned Commissioner could not have passed the order appointing respondent No.4 as *Lambardar*, it is observed that a Division Bench of this Court in the case of **“Tak Ram Vs. Financial Commissioner (Revenue), Haryana” 1998 (3) R.C.R. (Civil) 90** has held as under:-

“... the other contention of the learned counsel that the Commissioner or the Financial Commissioner had no jurisdiction to select a village Headman-cum-Lambardar again cannot be accepted. The Appellate or the Revisional Authority has a right to pass the same order that can be passed by the Collector. Thus the selection of

village Headman-cum-Lambardar by the Financial Commissioner cannot be set aside on that ground ...”

20. In view of the above discussion, I do not find any merit in this writ petition and the same is accordingly dismissed. The order dated 08.09.2017 (Annexure P-3) passed by the learned Commissioner, Rupnagar Division, Rupnagar, as affirmed by the learned Financial Commissioner (Appeals), Punjab, vide order dated 18.01.2024 (Annexure P-7) appointing respondent No.4 as the Lambardar of Village Bhallan(Taraf Majra), is hereby upheld.

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

July 09, 2024
gurpreet

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No