

227 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-16617-2016 (O/M)

Date of decision : 28.08.2024

Hoshiar Chand

..... Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Jasinder Singh Thind, Advocate
for the petitioner.

Mr. Rajneesh Chadwal, AAG Haryana.

Mr. B.S. Mittal, Advocate
for respondent No. 7.

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HARSH BUNGER, J. (ORAL)

1. Petitioner (Hoshiar Chand) has filed the instant civil writ petition under Articles 226/227 of Constitution of India, inter alia, seeking a writ in the nature of certiorari for setting aside the order dated 08.08.2014 (Annexure P-6), passed by learned Commissioner, Hisar Division, Hisar (in short 'Divisional Commissioner') whereby he has remanded the matter to learned Collector, Sirsa (in short 'Collector'), for passing a speaking order as regards appointment of Lambardar of village Nezadela Kalan, Tehsil and District Sirsa.

1.1 A further prayer has been made by the petitioner for setting aside the order dated 17.02.2016 (Annexure P-8), passed by learned Financial Commissioner, Haryana (in short 'Financial Commissioner') whereby although it was observed that the present petitioner is more meritorious than the other contesting candidates, however, he also

remitted the case to learned Collector for passing a speaking order on appointment of Lambardar after comparing merits and demerits of the candidates.

2. Briefly, on demise of Shri Diwan Chand, previous Lambardar (General Category) of village Nezadela Kalan, Tehsil and District Sirsa, proceedings were initiated for filling up the vacancy. In pursuance to the proclamation (mustri munadi) calling upon the applications for filling up the said vacancy, thirteen applications (including the one submitted by the petitioner and the others by respondents No. 5 to 7), were received, accordingly, their antecedents were got verified from the local police. It transpires that the Tehsildar, Sirsa recommended the name of Shri Manjeet Singh (respondent No. 5) and Sub Divisional Officer (Civil), Sirsa recommended the name of present petitioner for appointment to the aforesaid vacancy and forwarded the matter to the learned Collector.

2.1 The learned Collector, upon appreciating the relative merits/demerits of the candidates, appointed the petitioner as Lambardar of village Nezadela Kalan, vide order dated 23.01.2013 (Annexure P-2).

2.2 The aforesaid Collector's order dated 23.01.2013 (Annexure P-2) came to be challenged by three candidates, namely, Manjeet Singh, Des Raj and Gural Singh (respondents No. 5 to 7, respectively) by filing their respective appeals. All the aforesaid appeals came to be decided by the learned Divisional Commissioner, vide a common order dated 08.08.2014 (Annexure P-6), whereby the matter was remanded to learned Collector for passing a speaking order after comparison of merits and demerits of all candidates.

2.3 Being aggrieved against the aforesaid order dated 08.08.2014 (Annexure P-6), the petitioner preferred an appeal (ROA-17/2013-14) before the learned Financial Commissioner, which came to be disposed of, vide order dated 17.02.2016 (Annexure P-8) whereby, although an observation was made that the petitioner was more meritorious, however, the matter was remitted to learned Collector for passing a speaking order.

3. In the aforementioned circumstances, the petitioner has filed the instant civil writ petition for the relief(s), as noticed above.

4. Learned counsel for petitioner submits that the learned Divisional Commissioner as well as learned Financial Commissioner have erred in law and facts in remanding the matter to learned Collector. It is submitted that neither learned Divisional Commissioner nor learned Financial Commissioner has set aside the appointment of petitioner as Lambardar, therefore, there was no occasion for remanding the matter to learned Collector. It is further submitted that the petitioner is more meritorious candidate than respondents No. 5 to 7 and he was rightly appointed as Lambardar. It is next submitted that the appellate authority as well as the revisional authority have failed to appreciate the well settled position that in the matter of appointment of Lambardar, the choice of Collector is not to be lightly interfered with unless there is patent illegality or perversity therein. It is contended that learned Divisional Commissioner has simply remanded the matter by observing that learned Collector has not compared various merits and demerits of all the candidates and neither learned Collector has discussed the allegations and counter-allegations in respect of every candidate. Learned counsel for petitioner, while referring to learned Collector's order, submits that

learned Collector has compared the merits of all the candidates and thereafter, proceeded to highlight merits of the petitioner and appointed him as Lambardar. Accordingly, prayer has been made for setting aside the impugned orders (Annexure P-6 and Annexure P-8) being unsustainable in the eyes of law and for restoring the Collector's order, appointing petitioner as Lambardar.

5. Per contra, learned counsel for respondent No. 7-Gurpal Singh has opposed the submissions made on behalf of petitioner by submitting that the impugned orders do not call for interference by this Court as the matter has only been remanded to learned Collector and the petitioner can very well agitate his claim before learned Collector. It is submitted that learned Collector, while passing the order dated 23.01.2013 (Annexure P-2), failed to point out as to how the petitioner was more meritorious than other candidates, therefore, the appellate authority has rightly remanded the case. It is further submitted that even learned Financial Commissioner has maintained the remand of the matter to learned Collector, therefore, there is no scope for any interference by this Court in exercise of its writ jurisdiction. With the aforesaid submissions, prayer for dismissal of instant civil writ petition has been made.

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

7. Here, it would be apposite to state the relative merits of the candidates (as noticed by learned Collector), which can be summed up as under :-

Particulars	Petitioner (Hoshiar Chand)	Resp. No. 5 (Manjeet Singh)	Resp. No. 6 (Des Raj)	Resp. No. 7 (Gurpal Singh)
Education	B.A.	Matric	7th	B.A.
Land	6 ¼ Acre	9 Acre	2 ½ Acre	29 Acre
Age	36 years	39 years	32 years	29 years
Recommended by	Sub Divisional Officer (Civil), Sirsa	Tehsildar Sirsa	-----	-----

7.1 A bare perusal of the above chart would show that petitioner is a young man (36 years as per Collector's order); whereas the other candidates also fall in the same age group with a difference of 4-6 years. Petitioner and respondent No. 7 are more educated (graduate) than respondents No. 5 and 6. Petitioner has sufficient landholding (6 ¼ Acre) and his name was recommended by the Sub Divisional Officer (Civil), Sirsa.

7.2 In *Mahavir Singh Versus Khiali Ram and Others*, 2009 (1) RCR (Civil) 757, Hon'ble the Supreme Court held that with regard to the appointment of a Lambardar in the State of Punjab, age of a candidate is a relevant factor. As far as the recommendations by the lower Revenue Officer is concerned, although, the Collector is not bound by the recommendation made by the 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 Versus Financial Commissioner (Revenue), Punjab*, 2016 (4) RCR (Civil) 335 and *Atma Singh Versus The Financial Commissioner, Revenue, Punjab*, 2016 (1) LAR 592.

7.3 Although, respondents No. 5 and 7 own more land than the petitioner; however, it is observed that as far as holding of land is concerned, same is taken into consideration only for the purpose of security towards government revenue collected by the Lambardar. Petitioner has about 6 ¼ Acre of land, which is sufficient to be taken into consideration for the purpose of security of revenue, collected by the Lambardar. Moreover, in case of ***Gurpreet Singh versus Financial Commissioner (Revenue), Punjab***, 2017(1) RCR (Civil) 233, this Court has observed that land revenue stood abolished in both the State of Punjab and Haryana, long back, thus owning land by the candidates for the post of Lambardar would not be of much significance any further.

7.4 Furthermore, 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 should be respected.

7.5 Moreover, according to the judgment rendered by Hon'ble the Supreme Court in the case of ***Khajan Singh Versus Shamsher Singh***, 1998 (3) RCR (Civil) 634, the order dated 23.01.2013 (Annexure P-2), passed by learned Collector, has become final as the same was not set aside by the learned Divisional Commissioner, while

remanding the matter to the learned Collector for fresh decision. Thus, the Financial Commissioner was not justified in maintaining the remand of the matter.

8. That apart, in the impugned order dated 17.02.2016 (Annexure P-8), passed by learned Financial Commissioner, it has been observed that although the present petitioner is more meritorious than the other contesting candidates, however, he remitted the case to learned Collector for passing a speaking order on appointment of Lambardar after comparing merits and demerits of the candidates. From the Collector's order, it is evident that he has compared the merits of all the candidates and thereafter, proceeded to highlight merits of the petitioner and appointed him as Lambardar by observing as under :-

“ I have heard the explanations of Ld. Counsels of the candidates and observed the filed thoroughly. The candidate is 36 years old, B.A. pass. He owns land holding of 6 ¼ acre. He is social worker. He is blood donor and motivated people for it. This candidate has fully participated in Tree Plantation and Education Mission, presently, his wife is “Sarpanch” of the village and he has good influence over people. Sub Divisional Officer (Civil), Sirsa also recommended his name for his appointment as Lambardar of village. Therefore the candidate Shri Hoshiar Chand S/o Shri Munshi Ram is appointed as new Lambardar of village Nezada Kalan, Tehsil and District Sirsa, in the place of deceased Lambardar Shri Diwan Chand. Certificate of Lambardari be prepared and issued.”

9. In the afore-mentioned facts and circumstances, I am of the considered view that the order dated 08.08.2014 (Annexure P-6), passed by learned Divisional Commissioner and order dated 17.02.2016

(Annexure P-8) passed by learned Financial Commissioner are unsustainable and the same are accordingly set aside. Resultantly, the instant civil writ petition is allowed and the order dated 23.01.2013 (Annexure P-2) passed by learned Collector, appointing the petitioner as Lambardar of village Nezada Kalan, Tehsil and District Sirsa, is upheld.

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

(HARSH BUNGER)
JUDGE

28.08.2024
sjks

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