

214 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-16830-2022 (O/M)

Date of decision : 14.10.2024

Sukhwinder Singh

..... Petitioner

Versus

Financial Commissioner (Appeals), Punjab and others Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. S.K. Singla, Advocate
for the petitioner.

Mr. Nirmaljit Singh Diwana, Senior DAG Punjab

Mr. Harkirat Singh Sandhu, Advocate
for respondent No. 4.

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HARSH BUNGER, J. (ORAL)

1. Petitioner (Sukhwinder Singh) 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 24.05.2022 (Annexure P-3), passed by learned Financial Commissioner (Appeals), Punjab (in short 'Financial Commissioner') in ROA-29-2016, upholding the order dated 03.05.2016 (Annexure P-2), passed by learned Commissioner, Patiala Division, Patiala (in short 'Divisional Commissioner'), whereby order dated 23.09.2015 (Annexure P-1), passed by the learned District Collector, Ludhiana (in short 'Collector'), appointing the petitioner as Lambardar of village Arak, Tehsil Samrala, District Ludhiana; has been set aside and respondent No. 4 (Kulwant Singh) was appointed as Lambardar village Arak.

2. Briefly, on demise of Shri Navtej Singh, previous Lambardar of village Arak, 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, 3 applications (including one submitted by the petitioner and other by respondent No. 4-Kulwant Singh), were received, accordingly, their antecedents were got verified from the local police. It transpires that the Naib Tehsildar, Machhiwara, as well as Sub Divisional Magistrate, Samrala, recommended the name of respondent No. 4 (Kulwant Singh) for appointment to the aforesaid vacancy and forwarded the matter to learned Collector.

2.1 Learned Collector, upon consideration of the matter, appointed the petitioner as Lambardar of village Arak, vide order dated 23.09.2015 (Annexure P-1).

2.2 Respondent No. 4 (Kulwant Singh) challenged the Collector's order dated 23.09.2015 (Annexure P-1) by filing an appeal before the learned Divisional Commissioner, who vide its order dated 03.05.2016 (Annexure P-2), allowed the appeal and set aside the Collector's order dated 23.09.2015 (Annexure P-1) and appointed respondent No. 4 (Kulwant Singh) as Lambardar of village Arak.

2.3 Being aggrieved against the aforesaid order dated 03.05.2016 (Annexure P-2), the petitioner preferred an appeal (ROA-29-2016) before the learned Financial Commissioner, which was also dismissed, vide order dated 24.05.2022 (Annexure P-3).

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 has erred in law and facts in allowing the appeal preferred by respondent No. 4 against the well reasoned order dated 23.09.2015 (Annexure P-1), passed by the learned Collector, appointing the petitioner as Lambardar. It is submitted that the learned Divisional Commissioner has failed to take note of the well settled position in law that in the matter of appointment of Lambardar, the choice of Collector is not to be lightly interfered with, even if two views are possible, unless there is patent illegality or perversity therein. It is submitted that learned Collector had rightly appointed petitioner as Lambardar as petitioner is younger in age than the respondent No. 4, has studied upto matric and has sufficient land holdings. It is contended that the learned Divisional Commissioner could not have appointed respondent No. 4 as Lambardar as it was only the prerogative of the learned Collector. It is next submitted that even the learned Financial Commissioner has failed to consider the aforesaid aspects and has wrongly upheld the order passed by learned Divisional Commissioner. Accordingly, it is prayed that the impugned orders (Annexure P-2 and Annexure P-3) be set aside and the Collector's order dated 23.09.2015 (Annexure P-1), appointing the petitioner as Lambardar of village Arak, be restored.

5. Per contra, learned counsel appearing for respondent No. 4 has opposed the submissions made on behalf of petitioner by submitting that the Collector's order suffers from perversity of law and fact. It is submitted that learned Collector has appointed the petitioner on the post of Lambardar by ignoring the recommendations of lower revenue

officials and without giving any reason. It is next submitted that learned Divisional Commissioner has appointed respondent No. 4 on the post of Lambardar after considering comparative merits of the candidates. It is also submitted that respondent No. 4 is more meritorious than the petitioner inasmuch as that respondent No. 4 is matric pass; is an ITI diploma holder; was a Member Panchayat for about 22 years; is a President of Multipurpose Agricultural Society and is an Executive Member of Management Committee of SSD Government Senior Secondary School and Management Committee of Gurudwara, whereas the petitioner is only matric pass and also does not hold strong position. It is contended that false allegation of illegal possession has been levelled against respondent No. 4. It is further contended that since the learned Collector had failed to take note of the most vital aspect of respondent No. 4 being more educated and involved in social works, the learned Divisional Commissioner has rightly set aside the Collector's order and appointed respondent No. 4 as Lambardar. It is further contended that the Divisional Commissioner's order has been further upheld by the learned Financial Commissioner, therefore, no interference is required to be made in the order passed by the learned Financial Commissioner, which is well reasoned and justified. As regards the contention of the petitioner that the learned Divisional Commissioner could not have appointed respondent No. 4 as Lambardar, it is submitted that the learned Divisional Commissioner as well as the learned Financial Commissioner have the same powers to appoint a Lambardar as that of the learned Collector. In this regard, reference is made to ***Tak Ram Versus Financial Commissioner (Revenue), Haryana;*** 1998 (3) RCR (Civil) 90.

Accordingly, prayer for dismissal of the writ petition has been made.

6. I have heard learned counsel for the 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 mentioned by the learned Collector in its order dated 23.09.2015), which is as under :-

Particulars	Petitioner (Sukhwinder Singh)	Respondent No. 4 (Kulwant Singh)
Age	35	47
Educational qualification	Matric	Matric, ITI Diploma holder,
Recommended by	-----	Naib Tehsildar, Machhiwara and SDM, Ludhiana (Samrala).
Land holding	5 Acre	67 Kanal – 5 Marla
Remarks	Organized blood donation camps and donated blood; donated Rs. eleven thousand to Sports Club and also given three fans to panchayat ghar.	President of Multipurpose Agricultural Society; Executive Member of Management Committee of SSD Government Senior Secondary School and Management Committee of Gurudwara

8. In the instant case, learned Collector appointed petitioner as Lambardar by observing as under :-

“ After hearing the arguments of the counsel for the candidates and on the perusal of the record available on the file, this fact has come into light that the qualification of both the candidates are almost equal. Gram Panchayat and many other respectable persons have recommended the candidature of Sh. Sukhwinder Singh for the post of Numbardar and this candidate have organised blood donation camp, donations to the Sports Club, donation to Gurudwara Sahib and donation to the Panchayat Ghar. He is having his residence in the village. After considering the above mentioned facts, I have reached to this conclusion

that candidate Sh. Sukhwinder Singh is a suitable candidate for the post of Nambardar. Therefore, candidate Sh. Sukhwinder Singh son of Sh. Surinder Singh is hereby appointed as New Nambardar of Village Arak, Tehsil Samrala, District Ludhiana against the vacant post occurred due to the death of deceased Nambardar Sh. Navtej Singh of Village Arak, Tehsil Samrala.”

8.1 From a perusal of the above extracted findings, it is evident that learned Collector found qualification of both the candidates almost equal, however, learned Collector appointed petitioner as Lambardar by considering following four factors :-

- (a) Gram Panchayat and many other respectable persons recommended candidature of petitioner ;*
- (b) Petitioner organized blood donation camps ;*
- (c) Petitioner made donations to Gurudwara Sahib, Sports Club and Panchayat Ghar ;*
- (d) Petitioner is having residence in village.*

8.2 In my considered view, learned Collector had appointed petitioner as Lambardar on irrelevant considerations that he made various donations. Further, learned Collector had given weightage to recommendations of petitioner's name by Gram Panchayat and other respectable persons but he ignored recommendations made by lower revenue officers in favour of respondent No. 4 and that too without assigning any reason.

8.3 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.

9. Learned Divisional Commissioner, while allowing the appeal filed by respondent No. 4, has observed as under :-

“4. I have heard the counsels and have also gone through the order passed by District Collector, Ludhiana. After hearing both the counsels, I am of the opinion that the appellant is more meritorious than the respondent as he is a mature person of 48 years old and has studied upto Matric alongwith diploma in ITI. Secondly, all the lower revenue officers have recommended the candidature of present appellant for appointment as Lambardar of village. Though the District Collector is not bound by the recommendations made by lower revenue officers but due consideration is to be accorded to these recommendations as they are in a position to assess the suitability of a candidate. Furthermore, nothing is adverse against the present appellant for which his candidature can be ignored. The Collector has failed to mention any reason to ignore the merits of the appellant. Thus, the appeal filed in this case is hereby accepted, the impugned order dated 23.09.2015 passed by District Collector, Ludhiana is set-aside and the present appellant i.e. Kulwant son of Sh. Azad Singh is ordered to be appointed as Lambardar of village Arak, Tehsil Samrala, District Ludhiana.”

10. Learned Divisional Commissioner's order dated 03.05.2016 (Annexure P-2) has been further upheld by learned Financial Commissioner by holding as under :-

“ I have considered the arguments put forward by the counsels for both the parties and also perused the orders of the lower courts. It is found that the Commissioner, Patiala Division, Patiala in his order dated 03.05.2016 has mentioned that the respondent No. 1 i.e. Kulwant Singh, is a mature person of 48 years and has studied up to Matric along with diploma in ITI. In today's scenario the duties of a lambardar, as suggested and held in the impugned order, are not limited in nature. A lambardar is called upon, by the revenue, police and administrative officers, to assist in various matters like disputes regarding possession of land, demarcation of land, identification of persons and attending to revenue and police officers when they visit the village for inspection of crops or for other official matters. A lambardar is called upon by inhabitants of his village to attest documents, identify them when they get their documents registered etc. To hold that better educated person is right choice for the post of lambardar if he/she possesses other relevant parameters. In instant case, both the candidates are almost having equal education qualification but the respondent No. 1 is having edge as he holds ITI diploma also.

6. It is a settled law that there should be no interference with the choice made by the Collector in the matter of appointment of Lambardar even if two views are possible. It is only the prerogative of the Collector to compare the merits of the candidates for appointment to the post of Lambardar, but this is not absolute. The order of Collector can be set aside if the order suffers from illegality or perversity. There is a cantina of judgments passed by the Hon'ble Punjab and Haryana High Court in which it has been held that the order of the District Collector can be set aside by the higher revenue authorities. In present case, the District Collector erred in appointing the appellant as

Lambardar of the village on the basis that his name has been recommended by the Gram Panchayat and respected persons of the village, (which have no role to recommend any name for appointment of Lambardar) have also recommended. It is the recommendations of the lower authorities, which can be considered by the appointing authority i.e. District Collector. Although, the District Collector is not bound by the recommendations of the lower revenue authorities i.e. Tehsildar and SDM, but since they are working at the ground level, so due consideration is to be accorded to these recommendations as they are in a better position to assess the suitability of a candidate.

7. Accordingly, in view of the discussion above, the present appeal is dismissed being devoid of merits. The order dated 03.05.2016 passed by the Commissioner, Patiala Division, Patiala is upheld.”

11. Taking note of comparative merits of the candidates; in my considered view, the respondent No. 4 has been rightly appointed as Lambardar by learned Divisional Commissioner. Learned Financial Commissioner has upheld order of learned Divisional Commissioner.

12. As regards jurisdiction/competence of appellate authority and revisional authority to appoint Lambardar is concerned, a Division Bench of this Court in ***Tak Ram's*** case (supra), 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..”

13. In view of the aforementioned facts and circumstances, there is no scope for any interference in the order dated 24.05.2022 (Annexure P-3), passed by learned Financial Commissioner (Appeals), Punjab, who has rightly upheld the order of learned Divisional Commissioner dated 03.05.2016 (Annexure P-2), appointing respondent No. 4 as Lambardar of village Arak, Tehsil Samrala, District Ludhiana.

14. 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

14.10.2024
sjks

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