

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-20453-2016 (O/M)
Reserved on : 19.07.2024
Date of decision : 30.07.2024

Chamkaur Singh

..... Petitioner

Versus

State of Punjab and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Ashok Bhardwaj, Advocate
for the petitioner.

Mr. Nirmaljit Singh Diwana, Senior DAG Punjab.

Mr. H.R. Bhardwaj, Advocate
for respondent No. 5.

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HARSH BUNGER, J.

1. Petitioner (Chamkaur Singh) has filed the instant civil writ petition under Articles 226/227 of Constitution of India, seeking setting aside of order dated 20.07.2011 (Annexure P-1), passed by learned District Collector, Sangrur (respondent No. 4), appointing respondent No. 5 (Avtar Singh) as the Lambardar (Scheduled Caste) of village Mullowal, Tehsil Dhuri, District Sangrur, which was a newly created post.

1.1 Petitioner further seeks setting aside of order dated 20.11.2012 (Annexure P-2), passed by learned Divisional Commissioner, Patiala Division, Patiala (respondent No. 3) and order dated 04.03.2015 (Annexure P-3), passed by learned Financial Commissioner, Punjab (respondent No. 2), whereby appeal and revision, preferred by the petitioner against the concerned learned

Collector's order dated 20.07.2011 (Annexure P-1), were dismissed, respectively.

2. Briefly, a newly post of Lambardar (Scheduled Caste) was created for village Mullowal, Tehsil Dhuri, District Sangrur, and process was initiated for filling up the said post. In pursuance to the proclamation, petitioner as well as respondent No. 5 alongwith few other candidates applied for the said post. The concerned learned Collector, vide its order dated 20.07.2011 (Annexure P-1), found respondent No. 5 (Avtar Singh) as a fit and suitable candidate for the newly created post of Lambardar (Scheduled Caste) and accordingly, appointed him (respondent No. 5-Avtar Singh) to the said post, vide its order dated 20.07.2011 (Annexure P-1).

2.1 On an appeal filed by petitioner, the aforesaid learned Collector's order dated 20.07.2011 (Annexure P-1) was upheld by the learned Divisional Commissioner, Patiala Division, Patiala, vide its order dated 20.11.2012 (Annexure P-2) and further a revision filed by the petitioner was also dismissed by the learned Financial Commissioner, Punjab, vide its order dated 04.03.2015 (Annexure P-3) and thereby, upheld the concerned learned Collector's order dated 20.07.2011 (Annexure P-1).

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. 5 as Lambardar (Scheduled Caste) without appreciating the fact that the petitioner is more meritorious than respondent No. 5 and also that respondent No. 5 stood convicted in case FIR No. 66, dated 14.07.2002, registered under Sections 323, 324, 148, 149 IPC at Police

Station Sherpur, vide judgment dated 17.03.2006, passed by learned Judicial Magistrate 1st Class, Dhuri (Annexure P-5). It is, therefore, contended that since respondent No. 5 was convicted, accordingly, he ought to have been disqualified from holding the post of Lambardar (Scheduled Caste). It is further submitted that respondent No. 5 was in unauthorized possession of panchayat land, therefore, he was not a fit candidate to be appointed as a Lambardar (Scheduled Caste). Accordingly, it is prayed that the impugned orders be set aside and the petitioner be appointed as Lambardar (Scheduled Caste) of village of Mullowal, Tehsil Dhuri, District Sangrur.

5. Per contra, learned counsel appearing for respondent No. 5 has opposed the submissions made on behalf of the petitioner and submitted that the concerned learned Collector has rightly appreciated the merits and demerits of the candidates and after finding respondent No. 5 to be a fit and suitable candidate, he was appointed as a Lambardar (Scheduled Caste) by concerned learned Collector and the said appointment has been further affirmed by the learned Divisional Commissioner, Patiala Division, Patiala as well as the learned Financial Commissioner, Punjab. It is submitted that as per well settled law, the choice of the learned Collector is to be respected and the same is not to be lightly interfered with unless there is patent illegality or perversity. It is further submitted that although respondent No. 5 was convicted under Sections 323, 324, 148, 149 IPC, however, he was not sentenced for imprisonment and rather, he was ordered to be released on probation and, therefore, there was no disqualification for him to be appointed as Lambardar (Scheduled Caste) in terms of Rule 16 of Punjab Land Revenue Rules.

5.1 As regards the allegation of unauthorized possession of panchayat land, it is submitted that respondent No. 5 was asked to pay the value of the area under his possession, which was merely 2 biswas of land, vide order dated 23.05.2003 and he has already submitted the required payment and all these facts have been duly considered by the appellate and revisional authorities below. Therefore, no inference is required to be made in the impugned orders. Accordingly, dismissal of the instant civil writ petition has been prayed for.

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

7. The first issue which would call for decision is whether respondent No. 5 suffers from a disqualification, which would make him liable for dismissal from the post of Lambardar (Scheduled Caste) and resultantly make him ineligible for appointment as Lambardar. In this connection, Rule 16 of the Punjab Land Revenue Rules (in short 'PLR Rules') can be referred to, which reads as under :-

"16. Dismissal of headman :-

(i) A headman shall be dismissed when--

(a) he is sentenced to imprisonment for one year or upwards or to any heavier sentence; or

(b), (c), (d), (e)

(ii) A headman may be dismissed when--

(a) criminal proceedings which have been taken against him show that he is unfit to be entrusted any longer with the duties of his office; or

(b), (c), (d), (e), (f), (g)"

7.1 In sub-rule (i) of Rule 16 of PLR Rules, five clauses have been provided, in which the circumstances have been prescribed under which a

headman shall be dismissed. In such cases, there is no scope for discretion and the person has to be necessarily dismissed, if he is found to be covered by any of these clauses.

7.2 On the other hand, in sub-rule (ii) of Rule 16 of PLR Rules, a discretion has been conferred on the Collector to consider the desirability of dismissing a person, if he suffers from any of the disabilities or disqualifications prescribed in the seven clauses of this sub-rule. This sub-rule provides that headman may be dismissed, if any of the circumstances mentioned in the clauses under this sub-rule come to occur. One of the clauses provides for a situation where criminal proceedings have been taken against a village headman and which shows that he is unfit to be entrusted any longer with the duties of his office. However, it is a matter left purely at the discretion of the Collector and he is to decide in the circumstances of each case whether to dismiss a Lambardar or to take some other action against him in such cases.

8. In the present case, respondent No. 5 was involved in case FIR No. 66, dated 14.07.2002, wherein he alongwith others was convicted for offences under Sections 323, 324, 148, 149 IPC, registered at Police Station Sherpur, however, respondent No. 5 was released on probation. The said conviction pertains to the year 2006. In such circumstances, the case of respondent No. 5 can be said to fall under Rule 16 (ii)(a) of PLR Rules.

9. Therefore, in my considered view, the arguments of the learned counsel for petitioner that the respondent No. 5 suffers from a legal disqualification is not borne out by the provisions in this rule 16 (ii)(a) of PLR Rules. Had respondent No. 5 been suffering from any of the disqualification prescribed in sub-rule (i) of Rule 16 of PLR Rules, his arguments would have been quite valid. But in the case of disqualifications under sub-rule (ii) of

Rule 16 of PLR Rules, the matter being purely discretionary; the Collector's choice of a candidate, who has suffered from any of these infirmities some time ago, has to be respected.

10. The concerned learned Collector, the concerned learned Commissioner as well as learned Financial Commissioner, Punjab, have held this infringement not disqualifying the respondent No. 5 for appointment as Lambardar (Scheduled Caste).

11. As regards the allegation of the petitioner that respondent No. 5 is in unauthorized possession of panchayat land, it is observed that the learned Financial Commissioner, Punjab, has already dealt with the said objection and has observed as under:-

“5. A mere perusal of the merits and de-merits of both the candidates in a tabulated form in the order of Collector reveals that the respondent is younger and more educated than the petitioner. Criminal cases were registered against both the candidates and both have been acquitted. The Divisional Commissioner has also given detailed reason for dismissing the appeal and clearly holding that the respondent was not in illegal possession of the village land. Therefore, it is a settled law that the choice of the collector should prevail if there is no patent illegality. In the present case no such illegality has been brought about by the learned counsel for the petitioner. In such circumstances, do not find any reason to interfere with the order of the Collector and the Divisional Commissioner.”

12. In my considered view, in the attending facts and circumstances, there is no scope for any interference in the findings returned by the learned Financial Commissioner, Punjab. Moreover, it is not disputed before this court that since the date of appointment of respondent No. 5 as Lambardar

(Scheduled Caste) of village Mullowal, he has been performing his duties till now i.e. for the last almost 12 years.

13. It is a well-established position that the choice of the Collector is not to be lightly interfered with, even if two views are possible; unless there is any patent illegality or perversity therein. 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. Under these circumstances, I do not find any merit in this writ petition and the same must fail. Resultantly, the instant civil writ petition is dismissed.

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

(HARSH BUNGER)
JUDGE

30.07.2024
sjks

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