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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-17971-2024 (O/M)

Date of decision : 31.07.2024

Makhan Singh

..... Petitioner

Versus

The Financial Commissioner (Appeals), Punjab and others Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Surinder Sharma, Advocate
for petitioner.

Mr. Navneet Singh, Senior DAG Punjab.

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HARSH BUNGER, J.

1. Petitioner (Makhan Singh) has filed the instant civil writ petition under Articles 226/227 of Constitution of India, seeking a writ in the nature of certiorari for setting aside the order dated 21.09.2020 (Annexure P-1), passed by learned Deputy Commissioner-cum-Collector, Rupnagar (in short 'Collector'), appointing respondent No. 4 (Gurmail Singh) as Lambardar of village Kotbala, Tehsil and District Rupnagar.

1.1 A further prayer has been made for setting aside the order dated 07.12.2023 (Annexure P-3), passed by learned Financial Commissioner (Appeals), Punjab (in short 'Financial Commissioner'), whereby the order dated 16.03.2021 (Annexure P-2), passed by learned Commissioner, Rupnagar Division, Rupnagar (in short 'Divisional

Commissioner') was set aside and the matter has been remanded to the learned Divisional Commissioner for afresh decision.

2. Briefly, on demise of Shri Khajan Singh, previous Lambardar of village Kotbala, Tehsil Rupnagar, District Rupnagar, proceedings were initiated for filling up the vacancy. In pursuance to the proclamation made in the village for filling up the vacancy of Lambardar, 13 persons applied for the aforesaid post. The Naib Tehsildar, Rupnagar, recommended the name of present petitioner (Makhan Singh) for appointment to the aforesaid vacancy, however, the Sub Divisional Magistrate, Rupnagar, recommended the name of respondent No. 4 (Gurmail Singh) for appointment to the said vacancy and the file was sent to the learned Collector.

2.1 The learned Collector, vide order dated 21.09.2020 (Annexure P-1), after considering the merits of the candidates, appointed respondent No. 4 (Gurmail Singh) as Lambardar of village Kotbala.

2.2 It transpires that the aforesaid Collector's order dated 21.09.2020 (Annexure P-1) was challenged by the present petitioner by filing an appeal (ROA-21-2020) before the learned Divisional Commissioner. Similarly, other candidates, namely, Harbhajan Singh and Kulwinder Singh also filed their respective appeals before the learned Divisional Commissioner. All the aforesaid three appeals came to be decided by the learned Divisional Commissioner, vide common order dated 16.03.2021 (Annexure P-2), whereby the matter was remanded to the learned Collector with a direction to re-hear all the parties and decide the matter afresh.

2.3 Feeling aggrieved against the aforesaid order dated 16.03.2021 (Annexure P-2), passed by learned Divisional Commissioner, respondent

No. 4 herein filed three separate appeals (ROA-13-2021, ROA-14-2021 and ROA-15-2021) before the learned Financial Commissioner, which came to be decided, vide common order dated 07.12.2023 (Annexure P-3), whereby the matter has been remanded to the learned Divisional Commissioner for afresh decision.

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 the petitioner submits that the learned Financial Commissioner has erred in law and facts in remanding the matter to the learned Divisional Commissioner for afresh decision. It is submitted that the petitioner is more meritorious than respondent No. 4 and his name was recommended by Naib Tehsildar, Rupnagar. It is further submitted that the petitioner also owns more land in the village and has clean antecedents. It is next submitted that respondent No. 4 is an old person of around 60 years of age and the petitioner being younger in age than respondent No. 4 should be appointed as Lambardar of village Kotbala. With the aforementioned submissions, prayer has been made for setting aside the order passed by the learned Financial Commissioner dated 07.12.2023 (Annexure P-3) and for restoring the order dated 16.03.2021 (Annexure P-2), passed by learned Divisional Commissioner.

5. I have heard learned counsel for the petitioner and have also perused the paperbook with his able assistance.

6. In the present case, learned Collector had appointed respondent No. 4 as Lambardar of village Kotbala by observing as under :-

“ After going through the record and after hearing the candidates it is found that candidate Shri Makhan Singh is (as typed) may be grandson of deceased Lambardar, but he is less qualify than the other candidates and he is working in the Thermal Plant therefore, he is not available to the villagers for their work. Shri Harbhajan Singh at present sarpanch, Candidate Shri Davinder Singh working in Chandigarh. Candidate Shri Jagtar Singh is having less land. Candidate Shri Kulwinder Singh against cases are registered. Candidate Shri Gurmail Singh has been acquitted in both cases. Therefore, Gurmail Singh better candidate than the other candidate. His name recommended Sub Division Magistrate Roop Nagar. In view of facts mentioned above and agreeing with the recommendation of Sub Division Magistrate, Shri Gurmail Singh son of Shri Sant Singh is appointed new Numberdar in place of deceased Numberdar Khazan Singh son of Shri Seva Singh Village Kothala. H.B. No. 10, Tehsil and District Rup Nagar. Order announced and file be consigned to record room.”

6.1 The aforesaid order passed by learned Collector was challenged by the petitioner (Makhan Singh) as well as two other candidates, namely, Harbhajan Singh and Kulwinder Singh, before learned Divisional Commissioner and all the three appeals were decided, vide common order dated 16.03.2021 (Annexure P-2), passed by learned Divisional Commissioner by observing as under :-

“5. I have perused the case file and the impugned order. I feel that there are FIRs pending against the chosen candidate and that serious allegations against his low qualification and affiliation have been raised which have nowhere been discussed by the the Collector in the

impugned order. I think these contentions of the Appellants need to be relooked and discussed by the Collector. Hence, I remand the case to District Collector with the direction to rehear all parties and decide the matter afresh. Since this order of mine will dispose off three cases hence a copy of the order be placed on all case files.”

6.2 The aforesaid Divisional Commissioner's order dated 16.03.2021 (Annexure P-2) was further challenged by respondent No. 4 (Gurmail Singh) by way of three appeals, which were decided vide common order dated 07.12.2023 (Annexure P-3), passed by learned Financial Commissioner, whereby the matter has been remanded to learned Divisional Commissioner for afresh decision by observing as under :-

“5. I have heard counsel for all the parties and have also gone through the record. The Commissioner, Rupnagar Division, Rupnagar has only remanded the case back to the District Collector, Rupnagar for fresh decision on the ground that the appointed candidate was involved in criminal case and FIR no. 40/2010 u/s 379 IPC is pending. But the appellant claims that the cancellation report of the said FIR was prepared by the prosecution and the same was duly accepted by the Court of JMIC, Anandpur Sahib, vide order dated 31.05.2019 and therefore, no stigma is attached to the candidature of the appellant. In view of this, the Commissioner did not consider that matter properly which needs (as typed) re-consideration after evaluating the facts the case and merits of the candidates in proper manner. Hence, the present case is remanded back to the court of Commissioner, Rup Nagar, Rupnagar for fresh decision.”

6.3 A perusal of order dated 16.03.2021 (Annexure P-2), passed by learned Divisional Commissioner would show that the Divisional

Commissioner had remanded the cases to the learned Collector for afresh decision only on the contentions raised by appellants before him that respondent No. 4 (Gurmail Singh) was having criminal cases registered against him and there was also an allegation as regards his low qualification.

6.4 Apparently, the learned Financial Commissioner, while remanding the case to the learned Divisional Commissioner, has observed that as far as the allegation of criminal cases against respondent No. 4 (Gurmail Singh) are concerned, a cancellation report had been submitted therein, which was duly accepted by the concerned court on 31.05.2019, accordingly, facts were required to be re-evaluated and re-considered by the learned Divisional Commissioner.

7. Considering the aforementioned facts and circumstances, I am of the considered view that the revenue authorities below in the matter of appointment of Lambardar are required to apply their judicial mind to the attending facts and circumstances as well as the relevant merits and demerits of the candidates and thereafter, choose most suitable candidate for appointment to the post of Lambardar.

8. Accordingly, the learned Divisional Commissioner remanded the matter to the learned Collector for afresh decision only to look into the allegation of criminal case being pending against chosen candidate i.e. respondent No. 4 (Gurmail Singh). In case, any candidate had alleged that any criminal case is pending against another candidate, then learned Divisional Commissioner should have called upon such candidates to substantiate their respective claims and/or called for a report in that regard

from the concerned quarters, however, it appears that no such exercise was carried out.

9. Be that as it may, the learned Financial Commissioner has only remanded the matter to the learned Divisional Commissioner for re-considering the facts of the case as well as merits of the candidates in a proper manner, in the three appeals, filed by separate candidates, including the petitioner herein. In pursuance to the order passed by the learned Financial Commissioner, the petitioner would be well within its right to plead and substantiate his claims before the learned Divisional Commissioner.

10. In the attending circumstances, since the matter has only been remitted to the learned Divisional Commissioner for afresh decision, no interference is required to be made by this Court in exercise of its writ jurisdiction, resultantly, the instant civil writ petition fails and the same is accordingly dismissed.

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

(HARSH BUNGER)
JUDGE

31.07.2024
sjks

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