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

CWP-18788-2021

Date of decision: 24.04.2024

Malkeet Singh**.....Petitioner****versus****Financial Commissioner (Appeals) Punjab and others****..... Respondents****CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ*********

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

Mr. Navneet Singh, Senior DAG, Punjab.

Mr. Jagat Vir Dhindsa, Advocate
for respondent No.4.

*********RAJESH BHARDWAJ, J.**

Prayer in the present petition is for quashing of the impugned order dated 07.07.2021 (Annexure P-7) passed by respondent No.1 in ROA No.28 of 2021; order dated 13.05.2021 (Annexure P-4) passed by Commissioner, Patiala Division, Patiala whereby the well reasoned and speaking order dated 15.10.2018 (Annexure P-2) passed by the District Collector, Fatehgarh Sahib vide which the petitioner was appointed as Lambardar of Village Mohammadipur, Tehsil and District Fatehgarh Sahib has been wrongly set aside and thereby appointed respondent No.4 as Lambardar of Village Mohammadipur in violation of the provisions of Rule 15 of Punjab Land Revenue Rules and settled position of law as laid down by this Court as well as Hon'ble Supreme Court with regard to the choice of District Collector in the matter of appointment of Lambardar.

Further prayer has been made for staying the implementation of the impugned order dated 07.07.2021 (Annexure P-7) passed by respondent No.1 as well as order dated 13.05.2021 (Annexure P-4) passed by respondent No.2.

2. Adumbrated facts of the case are that the post of Lambardar fell vacant in Village Mohammadipur on the death of earlier Lambardar namely, Amar Singh, on 04.05.2017. Thus, necessary sanction for appointment of new Lambardar was granted vide order dated 13.07.2017 and proclamation/mustri munadi was conducted in the Village for inviting the applications from the interested candidates. In pursuance to the same, five applications were received from the candidates including petitioner- Malkeet Singh and respondent No.4-Satnam Singh. Character verifications of all candidates were conducted from the concerned police station. However, candidates namely, Manjit Singh, Gurmit Singh and Bhupinder Singh had withdrawn their applications and thus, only two candidates i.e. petitioner and respondent No.4 remained in the fray. Learned Assistant Collector 2nd Grade, Fatehgarh Sahib recommended the name of the candidate- Malkeet Singh. On appreciation of merits of both the candidates, it was found as follows:-

Sr. No	Name of the candidate	Age (years)	Education al Qualificati on	Land	Witn esses	Relation with deceased Lambardar	Policy report	Other qualificati on
1	Malkeet Singh son of Amar Singh	50	Under matric	7 kanals 5 marlas	65	Son	Ok	He was appointed as Sarbrah Lambardar of Sh. Amar Singh Lambardar and has produced the resolution passed by

								Punjab Lambardar Union (register- ed)
2.	Satnam Singh son of Didar Singh	63	B.A.	85 kanals	45	No relation	Ok	Present Sarpanch

3. On evaluation of the *inter se* merits, the Collector appointed petitioner as Lambardar of the Village vide his order dated 15.10.2018. Being aggrieved, respondent No.4 filed an appeal before the learned Divisional Commissioner, Patiala. Both the candidates were heard by learned Divisional Commissioner and their evidences were re-appreciated. On hearing both the sides, learned Commissioner *set aside* the order passed by the District Collector dated 15.10.2018 and appointed respondent No.4-Satnam Singh as Lambardar of the Village vide his order dated 13.05.2021. Being aggrieved, petitioner filed an appeal under Section 13 of the Punjab Land Revenue Act before the Financial Commissioner. However, learned Financial Commissioner on hearing both the sides, found no merit in the appeal and thus, dismissed the same vide his order dated 07.07.2021. Hence, petitioner is before this Court by way of filing the present petition.

4. Learned counsel for the petitioner has vehemently contended that on comparison of the *inter se* merits of both the candidates, it is apparent that the petitioner was younger in age and he remained Sarbara Lambardar of the Village as well. Thus, petitioner had an experience of working on the post of Lambardar as well. He submits that being younger in age and having experience, he was found to be more suitable for the appointment and hence, learned Collector had rightly appointed the petitioner as Lambardar of the Village. However, in the appeal filed,

learned Commissioner has overlooked the merits of the petitioner and the law settled and thus, not only *set aside* the order but illegally appointed respondent No.4 as Lambardar of the Village vide his order dated 13.05.2021. He has submitted that learned Financial Commissioner had also equally fallen in error in upholding the impugned order passed by the Commissioner. He submits that as per the law settled, the candidate younger in age deserves to be preferred. He further submits that petitioner was appointed by the Collector as Lambardar of the Village only on the basis of hereditary claim. However, he was younger in age and had remained Sarbara Lambardar and thus, he was found more suitable for the post. He submits that the appointment of the Lambardar is primarily the prerogative of learned Collector and his choice as per the law settled cannot be interfered with in the absence of any perversity or patent illegality

5. *Per contra*, learned counsel for respondent No.4 has vehemently opposed the submissions made by counsel for the petitioner. He has submitted that learned Collector had miserably failed in evaluating the *inter se* merits of both the candidates. It is submitted that respondent No.4 was Graduate by qualification and thus, he was well qualified in comparison to the petitioner. Besides this, the hereditary claim had already been held unconstitutional and thus, the same could not have been considered by learned Collector. He submits that the order passed by learned Collector was in total violation of the provisions of Rule 15 of Punjab Land Revenue Rules and the law settled and thus, learned Commissioner had rightly *set aside* the same finding it perverse order. He has submitted that learned Financial Commissioner had also found no merit in the appeal filed by the petitioner and thus, the view taken by the

learned Financial Commissioner was duly upheld finding the order passed by the Collector suffering from the patent illegality. He has submitted that the order passed by the Collector can always be interfered by the higher authorities in case the same is found to be suffering from perversity. He submits that there being no merit in the petition, the same deserves to be dismissed.

6. Learned State counsel has filed the reply by way of an affidavit of Mr. Parneet Shergill, District Collector, Fatehgarh Sahib, respondent No.3.

7. Heard. As deciphered from the facts and circumstances of the case that on comparison of the *inter se* merits of both the candidates, petitioner was found younger in age than respondent No.4. However, on the other side, respondent No.4 was more qualified than the petitioner. Needless to say that the hereditary claim has been held to be unconstitutional and it cannot be made the basis for the appointment of Lambardar. This Court in **Parkash Chand Vs. State of Haryana** passed in CWP-17185-2011 decided on 30.01.2013 has held as under:

12. So far as the hereditary claim is concerned, the issue is no more res integra. It was held by a Division Bench of this Court in Karnail Singh Vs. State of Haryana, (1974) 76 PLR 67 that Rule 17(ii) being violative of the fundamental rights guaranteed by Articles 14, 15 and 16 of the Constitution of India, the provision providing for the hereditary claim was ultra vires and unconstitutional.

However, the petitioner had remained the Sarbara Lambardar and thus, he had the experience of working on the post of Lambardar. Thus, the Collector had appointed the petitioner as Lambardar. However, the Appellate Authority had not only *set aside* the said order but appointed

respondent No.4 as Lambardar as his choice. It was further affirmed by the Revisional Authorities as well. On appreciation of the facts and circumstances of the case on the anvil of the law settled, this Court finds that the Appellate Authority in case of not agreeing with the choice of the Collector should have remanded the case to the Collector for a decision afresh. However, instead of remanding the case for reconsideration, he appointed respondent No.4 as Lambardar of the Village. Thus, this Court finds this part of the order as unsustainable in the eyes of law.

8. Needless to say that the appointment of the Lambardar is a prerogative of the Collector as per the law settled. Thus, the impugned orders dated 13.05.2021 and 07.07.2021 are set aside. The case is remanded to the Collector for decision afresh. Learned Collector would issue notice to both the sides and would take into consideration the *inter se* merits of both the candidates in the light of law settled and would pass a fresh order expeditiously preferably, within three months from the date of receipt of copy of this order.

9. Office is directed to send copy of this order to respondent No.3 forthwith who on receipt of the same will issue notice for appearance to all the parties concerned and proceed further in the matter.

10. Petition stands disposed of in above-mentioned terms.

24.04.2024
m. sharma

(RAJESH BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No