

216 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-15504-2023 (O/M)

Date of decision : 22.08.2024

Nachhattar Singh

..... Petitioner

Versus

Financial Commissioner (Appeals), Punjab and others Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. G.L. Bajaj, Advocate
for the petitioner.

Mr. Nirmaljit Singh Diwana, Senior DAG Punjab

Mr. K.S. Hissowal, Advocate
for respondent No. 4.

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HARSH BUNGER, J.

1. Petitioner (Nachhattar 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 27.10.2020 (Annexure P-3), passed by learned Divisional Commissioner, Patiala Division, Patiala (in short 'Divisional Commissioner') whereby the order dated 16.10.2018 (Annexure P-1), passed by the learned Collector, Ludhiana (in short 'Collector'), appointing the petitioner as Lambardar of village Aghwar Khuwaja Bajju, Tehsil Jagraon, District Ludhiana; has been set aside and respondent No. 4 (Ram Singh) was appointed as Lambardar village Aghwar Khuwaja Bajju.

1.1 A further prayer has been made by the petitioner for setting aside the order dated 09.01.2023 (Annexure P-4), passed by the learned Financial Commissioner (Appeals), Punjab (in short 'Financial Commissioner'), whereby the appeal filed by the petitioner against the order dated 27.10.2020 (Annexure P-3) has been dismissed.

2. Briefly, on demise of Shri Amar Singh, previous Lambardar (SC) of village Aghwar Khuwaja Bajju, 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, 9 applications (including the one submitted by the petitioner and also respondent No. 4-Ram Singh), were received, accordingly, their antecedents were got verified from the local police. It transpires that the Naib Tehsildar, as well as Sub Divisional Magistrate, Jagraon recommended the name of the petitioner for appointment to the aforesaid vacancy and forwarded the matter to the learned Collector.

2.1 The learned Collector, upon consideration of the matter, appointed the petitioner as Lambardar of village Aghwar Khuwaja Bajju, vide order dated 16.10.2018 (Annexure P-1).

2.2 Respondent No. 4 (Ram Singh) challenged the Collector's order dated 16.10.2018 (Annexure P-1) by filing an appeal before the learned Divisional Commissioner, who vide its order dated 27.10.2020 (Annexure P-3), allowed the appeal and set aside the order dated 16.10.2018 (Annexure P-1) and appointed respondent No. 4 (Ram Singh) as Lambardar of village Aghwar Khuwaja Bajju.

2.3 Being aggrieved against the aforesaid order dated 27.10.2020 (Annexure P-3), the petitioner preferred an appeal (ROA-55-2020) before

the learned Financial Commissioner, which was also dismissed, vide order dated 09.01.2023 (Annexure P-4).

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 16.10.2018 (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, 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 further submitted that the petitioner is more meritorious than respondent No. 4 as the petitioner is more educated than respondent No. 4 and his name was recommended by the lower revenue officials. 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. 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. Accordingly, it is prayed that the impugned orders be set aside and the Collector's order dated 16.10.2018 (Annexure P-1), appointing petitioner as Lambardar be restored.

5. Per contra, learned counsel appearing for respondent No. 4 has opposed the submissions made on behalf of petitioner by submitting

that respondent No. 4 was more meritorious than the petitioner inasmuch as that respondent No. 4 is younger in age than the petitioner and respondent No. 4 is an ex-serviceman, who deserves preference in the matter of appointment of Lambardar as he had rendered service to the Nation. It is further submitted that the recommendations made by the lower revenue officials are not binding on the Collector and the Collector is required to apply his own judicial mind while selecting the most suitable candidate for the appointment of Lambardar. It is contended that since the learned Collector had failed to take note of the most vital aspect of respondent No. 4 being younger in age and an ex-serviceman, 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 16.10.2018), which is as under :-

Particulars	Petitioner (Nachhattar Singh)	Respondent No. 4 (Ram Singh)
Age	72	64
Educational qualification	10+2	10th
Recommended by	Tehsildar and SDM, Jagraon.	-----
Remarks	Retired as Clerk from Municipal Council, Jagraon.	Ex-serviceman, having retired from Military.

7.1 A perusal of the above extracted comparison of the candidates would show that respondent No. 4 is younger in age than the petitioner and is sufficiently educated and is an Ex-serviceman, having rendered service to the Nation.

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 officials is concerned, although, the same has persuasive value, however, the learned Collector is not bound by such recommendations.

7.3 In *Devinder Singh Versus Financial Commissioner (Appeals-I), Punjab*, 2012 (39) RCR (Civil) 740, it was held by a coordinate Bench of this Court that failure on the part of the Collector to consider the considerations as provided under the Punjab Land Revenue Rules like service rendered to the Nation, amounts to perversity. Similar view was taken in *Sukhdev Singh Versus Financial Commissioner (Appeals-II), Punjab*, 2012 (4) SCT 505. Further, in *Balkar Singh*

Versus Financial Commissioner, 2009 (11) RCR (Civil) 499, it was observed by a coordinate Bench of this Court that weightage is to be given to an ex-serviceman. Still further, in ***Jagjit Singh Versus State of Punjab***, 2011 (53) RCR (Civil) 895, it was held by a Division Bench of this Court that the Financial Commissioner had rightly set aside the order of the Commissioner while observing that an ex-serviceman had been appointed and, therefore, he should be given preference in the matter of appointment of Lambardar.

8. In the present case, the learned Financial Commissioner, while dismissing the appeal filed by the petitioner, vide order dated 09.01.2023 (Annexure P-4), has observed as under :-

“6. I have heard counsels for the parties and perused the orders of the courts below. I have also gone through the written submissions made by the parties and documents produced in support of their cases. On perusal of the case, I find nothing illegal and perverse in the order dated 27.10.2020 passed by the Commissioner, Patiala Division, Patiala. After looking into the comparative merits of both the candidates, I find that respondent is more experienced and younger than the appellant. The respondent is ex-serviceman and rendered service to the Indian Army. As per Rule 15 of Punjab Land Revenue Rules, 1908 (applicable to the Punjab), at the time of appointment of the Lambardar, regard shall be had to various factors including the service rendered to the State. But the District Collector has also failed to appreciate and look into the ex-serviceman claim of the respondent in view of the provisions of Rule 15 of the Punjab Land Revenue Rules, 1908 (applicable to the Punjab), which

provides that “at the time of appointment of the Lambardar, regard shall be had to various facts including the service rendered by the candidate to the State”. Further, the respondent is also younger in age than the appellant. In the case of Mahavir Singh Versus Khiali Ram and others, 2009 (1) RCR (Civil) 757; 2009 (3) SCC (Civil) 439 the Hon'ble Supreme Court of India has held that “it is now a well settled principle of law, keeping in view the decision in regard to the appointment of Lambardar in the State of Punjab, age of candidate is a relevant fact”. In so far as the issue regarding age is concerned, the Supreme Court in Mahavir Singh's case (supra) has observed that the age of a candidate is a relevant factor and the Hon'ble Punjab and Haryana High Court in the case of Sudharshan Kumar Versus Financial Commissioner, Haryana, reported in 2013 (3) RCR (Civil) 347 has also observed that a person younger in age has more energy and potentiality to render the assistance to the villagers viz-a-viz the old age persons”. Therefore, keeping in view the facts and circumstances of the present case, I find that Commissioner, Patiala Division, Patiala has rightly set aside the order of the District Collector, Ludhiana and the appellant has failed to point out any illegality and perversity in the order of the Commissioner, Patiala Division, Patiala.

7. Resultantly, the present appeal is dismissed and the order dated 27.10.2020 passed by Commissioner, Patiala Division, Patiala is upheld. Copy of this order be communicated to the courts below. Record be returned and file be consigned to the record room.”

9. In view of the above discussion and from a perusal of the order passed by the learned Financial Commissioner, I am of the considered view that the learned Financial Commissioner has rightly upheld the order passed by the learned Divisional Commissioner, who had appointed respondent No. 4 as Lambardar (SC) of village Aghwar Khuwaja Bajju upon noticing that respondent No. 4 is younger in age than the petitioner and also respondent No. 4 was an ex-serviceman, who deserves preference especially when the other merits of the candidates in the fray, are equal.

10. Further, 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..”

10.1 Further, in **Gurnam Ram Versus Financial Commissioner, Punjab**, 2005(2) RCR (Civil) 553; Hon'ble the Supreme Court of India, while dealing with a case of appointment of Lambardar, has observed that if Financial Commissioner was dis-satisfied with the Commissioner's reasoning, no doubt it was open to the Financial Commissioner to re-decide the matter on merits; accordingly, the matter was remanded back to the Financial Commissioner for re-deciding the issue.

11. In view of the aforementioned facts and circumstances, it is concluded that learned Financial Commissioner, Punjab has rightly upheld the order of learned Divisional Commissioner, appointing respondent No. 4 as Lambardar of village Aghwar Khuwaja Bajju, Tehsil Jagraon, District Ludhiana. Accordingly, there is no scope for any interference by this Court in the impugned order(s).

12. No other argument has been raised.

13. Resultantly, the instant civil writ petition fails and the same is accordingly dismissed.

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

(HARSH BUNGER)
JUDGE

22.08.2024
sjks

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