

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

CWP-22993-2017

Date of Decision: 22.04.2024

Sarup Singh

..... Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr.Anish Setia, Advocate, for the petitioner.

Mr. Rajeev K. Takkar, Deputy Advocate General, Punjab.

Mr. Ashwani Prashar, Advocate for
respondent No.5.

Rajesh Bhardwaj, J.

1. Prayer in the present petition is for quashing the impugned order dated 02.08.2017 (Annexure P-6) passed by the Financial Commissioner (Revenue) and order dated 01.12.2016 (Annexure P-4) passed by the Commissioner, Roopnagar Division, Roopnagar being wholly illegal, unjust and unsustainable.

2. Adumbrated facts of the case are that on account of death of Charan Singh, earlier Lambardar of the village on 04.11.2010, post of Lambardar fell vacant and thus, process for the appointment of new Lambardar was initiated. Learned Sub Divisional Magistrate, Nawanshr granted sanctioned to Tehsildar, Nawanshahr for taking further action vide his order dated 12.01.2011. Resultantly, proclamation was made in the village for inviting applications from the interested and eligible candidates. In pursuance to the same, nine applications were received including the petitioner (Sarup Singh) and respondent No.5 (Jawinder Singh). Their character verifications were conducted from the concerned Police Station.

On comparison of their inter-se merits, the petitioner was found to be 53

years of age and BA pass and Degree in Electrical. Besides this he owned 2 acres of land and he was also found to be an ex-serivceman having retired from Navy. On the other hand, respondent No.5 was found to be 38 years of age and martic pass by qualification. Besides this he owned 6 kanals of land. Learned SDM, Nawanshahr vide his report dated 20.06.2011, recommended the name of respondent No.5 for the appointment of Lambardar. However, learned Collector on evaluation of the inter-se merits and demerits of all the candidates, found the petitioner to be more meritorious and suitable candidate and thus, appointed him as a Lambardar of the village vide order dated 15.09.2011 (Annexure P-2). Aggrieved by the same, the respondent No.5- Jaswinder Singh and co-appellant Piara Singh filed their independent appeals before the Commissioner, Roopnagar Division, Roopnagar. Both the appeals were heard together by learned Divisional Commissioner and after hearing all the sides, he found that appellant Piara Singh had died and thus, his appeal was dismissed, however, the appeal filed by respondent No.5 was accepted and thus, he was appointed as a Lambardar of village vide order dated 02.12.2016 (Annexure P-4). Aggrieved by the same, the petitioner filed an appeal under Section 13 of the Punjab Land Revenue Act, 1887 before the Financial Commissioner. Learned Financial Commissioner heard both the sides and re-appreciated the record, however, finding no merit in the appeal, he dismissed the same vide order dated 02.08.2017 (Annexure P-6) and thus, upheld the order passed by the Commissioner. Hence, aggrieved by the same, the petitioner is before this Court by way of filing the present petition.

3. Learned counsel for the petitioner has vehemently contended that on perusal of the inter-se merits of all the candidates in fray, it is

apparent that the petitioner was more meritorious and suitable candidate. He submits that the petitioner was more qualified and was retired from Navy. It is submitted that the petitioner rendered his service to the nation and thus, in view of the provisions of Rule 15 of the Punjab Land Revenue Rules, he was obviously most meritorious candidate and thus, was rightly appointed by the Collector as a Lambardar of the village. He submits that the petitioner is a resident of village and as per record, it was established that he had a *Pucca* house in the village and he also owned land in the village. He has submitted that respondent No.5 had encroached upon the Gram Panchayat land, but the same was not appreciated by the Appellate and Revisional authorities. He has submitted that as per law settled, choice of the Collector cannot be interfered with in a cavalier manner and there being no perversity in the order passed by the Collector, the same could not have been interfered with by the Appellate and Revisional authorities. He has submitted that learned Appellate and Revisional authorities have wrongly held that the petitioner would not be available for discharging his duties as a Lambardar as his availability is not possible in the village, which is totally against the evidence on record. He has relied upon the judgment of this Court in Mahender Singh vs. Financial Commissioner, Haryana and others, 2007 (10) RCR (Civil) 939. He further submits that in the overall facts and circumstances of the case and the law settled, the impugned orders being unsustainable in the eyes of law, deserve to be set aside.

4. Per contra, learned counsel for respondent No.5 has vehemently opposed the submissions made by learned counsel for the petitioner. He has submitted that on the comparison of inter-se merits of all the candidates, evidently respondent No.5 was much younger in age and besides this, he is

matric pass and owned 6 Kanals of land in the village. He further submits that respondent No.5 would always be available in the village for discharging the duties as a Lambardar of the village. It is submitted that learned Collector had failed to appreciate the same and thus, order passed by the Collector being perverse was rightly set aside by learned Commissioner by appointing respondent No.5 as Lambardar of the village. It is submitted that as per law settled by Hon'ble Supreme Court in **Mahavir Singh vs. Khiali Ram and others**, 2009(1) RCR (Civil) 757, for the appointment of Lambardar, age of the candidate is a relevant factor. He further submits that the allegations regarding encroachment against respondent No.5 are totally without any evidence and thus, the same cannot be taken into consideration in the absence of any evidence on record. He submits that the petition being devoid of any merit deserves to be dismissed.

5. After hearing learned counsel for the parties and perusing the record with their able assistance, it is apparent that on the issuance of proclamation, nine applications were received including the applications of the petitioner and respondent No.5. On comparison of the inter-se merits, the SDM recommended the name of respondent No.5, however, learned Collector on the evaluation of the inter-se merits of all candidates, found the petitioner to be more meritorious and thus, appointed him as a Lambardar of the village. However, in the appeal filed by respondent No.5, learned Commissioner found that the petitioner does not live in the village all the times, whereas, respondent No.5 is an agriculturist and he would be available in the village for discharging the duties of Lambardar. Thus, he found the order passed by the Collector to be perverse, as availability of the petitioner in the village was not taken into consideration and finding

respondent No.5 to be most suitable candidate for the appointment of Lambardar, set aside the order passed by the Collector and appointed him as Lambardar of the village. The view taken by the Commissioner was further upheld by learned Financial Commissioner.

6. There is no doubt that the petitioner is an ex-serviceman and is more qualified than respondent No.5, however, learned Collector is to consider the overall merits and assess the suitability of all the candidates in fray. Even if the petitioner is more qualified and an ex-serviceman that in itself would not be sufficient to find him suitable for the appointment of Lambardar when his availability in the village is seriously under dispute. It has been found that though the petitioner has house and land in the village, but he lives in Kharar and thus, his availability in the village was not found to be feasible. Thus, learned Commissioner has rightly found the order passed by Collector to be perverse and hence, rightly set aside the same by appointing respondent No.5 as Lambardar of the village. This view was further upheld by learned Financial Commissioner as well.

7. There is no denial to the arguments raised by counsel for the petitioner that as per law settled, the view taken by the Collector cannot be interfered with in a cavalier manner, however, as per law settled, if the same is found to be perverse and patently illegal, then Appellate and Revisional authorities are will within their jurisdiction to interfere with the same. Besides this, respondent No.5 was younger in age as well and as per law settled by Hon'ble Supreme Court in Mahavir Singh's case (supra), the candidate younger in age should be given preference for the appointment of Lambardar. There is no dispute regarding the judgment relied upon by learned counsel for the petitioner, however, in the facts and circumstances

of the case, the same is distinguishable.

8. Thus, being devoid of any merit, the present petition is hereby dismissed.

22.04.2024

sharmila

Whether Speaking/Reasoned

Whether Reportable

:

:

Yes/No

Yes/No

(RAJESH BHARDWAJ)

JUDGE