

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

CWP-4632-2016

Date of Decision: 10.04.2024

Bogha Singh

..... Petitioner

Versus

The State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Munish Jolly, Advocate, for the petitioner.

Mr. Rajeev K. Takkar, DAG, Punjab.

Mr. Rishi Jindal, Advocate for

Mr. Amandeep Singh Rai, Advocate,
for respondent No.4.

Rajesh Bhardwaj, J.

1. Prayer in the present petition is for setting aside the orders dated 08.09.2015 (Annexure P-12) passed by Financial Commissioner (Revenue), dated 13.06.2012 (Annexure P-10) passed by Commissioner, Patiala Division, Patiala and dated 28.07.2011 (Annexure P-8) passed by District Collector, Barnala.

2. Adumbrated facts of the case are that as per the order passed by the Commissioner, Patiala Division, Patiala dated 27.10.2010, process for filling up newly created vacancy was initiated. Thus, proclamation was made for inviting applications from the interested and eligible candidates. In pursuance to the same, three applications were received from candidates, namely, Bogha Singh (petitioner), Jeet Singh and Mukhtiar Singh (respondent No.4). One of the candidates, namely, Jeet Singh withdrew his application in favour of candidate Bogha Singh (petitioner). Thus, only two candidates remained in fray. Their character verifications were got conducted. On comparison of their inter-se merits, date of birth of Bogha

Singh (petitioner) was found to be 20.10.1948 and he was 7th pass by qualification. Besides this he owned 3 Kanals 4 Marlas of land and was retired as Baildar from Irrigation Department. On the other hand, date of birth of Mukhtiar Singh (respondent No.4) was found to be 04.12.1947 and he was 7th pass by qualification. The SDM recommended name of Mukhtiar Singh for the appointment of Lambardar. Learned Collector on evaluation of the inter-se merits and demerits of both the candidates, finding respondent No.4 to be more meritorious candidate appointed him as Lambardar of the village vide order dated 28.07.2011 (Annexure P-8). Aggrieved by the same, the petitioner filed an appeal before the Commissioner, Patiala Division, Patiala. Learned Divisional Commissioner after hearing both the sides found no merit in the appeal and thus, dismissed the same vide order dated 13.06.2012 (Annexure P-10). Still aggrieved by the same, the petitioner filed a revision petition under Section 16 of the Punjab Land Revenue Act, 1887 before the learned Financial Commissioner, who heard both the sides and re-appreciated the record, however, finding no merit in the revision petition, dismissed the same vide order dated 08.09.2015 (Annexure P-12). Thus, all the three authorities had given concurrent findings in favour of respondent No.4. Hence, aggrieved by the same, the petitioner is before this Court by way of filing the present petition.

3. Learned counsel for the petitioner primarily has assailed the impugned orders on the ground that as per the proclamation made in pursuance to the order passed by the Commissioner, the last date for filing the application was 30.12.2010, however, respondent No.4 filed an application on 03.01.2011 before the SDM for the reason that he could not

apply on time as no *munadi* had taken place in the village. He has submitted that once *munadi*/proclamation was made specifically fixing cut off date for filing application upto 30.12.2010, no further application could be entertained without following the process of law. It is submitted that application filed by respondent No.4 was admitted beyond the cut off date and the same was illegally accepted thereafter. He has submitted that during the pendency of the present case, on the direction of this Court, learned Deputy Commissioner has filed his affidavit in November, 2019, wherein, it is specifically admitted that upto the cut off date i.e. 30.12.2010, two applications were received in pursuance to the proclamation made. However, respondent No.4 submitted his application on 03.01.2011 before the SDM. The said application was sent to the office of Tehsildar for investigation, however, the then Assistant Collector Grade II-cum- Naib Tehsildar, Bhadaur by mistake ordered fresh proclamation vide order dated 17.01.2011 without obtaining necessary orders from the higher authorities. Thus, it is submitted that application of respondent No.4 was accepted illegally and hence, he could not have been considered for the appointment of Lambardar. He has submitted that application of respondent No.4 could not be entertained and as such, his appointment was void *ab initio*. He submits that however, the Collector, as well as both the Appellate and Revisional authorities have miserably failed to appreciate the same, thus, the impugned orders being perverse, deserve to be set aside.

4. Per contra, learned counsel for respondent No.4 has opposed the submissions made by learned counsel for the petitioner. He has submitted that respondent No.4 was more meritorious and thus, he was rightly appointed as Lambardar of the village. It is submitted that all the

three authorities have taken a concurrent view in his favour and thus, there being no infirmity in the impugned orders, the present petition deserves to be dismissed.

5. The Court has heard learned counsel for the parties and perused the record with their able assistance.

6. After hearing learned counsel for the parties, it is emanated from the facts and circumstances of the case that proclamation was made for inviting applications from the interested candidates for the appointment of SC Lambardar upto the cut off date i.e. 30.12.2010. In pursuance to the same, two applications were received. However, respondent No.4 filed an application on 03.01.2011 as is evident from the affidavit of the Deputy Commissioner filed in November 2019. It has been mentioned in the affidavit that fresh *munadi* conducted by the Assistant Collector Grade II-cum- Naib Tehsildar was mistake without obtaining any necessary orders from the higher authorities. Thus, it is an admitted fact that fresh *munadi*/proclamation was conducted without following due process of law. However, all the authorities have given concurrent findings in favour of respondent No.4 without adverting to the fact that how the acceptance of the application filed by respondent No.4 was legal and justified. Learned counsel for respondent No.4 has also not been able to explain the argument raised by counsel for the petitioner. Thus, in view of the facts and circumstances brought to the notice of this Court, the Court finds the impugned orders passed to be perverse and hence, orders dated 08.09.2015, dated 13.06.2012 and dated 28.07.2011 are set aside. The case is remanded to the Collector for decision afresh.

7. The Collector would take into consideration the eligibility of respondent No.4 at the relevant time and also complete evidence and the

law settled and would pass order afresh after hearing both the sides expeditiously preferably within a period of three months from the date of receipt of copy of this order. It is being clarified that respondent No.4 who is stated to be working as Lambardar of the village as on date, would continue to work as Lambardar till the fresh order is passed by the Collector.

8. Registry is directed to send a copy of this order to the Collector concerned, who on receipt of the same would issue notice to the parties for appearance and proceed with the matter in accordance with law.

9. The petition stands disposed of.

10.04.2024
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Whether Speaking/Reasoned
Whether Reportable

(RAJESH BHARDWAJ)
JUDGE

: Yes/No
: Yes/No