

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

CWP-22617-2019

Date of Decision: 15.04.2024

Naresh Kumar

..... Petitioner

Versus

Financial Commissioner (Appeals), Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Ram Kumar Chauhan, Advocate, for the petitioner.
Mr. Ankit Grewal, Deputy Advocate General, Punjab.
Mr. R.S. Chauhan, Advocate,
for respondent No.4.

Rajesh Bhardwaj, J.

1. Prayer in the present petition is for setting aside the order dated 20.05.2019 (Annexure P-3) passed by respondent No.1, whereby, revision filed by respondent No.4 has been allowed and respondent No.4 has been appointed as Lambardar of village Pahlewal illegally, arbitrarily and against the facts of the case and upholding the order dated 02.01.2017 (Annexure P-2) passed by respondent No.2 and order dated 01.03.2016 (Annexure P-1) passed by respondent No.3.

2. Adumbrated facts of the case are that on account of death of Harbhajan Singh, earlier Lambardar of village Pahewal, Tehsil Garhshankar, District Hoshiarpur, post of Lambardar fell vacant and thus, process for the appointment of new Lambardar was initiated. *Mushtri Munadi* was conducted in the village for inviting applications from the interested and eligible candidates. In pursuance to the same, three application from Naresh Kumar (petitioner), Anil Kumar and Surjit Singh (respondent No.4) were received. Their character verifications were got

conducted from the Police. SDM Garhshankar recommended the name of the petitioner for the appointment of Lambardar. On appreciation of their inter-se merits, Naresh Kumar (petitioner) was found to be 43 years of age and 10th pass by qualification. Besides this, he owned 3 Kanals of land and he was found to be ex-serviceman having served in Army for 17 years and thus, was a pensioner. He was also found to be nephew of the deceased Lambardar. On the other hand, Surjit Singh (respondent No.4) was found to be 68 years of age and 10th pass. Besides this he owned 4 Kanals of land and he was also found to be ex-serviceman having served in Army for 26 years and retired as Subedar. Learned Collector on evaluation of the inter-se merits and demerits of the candidates in fray, finding the petitioner to be more meritorious appointed him as Lambardar of the village vide order dated 01.03.2016 (Annexure P-1). Aggrieved by the same, respondent No.4 filed an appeal under Section 13 of the Punjab Land Revenue Act, 1887 before the Commissioner, Jalandhar Division, Jalandhar. Learned Divisional Commissioner after hearing both the sides found no perversity in the order passed by the Collector and thus, dismissed the appeal vide order dated 02.01.2017 (Annexure P-2). Again aggrieved by the same, respondent No.4 filed a revision petition under Section 16 of the Punjab Land Revenue Act, 1887 before the learned Financial Commissioner. However, learned Financial Commissioner after hearing both the sides set aside the orders passed by the Collector and the Commissioner by appointing respondent No.4 as Lambardar of the village vide impugned order dated 20.05.2019 (Annexure P-3). 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 from comparison of the inter-se merits of all three candidates in fray, it is apparent that petitioner was most meritorious and suitable candidate for the appointment of Lambardar. He submits that even SDM also recommended the name of petitioner to the Collector for the appointment. It is submitted that agreeing with the same, learned Collector on evaluation of the inter-se merits of all the candidates, found the petitioner to be more meritorious and thus, appointed him as Lambardar of the village, which was duly upheld by the Commissioner in the appeal filed by respondent No.4. He submits that learned Financial Commissioner has miserably failed to appreciate the evidence on record, statutory provisions of the Act and the law settled and thus, has illegally not only set aside both the well reasoned orders passed by the Collector and the Commissioner but also appointed respondent No.4 as Lambardar of the village. It is submitted that admittedly the petitioner was about 25 years younger in age than respondent No.4 and as per the law settled, the candidate younger in age should be given preference. He submits that the Collector is prime authority for the appointment of Lambardar and the order of the Collector cannot be interfered with unless it suffers from any perversity and thus, there being no perversity in the order passed by the Collector, the impugned order setting aside the same, is unsustainable in the eyes of law. He further submits that the observations made by learned Financial Commissioner that respondent No.4 being old would not mean that he was not capable of performing his duty, is totally in violation of law and the law settled and thus, the impugned order being perverse, deserves 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 is retired from Army from the rank of Subedar. He submits that the petitioner had served in Army only for 17 years, whereas, respondent No.4 had served for 26 years in the Army. He submits that during his service respondent No.4 received various medals for his distinguished service, but the Collector had failed to appreciate the same and thus, illegally appointed him as Lambardar of the village. He submits that learned Commissioner has equally failed in appreciating the merits of respondent No.4 and thus, illegally upheld the perverse order passed by the Collector. He submits that learned Financial Commissioner rightly appreciated the statutory provisions and the law settled and thus, set aside both the perverse orders passed by the Collector and the Commissioner. It is submitted that there being no perversity in the order passed by learned Financial Commissioner, the same deserves to be upheld by dismissing the present petition.

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 apparent that on evaluation of the inter-se merits of all three candidates in fray, the petitioner was found to be most suitable candidate. There is no gainsaying that both the petitioner and respondent No.4 are ex-servicemen and have rendered service to the nation. On the other hand, it cannot be denied that the petitioner was 25 years younger in age than respondent No.4. There was nothing adverse against the petitioner. Hon'ble Supreme Court in **Mahavir Singh vs. Khiali Ram and others**, 2009(1) RCR (Civil) 757 has held that for the appointment of Lambardar, age of the candidate is a relevant factor.

7. In **Sukhjinder Pal Singh Vs. State of Punjab and others**,

2016(3) R.C.R. (Civil) 725, this Court while dealing with the same question has held as under:-

“14. It is pertinent to mention here that the appointment of Lambardar is primarily the prerogative and administrative act of the District Collector. The selection made by him is normally not to be undone unless and until it is shown that the same suffers from gross irregularity, perversity or there is some patent error in the appointment.”

As per law settled, the Collector is the main authority for appointment of the Lambardar. It is the Collector, who not only appreciates the antecedents of all the candidates in the fray, but also personally interacts with them. Thus, the subjective satisfaction of the Collector cannot be ignored in a cavalier manner.

8. However, learned Financial Commissioner has failed to appreciate these aspects. In the considered opinion of this Court, the view taken by learned Financial Commissioner in setting aside the well reasoned orders passed by the Collector and the Commissioner by appointing respondent No.4 as Lambardar, is totally unsustainable in the eyes of law and against the evidence on record. Thus, the order dated 20.05.2019 (Annexure P-3) passed by the Financial Commissioner is set aside and the order dated 01.03.2016 (Annexure P-1) passed by the Collector is restored.

9. The present petition stands allowed.

15.04.2024

sharmila

Whether Speaking/Reasoned

Whether Reportable

:

:

Yes/No

Yes/No

(RAJESH BHARDWAJ)

JUDGE