

121 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-19332-2024 (O/M)

Date of decision : 09.08.2024

Harinder Singh

..... Petitioner

Versus

Financial Commissioner (Appeals), Punjab and others Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

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

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HARSH BUNGER, J.

1. Petitioner (Harinder 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 18.11.2020 (Annexure P-4), passed by learned Divisional Commissioner, Patiala Division, Patiala (in short 'Divisional Commissioner') whereby the order dated 03.05.2017 (Annexure P-2), passed by the learned Collector, Sangrur (in short 'Collector'), appointing the petitioner as Lambardar of village Sakrodi, Tehsil Bhawanigarh, District Sangrur; has been set aside and the matter was remanded to the learned Collector for fresh decision.

1.1 A further prayer has been made by the petitioner for setting aside the order dated 14.03.2024 (Annexure P-5), passed by the learned Financial Commissioner (Appeals), Punjab (in short 'Financial Commissioner'), whereby the appeal filed by the petitioner against the order dated 18.11.2020 (Annexure P-4) has been dismissed.

2. Briefly, on dismissal of Shri Gobinder Singh, previous Lambardar of village Sakrodi, 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, 3 applications (including the one submitted by the petitioner and also respondent No. 4-Davinder Singh), were received, accordingly, their antecedents were got verified from the local police. It transpires that the Naib Tehsildar, Tehsildar as well as Sub Divisional Magistrate, Bhawanigarh recommended the name of the petitioner for appointment to the aforesaid vacancy and forwarded the matter to the learned Collector.

2.1 It appears that the third candidate Somjit Singh did not appear before the Naib Tehsildar, Bhawanigarh and candidate Dalvir Singh withdrew his candidature in favour of petitioner-Harinder Singh, therefore, only petitioner remained in the fray and learned Collector, appointed the petitioner as Lambardar of village Sakrodi, vide order dated 03.05.2017 (Annexure P-2).

2.2 Respondent No. 4-Davinder Singh challenged the Collector's order dated 03.05.2017 (Annexure P-2) by filing an appeal before the learned Divisional Commissioner on the plea that no munadi (proclamation) was made in the village and the entire process for appointment of Lambardar has been carried out in an illegal manner by the petitioner in connivance with the local political leaders. It was further stated that the petitioner was not living in the village and is rather residing in Sangrur city and as such, he is not available in the village. It was also stated that the petitioner has a criminal record and belongs to Shiromani Akali Dal Party.

2.3 The learned Divisional Commissioner, vide its order dated 18.11.2020 (Annexure P-4), came to the conclusion that the mustri munadi (proclamation) was not properly executed by the Patwari as there is no witness in whose presence the said mustri munadi (proclamation) was executed. Accordingly, learned Collector's order dated 03.05.2017 (Annexure P-2) was set aside by the learned Divisional Commissioner and the matter was remanded to the learned Collector with a further direction that fresh mustri munadi (proclamation) be made at appropriate level inviting applications from the interested persons and appoint the eligible and competent person.

2.4 Being aggrieved against the aforesaid order dated 18.11.2020 (Annexure P-4), the petitioner preferred an appeal (ROA-56-2020) before the learned Financial Commissioner, which was also dismissed, vide order dated 14.03.2024 (Annexure P-5).

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 03.05.2017 (Annexure P-2), passed by the learned Collector, appointing the petitioner as Lambardar. It is submitted that the mustri munadi (proclamation) was duly effected in the village and a rapat rojnamacha was also duly recorded, therefore, the finding returned by the learned Divisional Commissioner that no proper mustri munadi (proclamation) has been effected, is wrong and arbitrary. It is further submitted that the petitioner is more meritorious than respondent No. 4.

It is further submitted that once respondent No. 4 had not applied for the vacant post of Lambardar, therefore, he had no locus-standi to challenge the learned Collector's order. Accordingly, it is prayed that the impugned orders be set aside and the Collector's order dated 03.05.2017 (Annexure P-2), appointing petitioner as Lambardar be restored.

5. I have heard learned counsel for petitioner and have also perused the paperbook with his able assistance.

6. Concededly, the petitioner was appointed as Lambardar of village Sakrodi by the learned Collector, vide its order dated 03.05.2017 (Annexure P-2) as he was the only candidate in the fray. Respondent No. 4 challenged the learned Collector's order dated 03.05.2017 (Annexure P-2), inter alia, on the plea that no proper mustri munadi (proclamation) was effected in the village. The learned Divisional Commissioner, upon considering the matter, came to the conclusion that the mustri munadi (proclamation) was not executed properly in accordance with law as there is no witness in whose presence the said mustri munadi (proclamation) was executed. Accordingly, the learned Collector's order was set aside and the matter was remanded to the learned Collector to carry out fresh mustri munadi (proclamation) and to appoint eligible and competent person. The aforesaid order dated 18.11.2020 (Annexure P-4), passed by the learned Divisional Commissioner, was upheld by the learned Financial Commissioner, vide its order dated 14.03.2024 (Annexure P-5) by observing as under :-

“5. I have heard Ld. Counsel for both the parties, gone through their submissions and perused the order of the courts below. The Divisional Commissioner in his order dated 18.11.2020

observed that mushtri munadi was executed by the concerned patwari on 24.08.2015 through village chowkidar and the same was pasted on Public place, but there is no witness in whose presence the mushtri munadi was executed which concludes that the mushtri munadi was not executed properly by the patwari which is mandatory as per law. From perusal of the file of the District Collector, I find that there is no signature of witnesses on report dated 24.05.2015 of mushtri munadi in whose presence the proclamation (Mustri Munadi) was done. There must be signature of any Sarpanch or Panch or any respectable persons of the village while conducting proclamation/mustri munadi for calling the application from the interested candidates regarding appointment for the post of lambardar. The Divisional Commissioner has rightly ordered to make fresh Munadi in the village so that better candidates may come forward and no harm shall be caused to any of the party if fresh Munadi is conducted in the village. In the process of selection of a candidate, a wide choice must be available to the concerned authority in order to appraise the merits and demerits of competing candidates to find the best person for being appointed as lambardar of the village. Therefore, I find no perversity or illegality in the order passed by Divisional Commissioner which requires interference of this Court.

6. Therefore, keeping in view the aforesaid facts and circumstances of the case, I dismiss the present appeal and the order dated 18.11.2020 passed by the Commissioner, Patiala Division, Patiala, is upheld. Copy of this order be communicated to the courts

*below. Record of the lower court be returned. File
be consigned to the record room.”*

7. Learned counsel appearing for petitioner has failed to dislodge the aforesaid factual observations made by the learned Financial Commissioner in the impugned order dated 14.03.2024; by referring to any document/material whatsoever. It has not been disputed by learned counsel for petitioner that the report regarding mustri munadi (proclamation) does not contain the signatures of any witness. Furthermore, no prejudice would be caused to the petitioner in case fresh mustri munadi (proclamation) is carried out in the village in accordance with law for filling up the vacant post of Lambardar of village Sakrodi as the petitioner would also be entitled to apply against the said vacancy afresh.

8. No other argument has been raised.

9. Keeping in view the aforementioned facts and circumstances, I do not find any merit in the instant civil writ petition and the same is accordingly dismissed.

10. All pending application (s), if any, shall also stand closed.

(HARSH BUNGER)
JUDGE

09.08.2024
sjks

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