

2024:PHHC:117395



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

CWP-22180-2024 (O&M)
Date of decision : 04.09.2024

SARWAN SINGH

...Petitioner

Versus

FINANCIAL COMMISSIONER (APPEALS) AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Vivek K. Thakur, Advocate
for the petitioner.

Mr. Navneet Singh, Sr. D.A.G., Punjab.

HARSH BUNGER, J. [ORAL]

Prayer in the present petition filed under Articles 226/227 of the Constitution of India, is, *inter alia*, for issuance of a writ in the nature of *certiorari* for setting aside of order dated 06.10.2021 (Annexure P-4) passed by the learned Commissioner, Jalandhar Division, Jalandhar (here-in-after referred as 'the Divisional Commissioner'); whereby the case was remanded to the learned Collector, Kapurthala for passing a fresh order after reviewing the merits of the candidates for the post of *Lambardar* of Village Karamjitpur, Tehsil Sultanpur Lodhi, District Kapurthala.

A further prayer has been made for setting aside the order dated 18.12.2023 (Annexure P-7) passed by the learned Financial Commissioner (Appeals), Punjab (here-in-after referred to as 'the learned

Financial Commissioner); whereby the Revision Petition (ROR-53-2022) filed by the petitioner against Commissioner's order dated 06.10.2021 (Annexure P-4) was dismissed.

2. Briefly, on account of demise of Sh. Piara Singh, previous *Lambardar* of Village Karamjitpur; proceedings were initiated for filling up the said vacancy. In pursuance to the proclamation carried out for filling up the afore-said vacancy, ten applications (including the applications submitted by the petitioner and respondent Nos.4 and 5) were received.

2.1 The learned Tehsildar as well as Sub Divisional Magistrate, Sultanpur Lodhi, recommended the name of the present petitioner (Sarwan Singh) for appointment to the afore-said vacancy and forwarded the case to the learned Collector.

2.2 The learned Collector, vide his order dated 22.10.2020 (Annexure P-3) appointed the petitioner as the *Lambardar* of Village Karamjitpur.

2.3 The afore-said order dated 22.10.2020 (Annexure P-3) was challenged by respondents No.4 and 5, herein, by way of filing their separate appeals before the learned Divisional Commissioner.

2.4 Both the afore-said appeals came to be decided by the learned Divisional Commissioner, vide common order dated 06.10.2021 (Annexure P-4), whereby the matter was remanded to the learned Collector with the direction to decide the case afresh.

2.5 Feeling aggrieved against the afore-said order dated 06.10.2021 (Annexure P-4), the petitioner preferred a Revision Petition (ROR No.53 of 2022) before the learned Financial Commissioner.

2.6 The afore-said Revision Petition came to be dismissed by the learned Financial Commissioner, vide order dated 18.12.2023 (Annexure P-7), whereby the Commissioner's order dated 06.10.2021 was maintained.

3. In the afore-mentioned circumstances, the petitioner has filed the instant writ petition before this Court, for the relief/s, as noticed here-in-above.

4. Learned counsel for the petitioner submits that the learned Commissioner as well as the learned Financial Commissioner, have erred in law and fact in passing the impugned order, by ignoring the settled law that in the matter of appointment of *Lambardar*, the choice of the learned Collector, is not to be interfered with. It is submitted that the petitioner is the more suitable candidate for the post of *Lambardar* and was rightly appointed by the learned Collector. It is submitted that the candidature of the petitioner was recommended by the lower Revenue Officer, which was required to be considered by the Appellate as well as the Revisional Authority below. It is next submitted that the allegation against the petitioner that he had prepared a job card under MANREGA Scheme in SC category, was infact, a clerical mistake on the part of the department and this fact stands clarified vide letter dated 11.03.2020 (Annexure P-2) issued by the Additional Deputy Commissioner. Accordingly, it is submitted that the impugned orders may be set aside and the order passed by the learned Collector, may be upheld.

5. Heard.

6. Here, it would be apposite to state the relative merits and de-merits of the candidates (as noticed by the learned Collector), which can

be summed up as under :-

<i>S. No.</i>	<i>Particulars</i>	<i>Petitioner (Sarwan Singh)</i>	<i>Resp. No.4 (Major Singh)</i>	<i>Resp. No.5 (Palvinder Kaur)</i>
<i>1</i>	<i>Age</i>	<i>49 years</i>	<i>53 years</i>	<i>36 years</i>
<i>2</i>	<i>Educational qualification</i>	<i>Matric</i>	<i>8th standard</i>	<i>B.A. B.Ed. M.A. M.Ed.</i>
<i>3</i>	<i>Land holding/s</i>	<i>38 K – 3 M</i>	<i>66 Kanals</i>	<i>----</i>
<i>4</i>	<i>Recommended by</i>	<i>Tehsildar Sub- Divisional Magistrate.</i>	<i>----</i>	<i>----</i>

7. A bare perusal of the above chart would show that respondent No.5 is younger in age; is more educated than the petitioner. Although, the name of the petitioner was recommended by the lower Revenue Authorities but the Collector is not bound by the recommendation of the Revenue Authorities.

8. In the present case, the petitioner was appointed as the *Lambardar* by the learned Collector vide his order dated 22.10.2020 (Annexure P-3) by holding as under :-

“After perusal of the record on record and hearing the candidates who appeared before the court, it was found that the candidate Sarwan Singh son of Ram Singh is an eligible candidate for this post as he is a resident of village Karamjitpur Tehsil Sultanpur Lodhi District Kapurthala, his age is 49 years, he has studied 10th class, he has 38 kanal 03 marla of land. He has donated to Indian Red Cross Society. It is verified that he was a member of Panchayat and Cooperative Society. In the report received from the Additional Deputy Commissioner, Kapurthala regarding the objections raised by the candidate Major Singh, it has been found that there is no charge against him. Some

other candidates in the lower court have also expressed their agreement in favour of making him a Numbardar. The questions asked by him in the court were answered in a very clean and clear manner, due to which he seems to have acquired knowledge of the works of Lambardar and the lower officers have also recommended him to be made Lambardar. Although the candidate Palwinder Kaur is more educated, her ownership of land has not been verified, while for the appointment of the Lambardar, it is necessary for the candidate to own land. Therefore, in agreement with the recommendation report of the following officers, I appoint the candidate Sarwan Singh son of Ram Singh, resident of Village Karamjitpur, Tehsil Sultanpur Lodhi, District Kapurthala, as new Lambardar to the vacant post of deceased Lambardar Pyara Singh son of Banta Singh, Village Karamjitpur (Hadbast No.26), Tehsil Sultanpur Lodhi, District Kapurthala. After compliance, file be consigned to record room in proper manner.”

8.1 A perusal of Collector's order would show that a clear observation was made therein that Palwinder Kaur is more educated than the petitioner, however, she was non-suited only on the ground that her ownership of land was not verified. Learned Collector, *prima facie*, proceeded on the basis that ownership of land is necessary. It is observed that land holding is considered for the purposes of security towards Government revenue collected by the *Lambardar*, whereas, in case of ***Gurpreet Singh versus Financial Commissioner (Revenue), Punjab, 2017(1) RCR (Civil) 233***, this Court has observed that land revenue stood abolished in both the State of Punjab and Haryana, long back, thus owning land by the candidates for the post of *Lambardar* would not be of much significance any further. Therefore, the aforesaid premise for non-suiting

Palwinder Kaur, does not appear to be correct. It is further observed that

Palwinder Kaur is younger than the petitioner and is also more educated.

Age and educational qualification of a candidate are relevant factors.

8.2 The appeal filed by Major Singh Nandhar (respondent No.4) and Palwinder Kaur (respondent No.5) against Collector's order dated 22.10.2020 was allowed by the learned Commissioner, vide order dated 06.10.2021 (Annexure P-4) whereby the matter was remanded to the learned Collector, to pass a fresh order. The Commissioner's order has been further upheld by the learned Financial Commissioner, vide his order dated 18.12.2023 (Annexure P-7), by observing as under :-

“6. I have heard and considered the arguments advanced by Counsel for the parties and perused the documents available on record and also gone through the written arguments submitted by the parties. In the present case, I find that the respondents have acquired more merits than the petitioner as clear from the order of the Commissioner, Jalandhar Division, Jalandhar as well as from the pleading of the parties. Therefore, I agree with view expressed by the Commissioner, Jalandhar Division, Jalandhar that the merits of the candidates require fresh look in view of the provisions of Rule 15 of the Punjab Land Revenue Rules, 1909. Moreover, no prejudice is going to be caused to the interest of any parties including the petitioner, if the case is re-heard by the District Collector, Kapurthala where he shall also have the opportunity to plead his case. In this case, the Counsel for the petitioner vehemently argued that choice of the Collector cannot be set aside but in my opinion as well as in view of the Judgments passed by the Hon'ble Courts in various cases it has been held that as and when any order passed by the District Collector is found to be suffering from patent illegality or perversity, the higher revenue authorities would be well within their jurisdiction to

upset such a patent illegality. Therefore, I agree with view expressed by the Commissioner, Jalandhar Division, Jalandhar that merits of the candidates requires fresh look in view of the provisions of Rule 15 of the Punjab Land Revenue Rules, 1909. Moreover, no prejudice is going to be caused to the interest of any parties including the petitioner, if the case is re-heard by the District Collector, Kapurthala where shall also have the opportunity to plead this case.

7. Resultantly, the present revision petition is dismissed and the order dated 06.10.2021, passed by the Commissioner, Jalandhar Division, Jalandhar is upheld.”

9. In the afore-mentioned facts and circumstances, in my considered view, the observation made by learned Financial Commissioner, that the merits of the candidates require a fresh look, is correct and does not call for any interference by this Court.

10. Therefore, finding no merit in this writ petition, the same is dismissed.

11. All pending applications (if any) shall also stand closed.

September 04, 2024
gurpreet

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No