

211 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-21798-2023 (O/M)

Date of decision : 08.08.2024

Chanchal Singh

..... Petitioner

Versus

Financial Commissioner, Revenue, Punjab and others Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Shubham Goyal, Advocate
for the petitioner. (Through Video Conferencing)

Mr. Navneet Singh, Senior DAG Punjab.

Mr. Davinder Khurana, Advocate
for respondent No. 4.

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HARSH BUNGER, J.

1. Petitioner (Chanchal Singh) has filed the instant civil writ petition under Article 226/227 of Constitution of India, inter alia, seeking a writ in the nature of certiorari for setting aside the order dated 02.11.2022 (Annexure P-3), passed by learned Divisional Commissioner, Jalandhar Division, Jalandhar (in short 'Divisional Commissioner') whereby the order dated 03.09.2019 (Annexure P-1), passed by the learned Collector, Sri Muktsar Sahib (in short 'Collector'), appointing the petitioner as Lambardar (General Category) of village Patto Kalan, Tehsil Shahkot, District Jalandhar; 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 17.07.2023 (Annexure P-5), passed by the learned

Financial Commissioner (Appeals), Punjab (in short 'Financial Commissioner'), whereby the revision petition filed by the petitioner against the order dated 02.11.2022 (Annexure P-3) has been dismissed.

2. Briefly, on demise of Shri Malkit Singh, Lambardar (General Cateogry) of village Patto Kalan, proceedings were initiated for filling up the vacancy. In pursuance to the proclamation (mustri munadi) calling up applications for filling up the said vacancy, 12 applications (including the one submitted by the petitioner and also respondent No. 4-Ravinder Pal Singh), were received. Before the Tehsildar, Shahkot, four candidates remained absent and accordingly, antecedents of remaining eight candidates were got verified form the local police. It transpires that the Tehsildar as well as Sub Divisional Magistrate, Shahkot 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 before the learned Collector, respondent No. 4 Ravinder Pal Singh alongwith four other candidates, namely, Sarabpreet Singh, Gurnam Singh, Avtar Singh and Kulwinder Kaur withdrew their candidatures in favour of petitioner-Chanchal Singh. Another candidate Gurdev Singh remained absent and accordingly, only two candidates left in the fray i.e. petitioner and one Kulwinder Singh.

2.2 Learned Collector, after appreciating the relative merits/demerits of the candidates, appointed the petitioner as Lambardar of village Patto Kalan, vide order dated 03.09.2019 (Annexure P-1).

2.3 It appears that after the period of more than one year, respondent No. 4-Ravinder Pal Singh challenged the order dated 03.09.2019 by preferring an appeal before the learned Divisional

Commissioner on the plea that he never withdrew his application in favour of the petitioner. The learned Divisional Commissioner, vide its order dated 02.11.2022 (Annexure P-3) accepted the appeal, filed by respondent No. 4 and remanded the case to the learned Collector for fresh decision, by observing as under :-

“4. I have considered the arguments by the ld. counsels for the parties and have gone through the record. In view of issues raised by the appellant, the appeal is accepted and the case is remanded to the Deputy Commissioner-cum-Collector, Jalandhar for fresh decision after hearing the parties. File be consigned to the record room after usual formalities.”

2.4 Being aggrieved against the aforesaid order dated 02.11.2022 (Annexure P-3), the petitioner preferred a revision petition before the learned Financial Commissioner, who vide its order dated 17.07.2023 (Annexure P-5), dismissed the revision and upheld the order dated 02.11.2022 (Annexure P-3).

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 03.09.2019 (Annexure P-1), passed by the learned Collector, appointing the petitioner as Lambardar. It is submitted that once respondent No. 4 had withdrawn his candidature in favour of petitioner, accordingly, he was estopped from challenging the petitioner's appointment as Lambardar. It is further submitted that even otherwise, in the matter of appointment of Lambardar, the choice of the Collector is not

to be interfered with lightly, even if two views are possible, unless there is patent illegality or perversity in the Collector's order. Accordingly, it is prayed that the impugned orders be set aside and the Collector's order dated 03.09.2019 (Annexure P-1), appointing petitioner as Lambardar be restored.

5. Per contra, learned counsel for respondent No. 4 has opposed the submissions made on behalf of the petitioner by submitting that the learned Divisional Commissioner has rightly remanded the matter to the learned Collector for fresh decision as respondent No. 4 had never withdrawn his application for the post of Lambardar in favour of petitioner. It is further submitted that the learned Divisional Commissioner's order has been upheld by the learned Financial Commissioner, therefore, there is no scope for any interference in the impugned orders, moreso when the matter has only been remanded to the learned Collector for fresh decision. Accordingly, prayer for dismissal of the instant petition has been made.

6. I have heard learned counsel for respective parties and have also perused the paperbook with their able assistance.

7. Concededly, the petitioner was appointed as Lambardar of village Patto Kalan by the learned Collector, vide its order dated 03.09.2019 (Annexure P-1). It is clearly mentioned in the order dated 03.09.2019 (Annexure P-1) that respondent No. 4-Ravinder Pal Singh alongwith four other candidates had withdrawn their respective applications for Lambardar in favour of petitioner-Chanchal Singh. Apparently, respondent No. 4 challenged the order dated 03.09.2019 (Annexure P-1) after a period of more than one year, primarily on the plea

that he never withdrew his application in favour of petitioner and considering the same, the learned Divisional Commissioner accepted the appeal of respondent No. 4 and remanded the matter to the learned Collector for fresh decision. However, a perusal of the grounds of appeal (Annexure P-2) preferred by respondent No. 4 would show that the plea taken by respondent No. 4 that he never withdrew his candidature in favour of petitioner, is not correct, it would be apposite to refer to para-16 of the ground of appeal, preferred by respondent No. 4, which reads thus:-

“16. That the District Collector Jalandhar has given undue weightage to the recommendations of the lower revenue officers. He is to make his own opinion after considering the merits and demerits of the candidates and the merits of the appellant are much better than the respondent and the appellant should have been appointed as Lambardar of the village. The District Collector Jalandhar in his order under appeal has not given any findings on the vital point i.e. physical fitness of the respondent due to the advanced age. It is pertinent to mention here that the District Collector, Jalandhar asked the appellant as to who should be appointed Lambardar then the appellant told that it is the decision of him (District Collector Jalandhar) and the District Collector Jalandhar said I will appoint the Chanchal Singh. To avoid annoying the District Collector Jalandhar, the appellant said no objection if the Chanchal Singh is appointed as Lambardar. But the appellant never withdrew his application in favour of the Chanchal Singh. The respondent-Chanchal Singh is wrongly and illegally as Lambardar. The District Collector, Jalandhar has given wrong and

false reason for ignoring the appellant for the post of Lambardar and wrong merits are stated in the order under appeal by the District Collector, Jalandhar. The order of the District Collector, Jalandhar is based on conjecture and surmises.”

7.1 In the above extract para-16, it is clearly averred by respondent No. 4 that before the learned Collector, he had stated his no objection if Chanchal Singh (petitioner) is appointed as Lambardar. Once respondent No. 4 had got his no objection recorded before the learned Collector as regards appointment of petitioner as Lambardar, it has to be taken that he has withdrawn his candidature in favour of petitioner. In my considered view, after respondent No. 4 stated his no objection to petitioner's appointment as Lambardar, it was not open to him to have laid challenge to petitioner's appointment; moreso, when such no objection was not on account of any undue influence, coercion or pressure upon respondent No. 4. Therefore, respondent No. 4 was estopped from challenging the petitioner's appointment as Lambardar.

7.2 Furthermore, according to the judgment in case of ***Khajan Singh Versus Shamsher Singh, 1998 (3) RCR (Civil) 634***, the order dated 03.09.2019 (Annexure P-1), passed by learned Collector, has become final as the same was not set aside by the learned Divisional Commissioner, while remanding the matter to the learned Collector for fresh decision. Thus, the Financial Commissioner was not justified in upholding the order of the Divisional Commissioner.

8. Accordingly, the present writ petition is allowed and the impugned order dated 02.11.2022 (Annexure P-3), passed by learned Divisional Commissioner as well as order dated 17.07.2023 (Annexure P-

5), passed by learned Financial Commissioner are set aside. Consequently, the order dated 03.09.2019 (Annexure P-1), passed by the learned Collector, Sri Muktsar Sahib, appointing petitioner as Lambardar (General Category) of village Patto Kalan, Tehsil Shahkot, District Jalandhar, is maintained.

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

(HARSH BUNGER)
JUDGE

08.08.2024
sjks

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