

117 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-25942-2024 (O/M)

Date of decision : 04.10.2024

Gopal Chand

..... Petitioner

Versus

Financial Commissioner, Revenue Punjab and anr.

..... Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. N.S. Sodhi, Advocate
for the petitioner.

Mr. Navneet Singh, Senior DAG Punjab.

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HARSH BUNGER, J. (ORAL)

1. Petitioner (Gopal Chand) 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 26.02.2024 (Annexure P-1), passed by learned Financial Commissioner (Revenue), Punjab (in short 'Financial Commissioner'), whereby he has set aside the order dated 18.04.2023 (Annexure P-2), passed by learned Commissioner, Ferozepur Division, Ferozepur (in short 'Divisional Commissioner') and further upheld the order dated 19.08.2021 (Annexure P-3), passed by learned District Collector, Fazilka (in short 'Collector') whereby respondent No. 2 (Pardeep Kumar) was appointed as Lambardar of village Bandiwala, Tehsil and District Fazilka.

2. Briefly, on demise of Shri Dalip Kumar, previous Lambardar of village Bandiwala, 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, seven applications

(including one submitted by the petitioner and also respondent No. 2- (Pardeep Kumar), were received.

2.1 The learned Naib Tehsildar, Fazilka, Tehsildar, Fazilka and Sub Divisional Magistrate, Fazilka recommended the candidature of respondent No. 2 for appointment to the aforesaid vacancy and forwarded the case to learned Collector.

2.2 The learned Collector, vide order dated 19.08.2021 (Annexure P-3), appointed respondent No. 2 as Lambardar of village Bandiwala.

2.3 It transpires that the petitioner challenged the order dated 19.08.2021 (Annexure P-3) by filing an appeal before the learned Divisional Commissioner, which came to be decided, vide order dated 18.04.2023 (Annexure P-2), whereby the matter was remanded to learned Collector. The relevant extracts of order dated 18.04.2023 reads as under :-

“5. I have considered the arguments, addressed by both the counsel for parties and perused the record of the case. The educational qualification of respondent is B.A. LLB and done the diploma of Labour Law, he is 52 years of age and owns land measuring 131 Kanals 13 Marlas whereas the age of appellant is 38 years, he has passed M.Sc. (Computer Science) as well as P.G.D.C.A. and he is owner of land measuring 33 Kanals 10 Marlas. From the record, it shows that appellant has done M.Sc. (Computer Science) from Maharish Dayanand University Rohtak (distance education) which does not appear to be genuine. The appellant produced document which shows that the respondent is not residing in village and respondent is in unauthorised possession of Shamlat land in village

Bandiwala. Under these circumstances, it would be appropriate to verify the following points :

- 1. Whether the respondent is in unauthorized possession over the Shamlat land in village Bandiwala ?*
- 2. Whether the respondent is residing in village Bandiwala or not ?*
- 3. Whether the educational certificates of M.Sc. (Computer Science) as well as P.G.D.C.A. of appellant are genuine or not ?*

After verification of above points, if both appellant and respondent are found to be not suitable for the post of lambardar, then necessary proceedings be initiated to fill up the vacant post of lambardar. Accordingly, this case is remanded to the court of District Collector, Fazilka.”

2.4 Feeling aggrieved against the order dated 18.04.2023 (Annexure P-2), passed by the learned Divisional Commissioner, respondent No. 2 (Pardeep Kumar) preferred a revision (ROR-975-2023) before learned Financial Commissioner. Similarly, present petitioner also challenged the Commissioner's order by filing a separate revision petition (ROR-1020-2023). Both the aforesaid revision petitions came to be decided, vide a common order dated 26.02.2024 (Annexure P-1), whereby revision petition filed by the petitioner was dismissed and the revision petition filed by respondent No. 2 was allowed by setting aside the Commissioner's order dated 18.04.2023 (Annexure P-2) and further upholding the learned Collector's order dated 19.08.2021 (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 learned Financial Commissioner has erred in law and facts in upholding the Collector's

order appointing respondent No. 2 as Lambardar. It is submitted that learned Financial Commissioner has failed to appreciate that respondent No. 2 is in unauthorized possession of shamlat land and relevant evidence in this regard has been totally overlooked. It is further submitted that respondent No. 2 is not a resident of village Bandiwala as he is an advocate by profession and is practising at District Courts, Fazilka. It is also submitted that respondent No. 2 has his residence at Fazilka, therefore, he is not available to the villagers, which is a very relevant consideration for the appointment of Lambardar. It is next submitted that the petitioner is more meritorious than respondent No. 2 inasmuch as that he is well educated; is younger in age than respondent No. 2; has sufficient land holding; takes active part in social works and is a permanent resident of village; therefore, he was required to be appointed as Lambardar. With the aforesaid submissions, it is prayed that the impugned orders be set aside and petitioner may be appointed as Lambardar.

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

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

Particulars	Petitioner (Gopal Chand)	Respondent No.2 (Pardeep Kumar)
Age	37	51
Educational qualification	MCA	BA, LLB
Land holdings	33 kanal 10 marla	131 kanal 13 marla
Recommended by	---	Naib Tehsildar, Tehsildar and SDM, Fazilka
Social Work (s)	Member of Pasvik Committee since 2010-15 ; Blood donation ; Performed marriage of two poor girls ;	---

6.1 From a bare perusal of the above extracted comparison, it is noticed that respondent No. 2 is a mature man and an advocate by profession. Respondent No. 2 has more land holding than petitioner and even the name of respondent No. 2 was recommended by lower revenue officials.

6.2 Although, the Collector is not bound by the recommendation made by the Revenue Authorities in favour of a candidate; however, due consideration is to be accorded to such recommendations as they are in a position to assess the suitability of a candidate and such recommendation would have some persuasive value. In this regard, reference can be made to the observations made in the case of ***Hakam Singh Versus Financial Commissioner (Revenue), Punjab***, 2016(4) RCR (Civil) 335 and ***Atma Singh Versus The Financial Commissioner, Revenue, Punjab***, 2016(1) LAR 592.

6.3 As regards the contention of the petitioner that he is younger in age than respondent No. 2, it is observed that no doubt, the age of a candidate is a relevant factor for appointment to the post of Lambardar and Hon'ble the Supreme Court in '***Mahavir Singh v. Khiali Ram and others***', 2009(1) RCR (Civil) 757, has also held that age of a candidate is a relevant factor; however, the age of a person is to be considered in the context of his physical ability and capacity to discharge his duties as a headman of the village. No such plea has been raised that the respondent No. 2 is incapacitated from discharging the functions of a Lambardar, in view of his age. There is nothing on record suggestive of the fact that any complaint was made against him that he is not able to render his services properly owing to his age. In this scenario, rejecting

petitioner, may amount to injustice to him. Similar view was taken by a Division Bench of this Court in ***Ram Kumar Versus The Financial Commissioner, Haryana and others, 2013 (2) RCR (Civil) 1038.***

Accordingly, this contention is rejected.

6.4 As regards the submission of the petitioner that respondent No. 2 is a practising advocate at District Courts Fazilka and also has his residence at Fazilka, therefore, is not readily available to the villagers, it is observed that learned Collector in its order has clearly indicated that respondent No. 2 had kept his residence at Fazilka during his practice days and while his children were studying there, but his permanent residence was in village Bandiwala, which is evident from Aadhar Card as well as Voter Card of respondent No. 2. During the course of hearing, learned counsel for petitioner stated that village Bandiwala is at a distant of about 20 kms from Fazilka town. Considering the distance between village Bandiwala and Fazilka town, it cannot be presumed that respondent No. 2 would not be available in the village to discharge duties of Lambardar. Moreover, a candidate for the post of Lambardar cannot be expected to be unemployed or without any source of income.

6.5 In somewhat similar circumstances, this Court in ***Amarjit Kaur v. Financial Commissioner (Co-operation), Punjab, 2011(3) RCR (Civil) 961***; held as under:-

“3. The only question involved in the present petition is, as to whether a Lambardar is expected to be unemployed or merely engaged in agricultural activities?”

4. In the opinion of this Court, Lambardar cannot be expected to be an unemployed or merely engaged in agricultural activities. Merely because petitioner is running a school at Talwara, would not mean that she will not be

available in the village to perform duties of Lambardar. Petitioner has given sufficient explanation that she has engaged several teachers and staff in the school to look after the management, other jobs and teaching activities, therefore, presence of the petitioner in the school regularly is not required, which was wrongly disbelieved by the learned Commissioner. Merely because, Lambardar is running a school in the nearby city, cannot be a basis to create doubt that in future she would not be available in the village to discharge duties of Lambardar.

5. In the opinion of this Court if other qualities or qualifications of the candidate are appealing and he is permanent resident of the village and ordinarily residing in the same village, his candidature should not be refused solely on the ground he is engaged in some commercial activities near the village to earn his livelihood...”

6.6 As regards the submission of the petitioner that respondent No. 2 is in unauthorized possession of shamlat land, it is observed that respondent No. 2 has already submitted an affidavit dated 18.08.2021 (Annexure P-4), stating that he has no concern with said land. The relevant extract of affidavit reads as under :-

“ Stated that I had submitted application as candidate for vacant post of General Numberdari of village Bandiwala. Today in the court Gopal Chand candidate raised a objection on my father that he is in illegal possession as Gairmarusi Mubraba no. 159 min east (0-8) but neither I nor my father Sh. Kanshi Ram ever check the revenue card. I and my father never remain in possession over muraba no. 159 min east (0-8) and nor the same in our possession on spot. The other residents of the village used to through Roori over this plot. We have no concern with its possession. If Gram Panchayat got its Girdawari changed in his name than I or any member of my family have no objection. His candidature cannot be disqualified

due to wrong entry in the revenue card. I am suffering this affidavit with my full conscious with my sweet will and without any undue pressure.”

6.7 That apart, learned Financial Commissioner has considered the aforesaid objection of petitioner regarding unauthorized possession by respondent No. 2 and the same was rejected by holding as under :-

“ On careful examination of the record, I find that the Halqa Kanungo vide his report dated 08.10.2021 has made clear that the petitioner has not encroachment upon any panchayat land and due to wrong revenue entries the khasra No. 159 (0-8) has been shown in the name of the petitioner whereas the land belongs to the village gram panchayat. Moreover, the petitioner Pardeep Kumar has also suffered a statement before the District Collector that he has no objection if the entries in the revenue record be corrected in the name of the village gram panchayat. Upon considering all the evidence and document on record, the District Collector, Fazilka has appointed the petitioner as lambardar of the village Bandiwala. Thus, there is no need to make a fresh inquiry on this point because it will unnecessarily waste the precious time of the lower revenue officials. Even after evaluating the comparative merits and demerits of the candidates, I find that all the lower revenue authorities recommended the name of the petitioner for the post of lambardar and the District Collector, Fazilka rightly appointed the petitioner as lambardar of the village. Hon'ble Supreme Court of India in the case of Mahavir Singh versus Khiali Ram and others reported as 2009 (1) RCR (Civil) 757 that “there should not be interference with the choice made by the collector in the appointment of lambardar even if two views are possible”. As regards to availability of the petitioner in the village, it is submitted that the Domicile Certificate, Voter Card, Aadhar Card, Passport, Driving

Licence, Bank Accounts etc. produced by the petitioner clearly establishes that he is resident of the village Bandiwala. Thus, there is no substance in the plea of the respondent and it is liable to be rejected. Therefore, keeping in view the facts and circumstances of the present case, I am of the view that the Commissioner, Ferozepur Division, Ferozepur has wrongly and illegally set-aside the order of the District Collector, Fazilka on wrong perception and it warrants the interference of revisional jurisdiction of this court.

7. Resultantly, the revision petition filed by the petitioner Pardeep Kumar bearing ROR 975 of 2023, is accepted and the order dated 18.04.2023, passed by the Commissioner, Ferozepur Division, Ferozepur is set aside and the order dated 19.08.2021, passed by the District Collector, Fazilka is restored and upheld. The Counter-case bearing ROR 1020 of 2023, filed by the respondent Gopal Chand is dismissed. Since, the case was reserved for order, therefore, the copy of this order be communicated to the Counsel for both the parties. Copy of this order be also communicated to the courts below. File be consigned to the record room.”

6.8 The learned counsel for petitioner has further sought to impress that there are subsequent reports (Annexure P-7 and Annexure P-8) indicating unauthorized possession of respondent No. 2, however, I find no merit in the same for more than one reason. Firstly, it is not forthcoming from the reports (Annexure P-7 and P-8) that the so called spot inspection was carried out after due notice to respondent No. 2 or in his presence. Secondly, it is not forthcoming as to in what manner the demarcation was carried out and in whose presence. Concededly, the procedure prescribed for demarcation as envisaged under Volume 1

Chapter I-M of Punjab and Haryana High Court Rules and Orders and

learned Financial Commissioner's instructions, have not been followed. Accordingly, in the absence of any legally acceptable evidence on record, it is difficult to accept the submission of the petitioner that respondent No. 2 is in unauthorized possession of shamlat land.

6.9 Further, a perusal of order dated 19.08.2021 (Annexure P-3) would show that the learned Collector has duly appreciated the merits/demerits of the candidates and finding respondent No. 2 as the suitable candidate, appointed him as the Lambardar of village Bandiwala. There appears to be no illegality or perversity in the appointment of respondent No. 2 as Lambardar. In the case of ***Kuldip Singh Versus Financial Commissioner, Appeals-II, Punjab***, 2016 (1) RCR (Civil) 273; it was held by the Division Bench of this Court that the choice of the District Collector cannot be lightly set aside, even if two views are possible.

7. No other argument has been raised.

8. In view of the above discussion, I do not find any merit in this writ petition and the same is accordingly dismissed. The learned Collector's order dated 19.08.2021 (Annexure P-3) appointing respondent No. 2 (Pardeep Kumar) as Lambardar of village Bandiwala, Tehsil and District Fazilka is maintained.

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

(HARSH BUNGER)
JUDGE

04.10.2024
sjks

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No