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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-28085-2024 (O/M)

Date of decision : 18.10.2024

Satyavir

..... Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Surinder Gaur, Advocate
for the petitioner.

Ms. Upasana Dhawan, AAG Haryana.

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HARSH BUNGER, J. (ORAL)

1. Petitioner (Satyavir) 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 13.01.2022 (Annexure P-4), passed by learned Commissioner, Rohtak Division, Rohtak (in short 'Divisional Commissioner'), whereby the order dated 21.11.2019 (Annexure P-3), passed by learned Collector, Sonipat (in short 'Collector'), appointing the petitioner as Lambardar (Backward Class) of village Kakana Bhadri, Sub Tehsil Khanpur Kalan, Tehsil Gohana, District Sonipat, has been set aside. A further prayer has been made for setting aside the order dated 30.04.2024 (Annexure P-5), passed by learned Financial Commissioner, Haryana (in short 'Financial Commissioner'), whereby the appeal (ROA-468-2022), filed by the petitioner, has been dismissed.

2. Briefly, on demise of Shri Hukum Singh, previous Lambardar (Backward Class) of village Kakana Bhadri, proceedings were initiated for filling up aforesaid vacancy. In pursuance to the proclamation in the village for filling up the aforesaid vacancy, 7 persons applied (including the petitioner and respondent No. 6-Hansraj). The Naib Tehsildar, Khanpur Kalan recommended the candidature of petitioner (Satyavir) for appointment to the aforesaid vacancy, however, the Sub Divisional Officer, Gohana recommended the name of respondent No. 6-Hansraj for appointment to the aforesaid vacancy and forwarded the case to learned Collector.

2.1 Learned Collector, vide order dated 21.11.2019 (Annexure P-3), appointed the petitioner (Satyavir) as Lambardar of village Kakana Bhadri.

2.2 The aforesaid order dated 21.11.2019 (Annexure P-3) was challenged by respondent No. 6 by filing an appeal before learned Divisional Commissioner, which was allowed vide order dated 13.01.2022 (Annexure P-4), whereby learned Collector's order was set aside. Thereafter, present petitioner challenged learned Divisional Commissioner's order dated 13.01.2022 (Annexure P-4) by filing an appeal before learned Financial Commissioner, which was dismissed, vide order dated 30.04.2024 (Annexure P-5).

3. In the aforementioned circumstances, the petitioner has filed the instant civil writ petition for seeking relief(s), as noticed above.

4. Learned counsel for petitioner submits that learned Divisional Commissioner has erred in law and fact in setting aside order dated 21.11.2019 (Annexure P-3), whereby petitioner was appointed as

that learned Divisional Commissioner has non-suited the petitioner on two grounds, firstly, that he was working with an educational institution located in Khanpur Kalan and, therefore, during office hours, he would not be available to the local people, officials of Revenue and other departments, for the work of Lambardari; secondly, there was an allegation of unauthorized possession over the panchayat land by the petitioner.

4.1 Learned counsel for petitioner contends that working with an educational institution is not a disqualification for appointment of Lambardar. It is further submitted that the petitioner is not in unauthorized possession of any panchayat land. It is next submitted that Haryana Government has issued a Memo dated 23.11.2021, whereby fresh appointment of Lambardar has been frozen and no appointments are being made on the post of Lambardar. It is also submitted that since the petitioner was appointed by learned Collector, vide order dated 21.11.2019 (Annexure P-3) i.e. prior to Haryana Government's Memo dated 23.11.2021, therefore, his appointment is not liable to be set aside. With the aforesaid submissions, it is prayed that the impugned orders (Annexure P-4 and Annexure P-5), passed by learned Divisional Commissioner as well as learned Financial Commissioner, respectively, be set aside and learned Collector's order dated 21.11.2019 (Annexure P-3) be maintained.

5. Heard.

6. In the present case, the petitioner was appointed as Lambardar (BC) of village Kakana Bhadri by learned Collector, vide order dated 21.11.2019 (Annexure P-3), however, on an appeal being

learned Divisional Commissioner vide order dated 13.01.2022 (Annexure P-4). The aforesaid order dated 13.01.2022, passed by learned Divisional Commissioner was further upheld by learned Financial Commissioner, vide order dated 30.04.2024 (Annexure P-5) by observing as under :-

“5. I have heard the counsel for the parties and have gone through the record available on file. The parties have relied upon the order dated 15.11.2018 passed by the Assistant Collector 1st Grade, Gohana, wherein it has been observed that there has been no encroachment over the Panchayat land by the appellant. The Assistant Collector 1st Grade visited the spot on 15.11.2018 and has observed that in Khasra No. 220 there was no illegal possession as on day however, in the same report it has been observed that in same Khasra No. 220 the crop of wheat was sown to the extent of area 1 kanal 10 marla. In the order dated 15.11.2018, it has been mentioned that there was an illegal possession, which was also corroborated from the report dated 31.03.2017 of DRO, which however has been vacated thereafter. So, it was established that there was an illegal possession over the Panchayat's land by Satyavir Singh, which however was vacated later on. So, it was a grave misconduct and the Lambardar is a connect between the residents of village and the Government machinery and the illegal encroachment over the Panchayat's land on any point of time would be a serious misconduct and such person could not be considered fit for the post. It is settled principle of law that in the matter of appointment of Lambardar, the choice of Collector should not be interfered with, unless there is an illegality or perversity in the order. However, in present case Satyavir Singh was in illegal possession of the Panchayat land the reference which was duly mentioned in the order passed by the Revenue Authority, therefore, there

was an illegality in the choice of the Collector. The Commissioner has legally and rightly set aside the order passed by the Collector.

6. In view of above, there is no merit in the appeal/petition, and the same is hereby dismissed in interest of justice.”

6.1 A perusal of the above extracted order passed by learned Financial Commissioner would manifest that earlier the petitioner was in illegal possession of panchayat land, however, the same was vacated later on, which is a grave misconduct. Accordingly, it has been observed by learned Financial Commissioner that the choice made by learned Collector was perverse and learned Divisional Commissioner had rightly set aside learned Collector's order.

7. Learned counsel for petitioner has failed to dislodge the aforesaid observations made by learned Financial Commissioner.

8. As regards the contention raised by learned counsel for petitioner that being in service is no bar for appointment of Lambardar, it is observed that although there is no bar in appointing a person in service as Lambardar, however, it is required to be seen as to whether such person would be able to take time to perform duties of Lambardar. In the instant case, concededly, the petitioner is working as a Mason under outsourcing policy of Government in B.P.S. Mahila University, Khanpur Kalan, therefore, learned Divisional Commissioner has rightly observed that during the working hours, petitioner would not be available to local people, officials of Revenue and other departments, for the work of Lambardari.

9. As regards the contention of learned counsel for petitioner that learned Collector's order appointing the petitioner as Lambardar is to

be maintained, in view of Haryana Government's Memo dated 23.11.2021, whereby fresh appointments of Lambardar have been frozen, suffice it to say that since proceedings for filling up vacancy of Lambardar (BC) of village Kakana Bhadri was initiated prior to the issuance of Haryana Government's Memo dated 23.11.2021, therefore, the said Memo dated 23.11.2021 would not be applicable as regards the appointment of Lambardar (BC) of village Kakana Bhadri is concerned.

10. In view of the above discussion, I do not find any merit in the instant civil writ petition and the same is accordingly dismissed. However, it needs to be noticed that although learned Divisional Commissioner had set aside learned Collector's order dated 21.11.2019 (Annexure P-3), however, no further direction as regards appointment of Lambardar (BC) of village Kakana Bhadri has been issued. Accordingly, it is directed that learned Collector, Sonipat, in continuity of earlier proceedings, may get fresh proclamation issued in village for filling up the vacancy of Lambardar (BC) of village Kakana Bhadri.

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

(HARSH BUNGER)
JUDGE

18.10.2024
sjks

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