

208 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-36118-2019 (O/M)
Date of decision : 05.08.2024

Sharda Devi Petitioner

Versus

Financial Commissioner (Appeals), Punjab and others Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. K.S. Dadwal, Advocate,
for the petitioner.
Mr. Navneet Singh, Senior DAG Punjab.
Mr. R.S. Chauhan, Mr. Rohit Sapehiya,
Ms. Deepika Chauhan, Advocates
for respondent No. 4.

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HARSH BUNGER, J.

1. Petitioner (Sharda Devi) 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 02.09.2019 (Annexure P-4), passed by learned Financial Commissioner (Appeals), Punjab (in short 'Financial Commissioner') whereby he has set aside the order dated 02.02.2016 (Annexure P-1), passed by the learned Collector, Hoshiarpur (in short 'Collector') and also order dated 24.01.2017 (Annexure P-2), passed by learned Commissioner, Jalandhar Division, Jalandhar (in short 'Divisional Commissioner') and appointed respondent No. 4 (Arjan Singh) as Lambardar of village Behbal Manj, Tehsil Mukerian, District Hoshiarpur.

1.1 A further prayer has been made by the petitioner for restoring the learned Collector's order dated 02.02.2016 (Annexure P-1) whereby the petitioner was appointed as Lambardar of village Behbal Manj, Tehsil

Mukerian, District Hoshiarpur and also restoring the order dated 24.01.2017 (Annexure P-2), passed by learned Divisional Commissioner, whereby the learned Collector's order was upheld.

2. Briefly, on demise of Shri Partap Singh, previous Lambardar of village Behbal Manj, Tehsil Mukerian, District Hoshiarpur, 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, eighteen applications (including the one submitted by the petitioner and also respondent No. 4-Arjan Singh), were received, accordingly, their antecedents were got verified from the local police. It transpires that the Tehsildar, Mukerian recommended the name of one Shri Rashpal Singh son of Milkhi Ram for appointment to the aforesaid vacancy, however, the Sub Divisional Magistrate recommended the name of the petitioner (Sharda Devi) for appointment to the aforesaid vacancy and forwarded the matter to the learned Collector.

2.1 The learned Collector, upon appreciating the relative merits/demerits of the candidates, appointed the petitioner as Lambardar of village Behbal Manj, vide order dated 02.02.2016 (Annexure P-1).

2.2 Respondent No. 4-Arjan Singh challenged the Collector's order dated 02.02.2016 (Annexure P-1) by filing an appeal before the learned Divisional Commissioner, however, the same was dismissed, vide order dated 24.01.2017 (Annexure P-2).

2.3 Being aggrieved against the aforesaid orders (Annexure P-1 and Annexure P-2), respondent No. 4 preferred a revision petition (ROR-388-2017) before the learned Financial Commissioner, which came to be allowed, vide order dated 02.09.2019 (Annexure P-4) whereby the

orders (Annexure P-1 and Annexure P-2) were set aside and respondent No. 4-Arjan Singh was appointed as Lambardar of village Behbal Manj.

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 Financial Commissioner has erred in law and facts in allowing the revision petition preferred by respondent No. 4 and thereby setting aside the well reasoned order dated 02.02.2016 (Annexure P-1), passed by the learned Collector, appointing the petitioner as Lambardar and also the order dated 24.01.2017 (Annexure P-2), passed by learned Divisional Commissioner, whereby the Collector's order was upheld. It is submitted that the impugned order dated 02.09.2019 (Annexure P-4), passed by learned Financial Commissioner is against the well settled law that in the matter of appointment of Lambardar, the choice of Collector is not to be lightly interfered with, even if two views are possible unless there is patent illegality or perversity therein. It is further submitted that the learned Financial Commissioner has failed to point out any illegality or perversity in the orders passed by the learned Collector as well as the learned Divisional Commissioner. It is next submitted that the petitioner is more meritorious than respondent No. 4 inasmuch as the name of petitioner was recommended by the Sub Divisional Magistrate, Mukerian and the petitioner is younger in age and more educated than respondent No. 4. As regards the landholding is concerned, it is submitted that the petitioner has sufficient landholding in her name and is also involved in social work in the village. It is also submitted that although respondent No. 4 is an ex-serviceman, similarly, the husband and brother in law of

petitioner have also served the Army, therefore, her family has also rendered service to the State, which is also one of the considerations envisaged under Rule 15 of Punjab Land Revenue Rules (in short 'PLR Rules'). Learned counsel for petitioner contends that the learned Financial Commissioner, while setting aside her appointment, has observed that while appointing Lambardar, the aspects as regards the availability, readiness to discharge the duties and availability to the village community during the late hours is to be considered, however, the learned Financial Commissioner has not indicated as to in what manner the petitioner would not be able to discharge the duties of Lambardar even during the late hours, if need so arises. Accordingly, prayer has been made for setting aside the impugned order dated 02.09.2019 (Annexure P-4) being unsustainable in the eyes of law and for restoring the Collector's order, appointing petitioner as Lambardar.

5. Per contra, learned counsel for respondent No. 4-Arjan Singh has opposed the submissions made on behalf of petitioner by submitting that the impugned order dated 02.09.2019 (Annexure P-4) passed by the learned Financial Commissioner is well reasoned and justified and does not call for interference by this Court. It is submitted that respondent No. 4 is an ex-serviceman and on that account he deserves preference in the matter of appointment of Lambardar, however, the said aspect was ignored by the learned Collector as well as learned Divisional Commissioner. It is further submitted that the learned Collector had appointed the petitioner as Lambardar in an arbitrary manner without considering the merits of respondent No. 4. It is next submitted that respondent No. 4 being an ex-serviceman, possesses good character,

Army Graduation Certificate dated 30.09.2005 and Training Security Certificate dated 30.09.2005 have been issued. It is also submitted that respondent No. 4 has more landholding than petitioner and respondent No. 4 was also elected as the President of District Hoshiarpur Ex-Servicemen Welfare Association. It is, therefore, contended that learned Collector as well as learned Divisional Commissioner had not considered the aforesaid aspects, accordingly, the learned Financial Commissioner had rightly set aside the orders passed by learned Collector as well as learned Divisional Commissioner and appointed respondent No. 4 as Lambardar, which is liable to be maintained. With the aforesaid submissions, learned counsel for respondent No. 4 has prayed for dismissal of the instant civil writ petition.

6. I have heard learned counsel for respective parties and have also perused the paperbook with their able assistance.
7. Here, it would be apposite to state the relative merits of the candidates, which can be summed up as under :-

Particulars	Petitioner (Sharda Devi)	Resp. No.4 (Arjan Singh)
Age	40 years	48 years
Educational qualification	MA. B.Ed., Diploma in I.T.	10th pass Army Graduation Certificate
Land holding/s	5 Kanal	42 Kanal-2Marla
Recommended by	Sub Divisional Magistrate, Mukerian	---
Service to Nation	Husband and brother in law served in the Army	Ex-serviceman from Indian Army

- 7.1 A bare perusal of the above chart would show that petitioner is younger in age; is more educated than respondent No.4 and her name was recommended by the Sub Divisional Magistrate, Mukerian.

7.2 In ***Mahavir Singh Versus Khiali Ram and Others***, 2009(1)

RCR (Civil) 757, Hon'ble the Supreme Court held that with regard to the appointment of a Lambardar in the State of Punjab, age of a candidate is a relevant factor. As far as the recommendations by the lower Revenue Officer is concerned, 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 vs The Financial Commissioner, Revenue, Punjab*, 2016(1) LAR 592.

7.3 Although, respondent No. 4 owns more land than the petitioner; however, it is observed that as far as holding of land is concerned, same is taken into consideration only for the purpose of security towards government revenue collected by the Lambardar. Petitioner has about 5 Kanals of land, which is sufficient to be taken into consideration for the purpose of security of revenue, collected by the Lambardar. Moreover, 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.

7.4 Furthermore, 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 choice of the District Collector cannot be lightly set aside, even if two views are possible, unless there is any patent illegality or perversity therein. It is also well established that the learned Collector is the main authority for appointment of the Lambardar. It is the Collector, who not only appreciates the antecedents of all the candidates in the fray but also personally interacts with them. Thus, the subjective satisfaction of the Collector, could not have been ignored in a cavalier manner by the learned Financial Commissioner.

8. Besides, I have also gone through the order passed by the learned Collector and a perusal thereof would show that the learned Collector has referred to the relative merits and de-merits of the candidates and thereafter, learned Collector appointed the petitioner as Lambardar. The order passed by the learned District Collector is well reasoned and justified, which does not call for any interference. Moreover, the learned Collector's order was further upheld by the learned Divisional Commissioner.

9. That apart, in the impugned order dated 02.09.2019 (Annexure P-4), passed by learned Financial Commissioner, it has been observed that Tehsildar, Mukerian had recommended the name of Arjan Singh (respondent No. 4 herein), however, a perusal of the Collector's order would show that the Tehsildar, Mukerian, had recommended the name of one Rashpal Singh son of Milkhi Ram, which is factually incorrect. Further, the observation made by learned Financial Commissioner that the learned Collector has not given any reason as to why he is preferring the present petitioner over respondent No. 4, is

totally misplaced. From the Collector's order, it is evident that the petitioner was found to be a better placed candidate than the other candidates by observing that she is younger in age and more educated than the other candidates and also that her name was recommended by Sub Divisional Magistrate, Mukerian. Furthermore, the learned Financial Commissioner appears to have been swayed by the fact that the petitioner being a lady would not be available to the village community during the late hours, however, in my considered view, in the present day modern times, the aforesaid factor cannot be a consideration for not appointing a lady to the post of Lambardar, moreso when the petitioner is a well educated lady having done M.A. B.Ed. and also holds an I.T. diploma.

10. In the afore-mentioned facts and circumstances, I am of the considered view that the order dated 02.09.2019 (Annexure P-4) passed by learned Financial Commissioner is unsustainable and the same is accordingly set aside. Resultantly, the instant writ petition is allowed and the order dated 02.02.2016 (Annexure P-1) passed by learned Collector, appointing the petitioner as Lambardar of village Behbal Manj, Tehsil Mukerian, District Hoshiarpur, is upheld.

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

(HARSH BUNGER)
JUDGE

05.08.2024

sjks

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No