

203 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-37283-2019 (O/M)

Date of decision : 28.11.2024

Malkiat Singh

..... Petitioner

Versus

Financial Commissioner, Revenue, Punjab and others Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Arun Bansal, Advocate
for the petitioner.

Mr. Nirmaljit Singh Diwana, Senior DAG Punjab.

Respondent No. 4 proceeded against ex-parte.

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HARSH BUNGER, J. (ORAL)

1. Petitioner (Malkiat Singh) 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 09.09.2019 (Annexure P-11), passed by learned Financial Commissioner (Appeals), Punjab (in short 'Financial Commissioner').

2. Briefly, on demise of Shri Gurdev Singh, previous Lambardar of village Sulhani, Tehsil and District Ferozepur, proceedings were initiated for filling up the aforesaid vacancy, whereupon only 2 candidates, namely, Malkiat Singh (petitioner) and one Angrej Singh applied for the post of Lambardar. It appears that said Angrej Singh withdrew his application for the post of Lambardar and accordingly, Naib Tehsildar, Talwandi Bhai recommended the name of present petitioner (Malkiat Singh) for appointment to the aforesaid vacancy.

2.1 It appears that before the learned Collector, Ferozepur (in short 'Collector'), one Jitenderpal Singh raised an objection that no munadi (proclamation) was effected in the village.

2.2 Upon this, learned Collector called for report from the field staff and after considering the report of Tehsildar indicating that munadi was conducted and even a rapat No. 589, dated 15.06.2013 was recorded; learned Collector, vide order dated 05.11.2013 (Annexure P-2), appointed the present petitioner (Malkiat Singh) as Lambardar.

2.3 The aforesaid Collector's order dated 05.11.2013 (Annexure P-2), was challenged by one Jitenderpal Singh and Kuldip Singh (respondent No. 4) by filing an appeal before learned Commissioner, Ferozepur Division, Ferozepur (in short 'Divisional Commissioner'), which was dismissed, vide order dated 30.10.2014 (Annexure P-3). Thereafter, respondent No. 4 filed a revision petition (ROR-94-2015) before learned Financial Commissioner, which came to be allowed, vide order dated 16.02.2016 (Annexure P-4) and the matter was remanded to learned Collector for fresh decision.

2.4 It transpires that present petitioner (Malkiat Singh) challenged the order dated 16.02.2016 (Annexure P-4), passed by learned Financial Commissioner before this Court by filing a civil writ petition (CWP-12848-2016), which came to be disposed of, vide order dated 07.03.2017 (Annexure P-10) and the matter was remanded to learned Financial Commissioner for deciding the case afresh.

2.5 Upon remand, learned Financial Commissioner, vide impugned order dated 09.09.2019 (Annexure P-11), remanded the case to learned Collector for fresh decision only on the ground that there is only

Lambardar, whereas for comparison of merits of candidates, there have to be two or more candidates.

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

4. It is noticeable that respondent No. 4 (Kuldip Singh), who had challenged the appointment of petitioner, is the only contesting respondent as the other person, namely, Jitenderpal Singh, was reported to have died. The said respondent No. 4 was also proceeded against ex-parte, vide order dated 05.08.2024, passed by this Court.

5. I have considered the submissions made on behalf of petitioner.

6. In the present case, petitioner came to be appointed as Lambardar of village Sulhani by learned Collector, Ferozepur, vide order dated 05.11.2013 (Annexure P-2) by observing as under :-

“ In this case applications were received from two candidates. One candidate Angrej Singh got his statement recorded for taking back his application and only one candidate Malkit Singh was left. Considering the qualification of this candidate, it is found that this candidate is 8th Pass. He is having approximate 17 acres of land of his own. He is permanent resident of village Sulhani. Finding this candidate to be suitable for the post of Numberdar, he is appointed as permanent Numberdar of the village Sulhani, Tehsil Ferozepur in place of Sh. Gurdev Singh son of Atma Singh. Order Announced. The file be sent to records room after indexing.”

6.1 Apparently, there were only two applications for the post of Lambardar i.e. one by present petitioner (Malkiat Singh) and other by one Angrej Singh. Said Angrej Singh had withdrawn his candidature and only present petitioner was the remaining candidate. Learned Collector

found that the petitioner has studied upto 8th class and was having approximately 17 acres of land and, therefore, appointed him as Lambardar considering him to be the sole candidate. Learned Collector's order was challenged by Kuldip Singh (respondent No. 4) as well as one Jitenderpal Singh (since deceased) primarily on the ground that no munadi (proclamation) was made in the village for calling the applications for the post of Lambardar, however, the aforesaid appeal was dismissed by learned Divisional Commissioner, vide order dated 30.10.2014 (Annexure P-3) by observing as under :-

“4. I have considered the arguments advanced by the learned counsel for the parties and have gone through the record of the case. The impugned order dated 25.11.2013 of District Collector reveals that keeping in view the application given by Jatinderpal Singh, appellant, a report was called regarding proclamation in the village. The Naib Tehsildar, Talwandi Bhai, reported that according to the report of the field staff a proclamation was got done through Faqir Singh (Chowkidar candidate) in the presence of Angrez Singh Sarpanch, Jagtar Singh son of Banta Singh, Amarjodh Singh son of Mangal Singh, Resham Singh Panch of village Sulhani, for which Rapat No. 589 dated 15.6.2012 was entered by the Halqa Patwari. So, it cannot be presumed that no proclamation was done in the village. The learned District Collector has further mentioned that Malkiat Singh, respondent, owns about 17 Acres of land, has passed 8th Class, and is the son of previous Lambardar. On the other hand, both the appellants have criminal background, and a number of criminal cases have been registered against them. FIR No. 12 dated 17.01.2014 under section 324/323/148/149 IPC and 25/27 Arms Act, PS Ghal Khurd; FIR No. 188 dated 10.12.2004 under sections 447/427/506 IPC, PS Ghal

Khurd; and FIR No. 71 dated 11.06.2004, PS Ghal Khurd, under sections 323/324/34 IPC have been registered against appellant No. 1. FIR No. 72 dated 22.05.2014 under section 379 and under section 21 of the Mining and Minerals Act, PS Ghal Khurd, has been registered against appellant No. 2. The appellant no. 1 is also defaulter of the OBC Bank, Branch Talwandi Bhai, and property of appellant No. 1 has already been attached by the said bank for recovery of loan. The learned District Collector, Ferozepur, therefore, vide his order dated 25.11.2013, has rightly appointed Malkiat Singh, respondent, as Lambardar of the village Sulhani, Tehsil and District Ferozepur. I do not see any force in this appeal and dismiss the same.”

6.2 A further revision petition (ROR-94-2015) filed by Kuldip Singh (respondent No. 4), was initially allowed by learned Financial Commissioner, vide order dated 16.02.2016 (Annexure P-4) and the matter was remitted to learned Collector for afresh decision, however, the said order dated 16.02.2016 (Anexure P-4) was set aside by this Court, vide order dated 07.03.2017 (Annexure P-10), passed in CWP-12848-2016 and the matter was remanded to learned Financial Commissioner for deciding the revision petition afresh. Thereafter, learned Financial Commissioner again remanded the matter to learned Collector for fresh decision primarily on the ground that there was only one candidate i.e. present petitioner and, therefore, no comparison of candidates was possible.

7. In my considered view, the aforesaid reasoning rendered by learned Financial Commissioner for remanding the matter to learned Collector is unsustainable in the eyes of law. If, in pursuance to the proclamation made in the village, which is found to be in order, only two candidates had applied and one of the candidates withdrawn his

candidature and on that account, learned Collector had appointed petitioner as Lambardar, no fault can be found with the said choice of learned Collector.

8. In this view of matter, the instant writ petition is allowed by setting aside the order dated 09.09.2019 (Annexure P-11), passed by learned Financial Commissioner and further maintaining the learned Collector's order dated 05.11.2013 (Annexure P-2) whereby petitioner was appointed as Lambardar of village Sasoli, Tehsil and District Ferozepur.

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

(HARSH BUNGER)
JUDGE

28.11.2024
sjks

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