

120 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-13160-2023 (O/M)

Date of decision : 14.01.2025

Krishan Kumar

..... Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Surender Saini, Advocate
for the petitioner.

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HARSH BUNGER, J. (ORAL)

1. Petitioner (Krishan Kumar) has filed the instant civil writ petition under Articles 226/227 of the Constitution of India, inter alia, for issuance of a writ in the nature of certiorari for setting aside the order dated 24.03.2023 (Annexure P-1), passed by the learned Financial Commissioner, Haryana (in short 'Financial Commissioner'), order dated 22.07.1999 (Annexure P-1A), passed by the then learned Collector, Sonapat and order dated 01.10.2019 (Annexure P-5), passed by learned Collector, Sonapat.

1.1 A further prayer has been made for upholding the order dated 18.12.2013 (Annexure P-3).

2. Briefly, on demise of Shri Randhir Singh, previous Lambardar (General) of village Murthal, District Sonapat, proceedings were initiated for filling up the aforesaid vacancy, wherein only one person, namely, Shri Om Parkash, had applied.

2.1 However, the then learned Collector, Sonapat, vide order dated 11.12.1997, ordered that fresh munadi (proclamation) be made in the village.

2.2 It appears that on fresh munadi (proclamation) also, only one application was received i.e. from respondent No. 4 (Nahar Singh), who was son of previous Lambardar. Learned Collector, Sonapat vide order dated 22.07.1999 (Annexure P-1A), appointed respondent No. 4 (Nahar Singh) as Lambardar of village Murthal.

2.3 It transpires that in the year 2008; the above referred Shri Om Parkash preferred an appeal before learned Commissioner, Rohtak Division, Rohtak (in short 'Divisional Commissioner'), challenging order dated 22.07.1999 (Annexure P-1A). The said appeal was decided, vide order dated 16.09.2010 (Annexure P-2), whereby the order dated 22.07.1999 (Annexure P-1A), passed by learned Collector, Sonapat was set aside and further direction was issued that munadi (proclamation) be again made in the village in accordance with law as per order dated 11.12.1997, passed by the then Collector, Sonapat.

2.4 It appears that in pursuance to order dated 16.09.2010 (Annexure P-2), passed by learned Divisional Commissioner, again munadi (proclamation) was carried out in the village, inviting applications for the post of Lambardar of village Murthal, wherein 5 persons, including above referred Om Parkash and petitioner-Krishan Kumar, applied.

2.5 It appears that respondent No. 4 (Nahar Singh) challenged order dated 16.09.2010 (Annexure P-2), passed by learned Divisional Commissioner by filing a revision petition (ROR-73/2012-13), wherein,

vide order dated 21.03.2013, learned Financial Commissioner, Haryana, stayed the order dated 16.09.2010 (Annexure P-2), passed by learned Divisional Commissioner (which was passed on the appeal preferred by aforesaid Om Parkash).

2.6 During the pendency of aforesaid revision petition i.e. ROR-73/2012-13, learned Collector, vide order dated 18.12.2013 (Annexure P-3), appointed the petitioner (Krishan Kumar) as Lambardar of village Murthal.

2.7 Evidently, since order dated 18.12.2013 (Annexure P-3), appointing Krishan Kumar as Lambardar, was in violation of stay order dated 21.03.2013, passed by learned Financial Commissioner, Haryana in ROR-73/2012-13; respondent No. 4-Nahar Singh preferred a contempt petition (COC-328-2014) before this Court, wherein order dated 02.04.2019 was passed by this Court, the relevant extract of which reads as under :-

“ The order of the Commissioner removing the present petitioner as Lumbardar was stayed by the Financial Commissioner way back on 21.3.2013. In spite of the same, Mr. Chander Shekhar, the then Collector, Sonapat proceeded with the appointment of Lumbardar and appointed respondent No. 2 as Lumbardar vide order dated 18.12.2013. The case put up by the subsequent Collector Sh. K.M. Pandurang in his affidavit dated 26.9.2016 before this Court is that the said order passed by the Financial Commissioner was never received in time and it was received much later in the office of Collector, Sonapat after 18.12.2013.

No doubt, Dr. Shalin, the present Collector, Sonapat has filed his affidavit on 25.2.2019 stating that they shall rectify the error but the fact remains that there is no

response from Sh. Chander Shekhar, the then Collector, Sonapat, who is actually responsible for violation of the order passed by the Financial Commissioner. The affidavit of Sh. K.M. Pandurang, the then Collector is wrong on the face of it. As per the Dak receipt report of the office of Collector, Sonapat placed on record on the asking of the Court shows that the said order was received in the office of the Collector, Sonapat on 16.4.2013 and then again on 28.5.2013 much before passing of the order on 18.12.2013. Therefore, let Sh. K.M. Pandurang, the then Collector Sonapat come present before this Court and explain as to how incorrect affidavit has been filed before this Court. Similarly, Mr. Chander Shekhar too shall come present before this Court to show cause as to why order of punishment should not be passed for having violated the order dated 21.3.2013 which has resulted in depriving the present petitioner of holding the post of Lambardar for all these years and allowing another person i.e. respondent No. 2 to continue to hold the post of Lambardar without any right or jurisdiction. The said consequences of having passed the order dated 18.12.2013 in fact cannot be compensated in any manner.

List on 22.7.2019.

Meanwhile the present incumbent on the post of Collector, Sonapat may rectify the error so committed and as undertaken to do so in his affidavit.”

2.8 It further appears that learned Collector, vide order dated 01.10.2019 (Annexure P-5), reviewed the order dated 18.12.2013 (Annexure P-3), whereby petitioner (Krishan Kumar) was appointed as Lambardar of village Murthal and set aside the same.

2.9 Thereafter, petitioner (Krishan Kumar), who was appointed as Lambardar of village Murthal, vide order dated 18.12.2013 (Annexure P-3), preferred a revision petition (ROR-190/2019-20) before

learned Financial Commissioner, Haryana, challenging order dated 10.01.2019 (Annexure P-5). Both the aforesaid revision petitions i.e., one filed by Nahar Singh (respondent No. 4) and other by petitioner-Krishan Kumar, came to be decided by learned Financial Commissioner, vide common order dated 24.03.2023 (Annexure P-1), whereby the order dated 16.09.2010 (Annexure P-2), passed by learned Divisional Commissioner, has been set aside and order dated 22.07.1999 (Annexure P-1A), passed by the then learned Collector, Sonapat, appointing respondent No. 4 (Nahar Singh) as Lambardar, has been restored. The relevant extract of said order dated 24.03.2023 (Annexure P-1) reads as under :-

“ I have heard the Counsels for the parties and have gone through the record available on file. The order dated 22.07.1999 was challenged before the Commissioner, Rohtak Division on 05.06.2008 after a lapse of around 9 years. The petitioner before the Commissioner (Om Parkash) was not an applicant and was supposed to be aware of the fact that Nahar Singh had been working in the village as Lambardar since 22.07.1999. As such, the appeal was filed beyond the limitation and was highly time barred. Section 14 of the Punjab Land Revenue Act, 1887 (hereinafter referred to as Act, 1887) provides the limitation of 60 days for appeal before the Commissioner. The entertaining of the appeal after the lapse of around 9 years was material irregularity, hence not sustainable. Even otherwise, it is settled provision of law that the findings of the Appointing Authority shall not be reversed unless there was a patent irregularity and perversity in the appointment. The Commissioner while passing the order on 16.09.2010 has not made any observation on the merits of the candidates including Nahar Singh. The appointment has

been set aside solely on the ground that the appointment was made by the Collector after making no Munadi. However, the perusal of the order dated 22.07.1999 would reflect that after making the Munadi in the village only one application for appointment of the Lambardar was submitted before him. And, there was no occasion to consider the appeal at level of the Commissioner on lapse of the procedure in appointment once the appellant was well aware of the fact that Nahar Singh has been working as Lambardar in the village since appointment from 22.07.1999. Therefore, the order dated 16.09.2010 passed by the Commissioner is likely to be set aside. Since the order dated 16.09.2010 passed by the Commissioner was a material irregularity, passed after entertaining illegally and without condoning the delay and hence set aside, as above, therefore, the initiation of the de novo proceedings for appointment of the Lambardar vide order dated 18.12.2013 was also not sustainable. As such, the Collector has rightly and legally reviewed the order dated 18.12.2013 vide his order passed on 01.10.2019.

Now coming to the prayer of the petitioner on issue of entertaining the petition against order dated 22.07.1999 of the Collector after invoking the extra ordinary powers under Section 16 (1) of the Act, 1887, it is observed that the matter before this Authority was brought into the notice after a lapse of around 13 years. Section 16 (1) empowers the Financial Commissioner for calling, examining and revising any proceeding of the Revenue Officers below "at any time". However, "at any time" has been interpreted legally up to the level of Hon'ble Supreme Court, wherein the period of even 7 years was found to be beyond limitation. In this regard, reliance is placed upon the case law titled as Loku Ram Vs. State of Haryana 1999 (1) PLR 1 of Hon'ble Supreme Court and case law in CWP No. 9447 of 1999 titled as Shiblal Singh Vs. FC Haryana of Hon'ble Punjab and Haryana High Court.

In view of the above, the order dated 16.09.2010 passed by the Commissioner, Rohtak Division is hereby set aside and order dated 22.07.1999 of the Collector is resultantly restored. The petition is disposed of accordingly.”

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

4. Heard.

5. During the course of hearing, it is not disputed by learned counsel for petitioner that the petitioner was appointed as Lambardar of village Murthal, vide order dated 18.12.2013 (Annexure P-3), passed by learned Collector, Sonapat, in pursuance to remand order dated 16.09.2010 (Annexure P-2), passed by learned Divisional Commissioner, which infact had already been stayed, vide order dated 21.03.2013, passed by learned Financial Commissioner, Haryana in ROR-73/2012-13. Therefore, the then Collector, Sonapat should have stayed his hands in the matter, but he proceeded to pass order dated 18.12.2013 (Annexure P-3), appointing petitioner as Lambardar. The order dated 18.12.2013 (Annexure P-3), passed by learned Collector, appointing petitioner (Krishan Kumar) as Lambardar of village Murthal, stood reviewed and set aside, vide order dated 01.10.2019 (Annexure P-5), passed by learned Collector.

6. Since, the petitioner-Krishan Kumar was appointed as Lambardar of village Murthal in utter violation of order dated 21.03.2013, passed by the then learned Financial Commissioner in ROR-73/2012-13, no fault can be found with the impugned order

dated 24.03.2023 (Annexure P-1), passed by learned Financial Commissioner, Haryana.

7. Keeping in view the aforesaid facts and circumstances, I find no merit in this writ petition and the same is accordingly dismissed.

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

(HARSH BUNGER)
JUDGE

14.01.2025
sjks

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No