

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP-35274-2024 (O&M)
Date of decision :07.01.2025

GURNAM SINGH

...Petitioner

Versus

FINANCIAL COMMISSIONER (APPEALS), PUNJAB
AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Yogesh Kumar Aneja, Advocate
for the petitioner.

Mr. Navneet Singh, Senior DAG Punjab.

HARSH BUNGER, J. [ORAL]

Prayer in the present writ petition, filed under Articles 226/227 of the Constitution of India, is for issuance of a writ in the nature of *certiorari* for setting aside the order dated 31.03.2022 (Annexure P-4), passed by the learned Commissioner, Ferozepur Division, Ferozepur (in short 'Divisional Commissioner') and also the order dated 18.12.2023 (Annexure P-6), passed by learned Financial Commissioner, Punjab (in short 'Financial Commissioner').

2. Briefly, on dismissal of Shri Kashmir Singh from the post of Lambardar (General) of village Gulam Rasool, Tehsil and District Fazilka, proceedings were initiated for filling up the vacancy; wherein, petitioner-Gurnam Singh as well as respondent No.4-Sukhwinder Singh were also the candidates. The learned Tehsildar, Fazilka as well as learned

Sub-Divisional Magistrate, Fazilka recommended the candidature of one Sh. Jaswant Singh son of Sh. Lal Singh and placed the matter before the learned Collector.

2.1 The learned Collector, Fazilka; vide order dated 15.12.2015 (Annexure P-1), appointed Sh. Santa Singh son of Sh. Labh Singh as Lambardar of village Gulam Rasool.

2.2 Feeling aggrieved against the Collector's order, petitioner-Gurnam Singh, respondent No.4-Sukhwinder Singh and two other candidates preferred their separate appeals before learned Commissioner, Ferozepur Division, Ferozepur. All the aforesaid four appeals came to be allowed by learned Commissioner vide common order dated 27.04.2017 (Annexure P-2), whereby learned Collector's order dated 15.12.2015 (Annexure P-1) was set aside and the matter was remanded to learned Collector for fresh decision, by observing as under:-

“9. I have given my thoughtful consideration to the arguments advanced by the learned counsel for the appellants and respondent. The educational qualification of Sukhwinder Singh son of Harmesh Singh is M.A. B.Ed. is 30 years old and as per Naqsha Lambardari, he is owner of 30 Kanals 11 Marlas of land in the village but he has been ignored by the District Collector, Fazilka, on the ground that he owns less land and does not have experience of working as Lambardar. S/Sh. Jaswant Singh and Sukhwinder Singh appellants have contended that they are resident of Dhani Mohna Ram which is Dhakli of village Gulam Rasul and there is no separate post of Lambardar sanctioned for Dhani Mohna Ram. I find that this case was not properly considered by the Distt. Collector before making appointment to the post of a Lambardar. The appellant-Sukhwinder Singh is owner of more land than the respondent No. 1-Santa Singh but Distt. Collector has mentioned that he owns less land. The contention of Jaswant

Singh and Sukhwinder Singh appellants is that there is no separate post of Lambardar sanctioned for Dhani Mohna Ram. But the Distt. Collector has also not considered that there is only one post of Lambardar for Dhani Mohna Ram and village Gulam Rasul. The Distt. Collector, Fazilka may check and verify whether there is only one post of Lambardar for village Gulam Rasul and Dakhli Mohna Ram and if there is only one post of Lambardar for village Gulam Rasul and Dhani Mohna Ram, then why the applicants belonging to Dhani Mohna Ram cannot be considered for appointment as Lambardar of village Gulam Rasul. Hence, I accept all the four appeals, set aside the impugned order dated 15.12.2015 and remand the cases to the Distt. Collector, Fazilka, with a direction to make fresh appointment of Lambardar of village Gulam Rasul after hearing the appellants and respondent and considering their relative merits and demerits. The parties have been directed to appear before the Distt. Collector, Fazilka, on 08.6.2017 for further proceedings. A copy of this order be placed in other connected cases.”

2.3 Upon remand, learned Collector vide order dated 03.08.2017 (Annexure P-3) appointed petitioner-Gurnam Singh as Lambardar of village Gulam Rasool.

2.4 Feeling aggrieved against the Collector's order dated 03.08.2017 (Annexure P-3), respondent No.4-Sukhwinder Singh and two other candidates namely, Sh. Jaswant Singh and Sh. Hushiar Singh; preferred their separate appeals before learned Commissioner, Ferozepur Division, Ferozepur. All the aforesaid three appeal came to be decided by learned Commissioner vide common order dated 31.03.2022 (Annexure P-4), whereby the appeals filed by Sh. Jaswant Singh and Sh. Hushiar Singh were dismissed and the appeal filed by respondent No.4-Sukhwinder Singh was allowed and the matter was remanded to learned Collector for fresh decision.

2.5 Being dis-satisfied with the Commissioner's order dated 31.03.2022 (Annexure P-4), the petitioner (Gurnam Singh) preferred a revision petition (***ROR 488 of 2022***) before the learned Financial Commissioner, which came to be dismissed vide order dated 18.12.2023 (Annexure P-6).

2.6 In the afore-mentioned circumstances, the present writ petition has been filed before this Court, for the relief/s, as noticed here-in-above.

3. Heard.

4. Apparently, petitioner–Gurnam Singh was appointed as *Lambardar* by learned Collector vide its order dated 03.08.2017 (Annexure P-3) primarily on the ground that his father and grandfather had remained *Lambardar* of village Gulam Rasool. However, on appeal filed by respondent No. 4 (Sukhwinder Singh), learned Divisional Commissioner vide its order dated 31.03.2022 (Annexure P-4) set aside the learned Collector's order dated 03.08.2017 (Annexure P-3) and remanded the case to the learned Collector for fresh decision, by observing as under:-

“5. I have considered the arguments, addressed by counsel for the parties and perused the record of the case. The educational qualification of appellants Hushiar Singh and Jaswant Singh is 7th standard whereas the educational qualification of appellant Sukhwinder Singh and respondent Gurnam Singh is higher than them. The educational qualification is one of the important factor for appointment as Lambardar as they have to interact with Government officials and go through the documents before attestation. Many a times less educated person is not in a position to understand the documents. The counsel for the appellants Hushiar Singh and Jaswant Singh has not produced any document which supersedes the claim of respondent No. 1 and Sukhwidner Singh appellant. Therefore, the appeals of

appellants namely Hushiar Singh and Jaswant Singh are hereby dismissed.

Besides above, the appeal of the appellant Sukhwinder Singh is concerned, it is admitted fact that the educational qualification of respondent Gurnam Singh is matriculation, his age is 49 years and appellant Sukhwinder Singh has studied upto B.A. B.Ed. and M.A., his age is 30 years. Moreover the appellant is owner of 4 acres of land whereas the respondent Gurnam Singh is owner of 4 Kanals of land. The District Collector in the impugned order observed that the respondent Gurnam Singh used to work with his father and he has experience of lambardari work. In fact, the father of the respondent Gurnam Singh was dismissed by the District Collector vide order dated 11.6.2014 due to conviction in criminal proceedings, so the such experience, gained by a candidate from his father cannot be considered in this matter. The merits of the appellant Sukhwinder Singh were not properly taken into consideration by the District Collector, while passing the impugned order. The appointment made by the District Collector is without making comparative merits and demerits of the candidates. Therefore, I accept the appeal of the appellant Sukhwinder Singh, set aside the impugned order and remand the case to District Collector, Fazilka for fresh decision after hearing the parties and considering the merits and demerits of the candidates.”

4.1 A revision petition (**ROR-488-2022**) preferred by petitioner before learned Financial Commissioner, has also been dismissed, vide order dated 18.12.2023 (Annexure P-6), by observing as under :-

“6. I have heard and considered the arguments advanced by counsel for the parties and perused the documents available on record and also gone through the written arguments submitted by the parties. In the present case, I find that the respondent has acquired more merits than the petitioner as clear from the order of the Commissioner, Ferozepur Division, Ferozepur as well as from the pleading of the parties.

Therefore, I agree with view expressed by the Commissioner, Ferozepur Division, Ferozepur that the merits of the candidates require fresh look in view of the provisions of Rule 15 of the Punjab Land Revenue Rules, 1909. Moreover, no prejudice is going to be caused to the interest of any parties including the petitioner, if the case is re-heard by the District Collector, Kapurthala where he shall also have the opportunity to plead his case. In this case, the counsel for the petitioner vehemently argued that choice of the Collector cannot be set aside but in my opinion as well as in view of the judgments passed by the Hon'ble Courts in various cases, it has been held that as and when any order passed by the District Collector is found to be suffering from patent illegality or perversity, the higher revenue authorities would be well within their jurisdiction to upset such a patent illegality. Therefore, I agree with the view expressed by the Commissioner, Ferozepur Division, Ferozepur that merits of the candidates requires fresh look in view of the provisions of Rule 15 of the Punjab Land Revenue Rules, 1909. Moreover, no prejudice is going to be caused to the interest of any parties including the petitioner, if the case is re-heard by the District Collector, Kapurthala where he shall also have the opportunity to plead his case.

7. Resultantly, the present revision petition is dismissed and the order dated 31.03.2022, passed by the Commissioner, Ferozepur Division, Ferozepur is upheld. Copy of this order be communicated to the courts below. File be consigned to the record room.

Announced in open court.”

5. Having gone through the order dated 31.03.2022 (Annexure P-4) passed by learned Commissioner as well as order dated 18.12.2023 (Annexure P-6) passed by learned Financial Commissioner and upon perusal of the same, I am of the considered view that the learned Collector had erred in appointing petitioner-Gurnam Singh as Lambardar

primarily considering the fact that his father and grandfather had remained Lambardar of village Gulam Rasool; which in essence, amounts to giving preference to a hereditary claim, when, otherwise, the provision in respect of hereditary claim offends Article 14 of the Constitution of India, as held in '*Karnail Singh v. The State of Haryana etc.*', 1973 PLJ 676.

5.1 Furthermore, respondent No. 4 (Sukhwinder Singh) has been found to be having better merits than the petitioner-Gurnam Singh as he is not only young in age and more educated but he also holds more land than petitioner-Gurnam Singh.

5.2 In my considered view, learned Commissioner as well as learned Financial Commissioner have rightly come to the conclusion that the merits of the candidates require a fresh look, accordingly the remand of the matter to the learned Collector for fresh decision, is justified in the peculiar facts and circumstances of this case.

6 Resultantly, the instant civil writ petition fails and the same is accordingly dismissed.

7. All pending application/s, if any, shall also stand closed.

January 7, 2025

gurpreet

Whether speaking/reasoned:

Whether reportable:

Yes/No

Yes/No

(HARSH BUNGER)

JUDGE