(2011) 04 P&H CK 0078

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 9251 of 2010

Balbir Chand APPELLANT

Vs

Financial Commissioner (Appeals-II), Punjab and others RESPONDENT

Date of Decision : 06-04-2011

Acts Referred:

Punjab Land Revenue Rules, 1909 — Rule 20

Citation : (2011) 3 RCR(Civil) 562

Hon'ble Judges : Ajai Lamba, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Ajai Lamba, J.—This petition has been filed praying for issuance of a writ in the nature of certiorari, quashing Order dated 28.1.2009 (Annexure P-2) passed by respondent No. 2 i.e. Commissioner, Jalandhar Division, Jalandhar; and Order dated 27.1.2010 (Annexure P-4) passed by respondent No. 1 i.e. Financial Commissioner (Appeals-II), Punjab.

2. Order dated 28.2.2008 (Annexure P-1) passed by Deputy Commissioner -cum- District Collector, Hoshiarpur, vide which petitioner had been appointed as Lambardar for village Talwandi Daddian, Tehsil Dasuya, District Hoshiarpur, has been set aside by the Commissioner vide Annexure P-2 while accepting the appeal filed by respondent No. 4, Kuldip Singh. Order (Annexure P-2) passed by the Commissioner has been maintained/upheld by the Financial Commissioner.

3. Comparative merit of the candidates is not in dispute. Petitioner is 39 years of age, matric pass, and is ordinarily & permanently residing in the village. Respondent No. 4, Kuldip Singh is 43 years of age and 6th class pass, however, is serving at Dasuya as Helper in Warehousing Corporation. Other than that, private respondent is stated to have contributed towards LIC policies. Father of the private respondent was an Ex-serviceman.

4. Learned counsel for the petitioner contends that foremost consideration in

such appointments should be that the candidate is residing in the same village. Respondent is residing at Dasuya where he is serving and therefore, would not be suitable for the post. In such circumstances, order (Annexure P-2) passed by the Commissioner and order (Annexure P-4) passed by the Financial Commissioner are not sustainable in law.

5. Learned counsel for respondent No. 4 contends that the Department has given no objection certificate to the respondent to seek appointment as Lambardar of the village. It has further been contended that since Sub Tehsil is at Dasuya, therefore, most of the work is to be carried there. In such circumstances, orders passed by the Commissioner and Financial Commissioner are required to be upheld.

6. I have considered the rival contentions of the learned counsel.

7. Essentially, the impugned orders have been passed on the premise that Deputy Commissioner -cum-District Collector, while appointing the petitioner as Lambardar, has not given any reasons for differing with the recommendations made by the revenue authorities. Revenue authorities recommended the case of respondent No. 4, Kuldip Singh, as Lambardar. The Financial Commissioner has upheld the order on the same premise viz. the name of Kuldip Singh was recommended by Naib Tehsildar and Sub Divisional Magistrate. District Collector has not given any reasons to differ with the recommendations of revenue officers.

8. In so far as, comparative merit is concerned, petitioner is younger and more educated, which aspect of the matter needs prime consideration. Respondent No. 4, admittedly, is serving as Helper in Warehousing Corporation at Dasuya which is stated to be about 20 kilometres from the village.

9. This Court has considered the issue in Civil Writ Petition No. 1395 of 2011 titled Bhag Singh v. Financial Commissioner, Appeals-II, Punjab & others'', decided on 25.1.2011. The following has been held in Para 11 and 12:-

11. I am, however, not; convinced with the argument in so much as the petitioner is serving on a transferable post, though within the district. The issue of availability of Lambardar in the village is required to be considered in context of duties to be discharged by such functionary. Duties to be discharged by a headman/ Lambardar are given out in Rule 20 of the Punjab Land Revenue Rules which when extracted, read as under :-

20. Duties of headman.- In addition to the duties imposed upon headman by law for any purpose, a headman shall

(i) collect by due date all land revenue and all sums, recoverable as land revenue from the estate, or subdivision of an estate in which he holds office, and pay the same personally or by revenue money order or by remittance of currency notes through the post [or at places where treasury business is conducted by the {State Bank of India or any Scheduled Bank as notified by the State Government from time to time}, by cheque on a local Bank] at the place and time appointed in that behalf to the Revenue Officer or assignee empowered by Government to receive it;

(ii) collect the rents and other income of the common land, and the account for them to the persons entitled thereto;

(iii) acknowledge every payment received by him in the books of the landowners and tenants;

(iv) defray joint expenses of the estate and render accounts thereof as may be duly required of him;

[(v) report to the Tehsildar the death or any assignee of land revenue or Government pensioner residing in the estate, or the marriage or remarriage of a female drawing a family pension and residing in the estate, or the absence of any such person for more than a year];

[(vi) report to the Tehsildar and Collector all encroachments on and injury to the roads, public streets and Government, Nazul and Panchayat land;]

(vii) report any injury to Government buildings made over to his charge;

(viii) carry out, to the best of his ability, any orders that he may receive from the Collector requiring him to furnish information or to assist in providing on payment supplies or means of transport for troops or for officers of Government on duty;

(ix) assist in such manner as the Collector may from time to time direct at all crop inspections, recording of mutations, surveys, preparation of records of right, or other revenue business carried on within the limits of the estate;

(x) attend the summons of all authorities having jurisdiction in the estate, assist all officers of the Government in the execution of their public duties, supply, to the best of his ability any local information which those officers may require, and generally act for the landowners, tenants and residents of the estate or sub-division of the estate in which he holds office in their relations with Government;

(xi) report to the Patwari any outbreak of disease among animals [or human beings];

(xii) report to the Patwari the deaths of any right-holders in their estates;

(xiii) report any breach or cut in a Government irrigation canal or channel to the nearest canal officer, or canal Patwari;

(xiv) under the general or special directions of the Collector, assist by the use of his personal influence and otherwise all officers of Government and other persons, duly authorised by the Collector, in the collection and enrolment of recruits for military service whether combatant or noncombatant;

(xv) render all possible assistance to the village postman, while passing the night in the village, in safeguarding the cash and other valuables that he carried.

12. Consideration of the nature of duties indicates that a Lambardar is required to remain present, by and large at all hours, in the village for discharge of his duties. The duties involve active interaction with the villagers/residents of the area. Headman/Lambardar is required to be aware of the deaths in the village for various reports to be made. He is required to be aware of the pensioners residing in the estate; marriage/re-marriage of a female drawing family pension residing in the estate or in case any such person goes absent from estate. He is also required to be aware of the encroachments on roads or Government buildings within the boundaries of estate. He is required to conduct crop inspections so as to assist the Collector. He is further required to attend the summons of authorities having jurisdiction in the estate and assist all officers of the Government in execution of their public duties.

10. Even if the private respondent is residing in the village, yet, because of travelling to Dasuya in relation to his work as a Helper in Warehousing Corporation, surely he would not be in a position to discharge the functions of Lambardar as provided under Rule 20 of the Punjab Land Revenue Rules.

11. So far as the requirement of giving reasons for differing with the report of recommending authorities is concerned, in my considered opinion, it would not be a sufficient ground to set aside the order passed by District Collector. Simply because no reasons have been assigned, would not render the order (Annexure P-1) passed by District Collector, to be perverse in nature. Recommending authorities only collect the material and prepare the comparative merit, to be considered by the Collector. District Collector is the authority who appoints the Lambardar. The facts and circumstances collected by the revenue authorities, subordinate to District Collector, in context of the report from Police etc., are required to be considered. In such circumstances, the reasons assigned by the Commissioner and approved by the Financial Commissioner are not borne out from Rules, law or logic.

12. In view of the above, the petition is allowed. Order dated 28.1.2009 (Annexure P-2) passed by respondent No. 2 i.e. Commissioner, Jalandhar Division, Jalandhar; and Order dated 27.1.2010 (Annexure P-4) passed by respondent No. 1 i.e. Financial Commissioner (Appeals-II), Punjab, are hereby quashed. Order dated 28.2.2008 (Annexure P-1) passed by District Collector is upheld.

