
(2009) 01 P&H CK 0127

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 18945 of 2007

Balwant Singh

APPELLANT

Vs

State of Haryana and others

RESPONDENT

Date of Decision : 09-01-2009

Acts Referred:

Citation : (2009) 2 RCR(Civil) 32

Hon'ble Judges : Ranjit Singh, J

Advocate : Mr. V.K. Jain, Senior Advocate with Mr. Prashant Vashisht, Advocate. For the Respondents No. 1 to 4, Mr. Yashwinder Singh, AAG, Haryana. For the Respondents No. 5 and 6, Mr. Ajay Jain, Advocate., Advocates for appearing Parties

Judgement

Ranjit Singh J.—Aggrieved against the order passed by the Financial Commissioner in remanding the case back of appointment of petitioner as Lambardar for reconsideration, the petitioner has filed this petition to impugn the said order. The facts in brief are that one Dharam Pal, Lambardar of village Gajjiwas expired on 7.1.2003. In response to "Munadi" done for the appointment of Lambardar in place of deceased Dharam Pal, petitioner filed an application before Sub Divisional Officer. Respondents No. 5 and 6 also submitted their applications for the said appointment. Tehsildar recommended the name of Ram Avtar, respondent No. 6 to the Sub Divisional Officer, who after verification of the merits and hearing the candidates concerned recommended the name of the petitioner to the Collector (Respondent No. 3), vide his order dated 10.5.2005 (Annexure P1). Respondent No. 3 accepted the recommendation of the Sub Divisional Officer (Civil) and appointed the petitioner as Lambardar of village Gajjiwas on 30.6.2005. Anil Kumar, respondent No. 5 and Ram Avtar, respondent No. 6 filed an appeal against this order which was dismissed by the Commissioner on 22.6.2006. Respondent No. 3, accordingly issued identity card and certificate of appointment of Lambardar to the petitioner on 9.11.2006. Copy of this has been placed on record as Annexure P4. Respondents No. 5 and 6 filed the revision against the order passed by the Collector as well as the

Commissioner before the Financial Commissioner. The plea was that some forged or fabricated document had also been filed and on the basis of the same, the impugned order has been passed remanding the case back for reconsideration as far as appointment of the petitioner as Lambardar is concerned.

2. The petitioner as well as respondents No. 5 and 6 had hotly contested by pleading their respective cases before the Collector for appointment as Lambardar. The Collector while appointing the petitioner as Lambardar came to the conclusion that Ram Avtar and Anil were residents of village Chandpur whereas the appointment of Lambardar was for village Gajjiwas. This aspect of the matter has also been affirmed by SDO (C) vide his report dated 10.5.2005. It was also reported that the petitioner, Balwant Singh is resident of village Gajjiwas. He was found to have made better contribution in the family planning and small savings. The petitioner was also member of NCC and NSS. Finding him to be meritorious, he was appointed as Lambardar. The Commissioner also considered the submissions made before him and found the petitioner more suitable for the appointment as compared to respondents No. 5 and 6. The contribution of the petitioner in various field was noticed and so also the fact that respondents No. 5 and 6 are from village Chandpur. The Commissioner, accordingly, upheld the order of appointment of the petitioner as Lambardar. As already noticed, the petitioner has been given a certificate for appointment and identity card. In a revision filed before the Financial Commissioner, he has viewed that availability and accessibility in village is essential for Lambardar to be effective. This observation has perhaps been made in the background of the submission made before him that the petitioner though was resident of Gajjiwas but was running a utensils shop at Rewari and his accessibility would be an issue. The Financial Commissioner accordingly took a view that the allegation and counter allegation in regard to the petitioner being busy with his shop at Rewari and the fact that respondents were resident of different village has not been properly considered. He has accordingly remanded the case back for reconsideration to determine these two aspects with the direction that petitioner and respondents be granted another opportunity of hearing to prove their assertion on these aspects. This order has been impugned through the present writ petition.

3. Learned counsel for the petitioner would contend that there is no justification in the order passed by the Financial Commissioner in remanding this case back for reconsideration to the Collector. He would submit that the choice of a Collector was made on the appropriate appreciation of merits and demerits of the respective candidates and his choice in regard to the appointment of Lambardar cannot lightly be interfered with. As per the counsel, there is no perversity seen in the order passed by the Collector, which could have prompted the Financial Commissioner to interfere in the same by directing remand of the case to the Collector. On the other hand, the learned counsel for respondents No. 5 and 6 would submit that the case has simply been remanded as there was doubt in regard to the assertion and counter assertions made by the petitioner and the

respondents concerned. This order would not in any manner prejudice the petitioner and as such the writ petition apparently is misconceived.

4. To support of his submission that accessibility is an issue which is vital and is required to be taken into consideration while appointing the person as a Lambardar, the counsel has drawn my attention to the two judgments of the Financial Commissioner in the cases of Gurdial Singh v. Iqbal Singh 2008(4) RCR(Civil) 283 and Sukh Chain Singh v. Commissioner, Ferozepur Division and others, 2008(2) RCR(Civil) 135. The counsel would also refer to cases of Ujagar Singh v. State of Punjab, 2008(3) RCR(Civil) 28 and Gurlal Singh v. Financial Commissioner (Revenue) Punjab and others, 2008(4) RCR(Civil) 792, to urge that as a general rule, choice of a Collector is final, except where the order discloses a lack of jurisdiction or an error of fact so palpable, as to render his order arbitrary, capricious or unreasonable. The contention of the counsel is that the manner in which merits and demerits of the petitioner and the respondents was discussed ignoring the accessibility aspect would make the order passed by the Collector to suffer from the vice of perversity.

5. I have considered the rival submissions made before me by the respective counsel. In view of the observation made in Ujagar Singh and Gurlal Singh's case supra, the choice of a Collector is generally to be treated as a final. It has rightly been observed that there has to be lack of jurisdiction, error of law or arbitrariness in the order which may require interference in the choice exercised by the Collector. Even in Gurlal Singh's case supra, it is observed that the Financial Commissioner can exercise revisional power only when he finds glaring illegality or irregularity in the orders or if he finds a particular person to be more suitable. It is thus to be seen if the order of Collector would suffer from any such infirmity as pointed out above.

6. While appointing the petitioner as Lambardar, the Collector was well aware of the fact and it was pleaded before him that petitioner is running a shop at Rewari. On the other hand, it was before him that respondents No. 5 and 6 are residents of different village whereas appointment pertain to village Gajjiwas. Can it be said that giving preference to a person who is from a village and may be running a shop at different location would be totally inaccessible and the one who is not belonging to the village should be preferred over him. Certainly under such circumstances preference where he is residing though may be running his business at some different place would be for a person who is from a village. I have not been able to see any perversity, illegality or arbitrariness in the choice exercised by the Collector. It is not even the finding of the Financial Commissioner. Simply because certain facts could not be established, it would not be a sufficient ground for remanding the case back when a particular person has been so appointed as Lambardar and had come to acquire certain rights. The Financial Commissioner perhaps failed to take notice of the fact that while appointing the petitioner, the Collector had before him a report given by Sub Divisional Officer (Civil) clearly revealing that respondents No. 5 and 6 are from

a different village whereas the petitioner was from village Gajjiwas. He has properly assessed the merits of the petitioner visavis respondents No. 5 and 6. Once there is no perversity seen, the choice of Collector is to be preferred in view of the settled provisions of law and is not liable to be interfered with. Accordingly, I am of the view that the Financial Commissioner has exercised his revisional jurisdiction without much justification and the order directing remand of the case for reconsideration cannot be sustained. The same is set aside. The necessary consequences would follow. The order appointing the petitioner is upheld.

The present writ petition is allowed.