
(2011) 05 P&H CK 0064

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 15883 of 2010

Didar Singh

APPELLANT

Vs

Financial Commissioner (Appeal-II) Punjab and Others

RESPONDENT

Date of Decision : 23-05-2011

Acts Referred:

Citation : (2011) 163 PLR 281

Hon'ble Judges : Ajai Lamba, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Ajai Lamba, J.—This Civil Writ Petition has been filed praying for issuance of a writ in the nature of certiorari quashing order dated 13.8.2007 (Annexure P-3), passed by Collector, Gurdaspur and order dated 28.4.2010 (Annexure P-12), passed by Financial Commissioner (Appeals-II), Punjab. The issue relates to appointment of Lambardar for Village Mamrai, Tehsil Batala, District Gurdaspur. The main contestants for the post are Petitioner-Didar Singh and respondent No. 4-Nishan Singh son of Kartar Singh.

2. The claim of the petitioner has been ignored by the Collector, while passing order (Annexure P-3), by saying that the petitioner has also constructed a house at Batala and, as such, the petitioner might be residing at Batala.

3. In the context of respondent No. 4, it has been said in order (Annexure P-3) that respondent No. 4 has been doing the work of Lambardar continuously and, therefore, would make a better candidate to be appointed as Lambardar.

4. The petitioner filed an appeal, which has been allowed vide order dated 21.4.2008 (Annexure P-9), passed by Commissioner, Jalandhar Division, Jalandhar. The Commissioner has taken into account higher qualification of the petitioner, being B.A. pass, visa-vis that of respondent No. 4, who is 5th class pass. The petitioner owns more land. The petitioner is about 9 years younger to respondent No. 4. The Commissioner has also taken into account the fact that

the Voters" List, Ration card, etc. of the petitioner, indicate that the petitioner is a resident of the village. Finding the order (Annexure P-3), passed by the Collector, to be perverse, the petitioner has been appointed as Lambardar by the Commissioner vide order (Annexure P-9).

5. Respondent No. 4 carried a revision before the Financial Commissioner, which has been allowed vide order dated 28.4.2010 (Annexure P-12), essentially on the ground that the Collector had made a choice after considering the merits of the candidates. Respondent No. 4 was found to be best suited by the Collector. The Commissioner had not pointed out any illegality or perversity in the order of the Collector.

6. Learned counsel for the petitioner has argued that the claim of the petitioner has been ignored on the ground that the petitioner might be living in the City because the petitioner owns a house in Batala. Learned counsel for the petitioner has referred to Driving License (Annexure P-4), Ex-serviceman Identity Card (Annexure P-5), Voters" List (Annexure P-6) and Ration Card (Annexure P-7) to contend that the petitioner is a resident of the village and, therefore, his candidature could not have been ignored on the ground that the petitioner might be living in Batala. It has also been pleaded that, surely, the petitioner is more meritorious than respondent No. 4.

7. Learned counsel for respondent No. 4 has only referred to the long experience of respondent No. 4 of serving as Sarbrah Lambardar.

8. I have considered the contentions of the learned counsel for the parties.

9. It is not in dispute that Kartar Singh, father of respondent No. 4, died on 27.4.1994. Thereafter, respondent No. 4 started serving as Sarbrah Lambardar. On 20.12.2006, respondent No. 4 made an application (Annexure P-I) to Tehsildar, Batala, with a prayer that Sanad Lambardari be issued in his favour. It has been pleaded in the application (Annexure P-I) that after death of Kartar Singh, respondent No. 4 had been performing the work of Lambardar continuously as Sarbrah Lambardar and even an Identity Card had been issued by Tehsildar, Batala.

10. Be that as it may, as per the Punjab Land Revenue Rules, proclamation was issued inviting applications for appointment as Lambardar. Vide order dated 13.8.2007 (Annexure P-3), respondent No. 4 was appointed Lambardar by the Collector. The Collector has not examined as to under which provision of law respondent No. 4 continued to serve as Lambardar since the year 1994 till the year 2006, when respondent No. 4 made the application (Annexure P-I), for issuance of Sanad Lambardari in his favour. Learned counsel for respondent No. 4 has also not been able to apprise the Court as to the procedure under which respondent No. 4 continued to serve as Lambardar.

11. In fact, death of Kartar Singh was required to be reported forthwith so that a Lambardar could be appointed by the Collector, after following due process of

law. The same, however, was not done. Be that as it may, suitability of respondent No. 4 for being appointed as Lambardar was required to be seen in the context of his conduct in not bringing to fore the death of Kartar Singh, immediately on his death. Very conveniently, respondent No. 4 kept on serving as Sarbrah Lambardar for a long period of 12 years.

12. So as to examine the comparative merit, I find that the petitioner is better qualified, being a graduate, vis-a-vis respondent No.4, who is 5th class pass. The petitioner has more land in the village. The petitioner is an ex-serviceman and no demerit is attached to the claim of the petitioner. The petitioner is also younger in age by 9 years as compared to respondent No. 4. The comparative merit of the petitioner and respondent No. 4 deserves a conclusion that the petitioner is more meritorious as compared to respondent No. 4.

13. So far as residence of the petitioner is concerned, Driving License of the petitioner (Annexure P-4), issued in the year 2003, Ex-serviceman Identity Card (Annexure P-5), Voters' List for the year 2007 (Annexure P-6) and Ration Card (Annexure P-7), indicate the residence of the petitioner to be in the village. In view of the documents referred to above, this court is of the considered opinion that conclusion drawn by the Collector and upheld by the Financial Commissioner to the effect that the petitioner might be living in Batala, is without any basis and foundation.

14. Considering the conduct of respondent No. 4, he having abused the process of law in continuing to serve as Sarbrah Lambardar without there being any order to that effect, such misconduct cannot be supported by way of appointment of respondent No. 4 as Lambardar.

15. In view of the above, the petition is allowed. Order dated 28.4.2010 (Annexure P-12), passed by the Financial Commissioner, is hereby quashed. Order dated 21.4.2008 (Annexure P-9), passed by the Commissioner is found to be legally tenable and is, therefore, upheld.