

(2009) 02 P&H CK 0118
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 19288 of 2007

Gurdev Singh

APPELLANT

Vs

Financial Commissioner (Appeals-II), Pb., Chandigarh and
others

RESPONDENT

Date of Decision : 13-02-2009

Acts Referred:

Citation : (2009) 4 RCR(Civil) 808

Hon'ble Judges : Ranjit Singh, J

Advocate : Mr. Jatinder Singla, Advocate, Mr. Vijay Sharma, Advocate.,
Advocates for appearing Parties

Judgement

Ranjit Singh, J.—The post of Lambardar of village Bhamaddi, Tehsil Khanna, District Ludhiana seems to be jinxed. The process of appointment is on since August 1994 but is yet to acquire finality.

2. On the death of Pakhar Singh, the process to fill the vacancy was initiated. Proclamation was made on 27.10.1995. Four persons, including the petitioner and respondent No. 4, were the applicants. Collector appointed the petitioner as Lambardar on 15.5.1996. Order in this regard is Annexure P1. Respondent No. 4, Hardip Singh, filed an appeal before Commissioner, who remanded the case back to the Collector, on 24.8.1998 to decide the same afresh. District Collector, however, found that none of the candidate was suitable and he accordingly issued fresh Proclamation on 12.1.1999, inviting fresh applications. This order was challenged before the Commissioner, who set aside the order dated 12.1.1999 and directed the Collector to decide the case after considering the merits and demerits of both the candidates that had remained in the field. District Collector was also required to decide the case preferably within three months from the date of receipt of copy of the order. This time, District Collector appointed respondent No. 4 as Lambardar on 20.11.2001. He found that said respondent was highly qualified and younger in age.

3. Now it was petitioner's turn to file appeal against this order. Commissioner

allowed the appeal and set aside the order passed by Collector through his order dated 26.3.2003. He appointed the petitioner as Lambardar in place of respondent No. 4. This order was challenged by respondent No. 4 before Financial Commissioner, who has now set aside the order of Commissioner and has restored the order passed by the Collector. The petitioner has, therefore, filed the present writ petition to challenge the order passed by the Financial Commissioner.

4. While issuing notice of motion, this Court directed the parties to remain present. Respondent No. 4 could not come present on 19.3.2008. The case ultimately came up for hearing today, when the parties are present.

5. Counsel for the petitioner submits that respondent No. 4 is working as a Teacher and as such, would not be in any position to devote time to perform the duties of Lambardar, which fact was taken into consideration by the Commissioner. Counsel also points out that respondent No. 4 was involved in a case under Section 304B IPC and as such, was not fit to be appointed as Lambardar. Reference is made to a decision given in Civil Writ Petition No. 16513 of 2006 (Amarjit Singh v. Financial Commissioner and others), decided on 7.11.2008 to buttress the submission that a person who is working as a Teacher, would not be fit for being appointed as a Lambardar. In this regard, Division Bench of this Court has observed as under :

"In the present case, we find that the order of the Collector was wrongly interfered with, merely on the ground that respondent No. 4 was the son of the deceased Lambardar and is M.Sc. Pass. It was not taken into consideration that he is a Government Servant and liable for frequent transfer. He will either have to leave the school premises to attend to his revenue duties or attend the school and ignore his duties in the Tehsil. The Lambardar is required for the purpose of identification of the person in the Village, Police Station, before the Registrar and others for attestation of documents and also to attend the Revenue Officers, in connection with measurement, spot verification, preparation of Jamabandies, Khasra Girdawaris etc. A person doing a Government job and especially, if it is a teaching job, will not be able to do justice to either of the two functions."

6. Counsel also refers to the observations made in the case of Kabul Singh v. The Financial Commissioner, Punjab, 2006(3) RCR(Civil) 313 : 2006(2) PLR 213 where registration of a criminal case against candidate, though acquitted, was considered an infirmity for appointment of Lambardar. Writ petition filed by such a candidate to challenge his rejection was dismissed on the ground that he was involved in a criminal case and, thus, had not been able to maintain clean record. In the case of Jog Dhian v. Financial Commissioner, Haryana and others, 2005(1) RCR(Civil) 658 : 2005(2) PLR 306, involvement in a criminal case was considered to be a stigma, which is not completely washed off by acquittal and, thus, the choice of the Collector to appoint other candidate with equal merit was not interfered with.

7. In contrast, counsel for respondent No. 4 would submit that respondent No. 4 can not be ignored simply on the ground that he is in Government service. He would also highlight that Tehsildar and Sub Divisional Magistrate had recommended the name of respondent No. 4 and that the Collector had appointed him, which is required to be preferred in terms of the law laid down by this Court as well as by Hon''ble Supreme Court. To justify that respondent No. 4 would be able to attend to the duties of Lambardar, though he is a Teacher, the counsel contends that the school is located at 3.5 K.Ms from the village and working hours are from 8 A.M. to 2 P.M. The counsel also points out that respondent No. 4 is working as a Lambardar for 5 years and there has been no complaint about his nonavailability. Highlighting the merit of respondent No. 4, the counsel says that he is younger in age and owns more land than the petitioner. Submission also is that respondent No. 4 has been acquitted of the allegation made against him under Section 304 B IPC. He points out that respondent No. 4 was found innocent during investigation but was subsequently summoned by the Court in exercise of jurisdiction under Section 319 Cr.P.C. but was acquitted. To highlight the scope of interference by the High Court, the counsel has drawn my attention to *Mahavir Singh v. Khiali Ram & Ors.*, 2009(1) RCR(Civil) 757 : 2009(1) RAJ 442 (SC).

8. The scope of interference by the High Court in exercise of jurisdiction under Article 226 of Constitution of India would be limited as observed by the Hon''ble Supreme Court in *Mahavir Singh's* case (supra). While exercising jurisdiction under Article 226 of the Constitution of India against the order passed by the Tribunal exercising quasijudicial functions, the High Courts are concerned with correctness of the decision making process and not the decision as such. Thus, the High Court may not be required to see the comparative merit of the case and then opine on the decision as made by the quasijudicial authorities. It is to be seen if the Tribunal/authorities while considering the case of the parties have committed any error in the decision making process or not. The way the Collector and other authorities have been wavering in passing one order and another would not speak well of them. Respondent No. 4 is highly qualified but he suffers an infirmity, being in Government service. It is certainly a factor which can be taken into consideration by the authorities while appointing him for the post of Lambardar. He is younger which is an advantage in his favour but he has not been able to maintain a clean record and had faced prosecution for a serious charge under Section 304B IPC. He may have earned acquittal but that in itself would not mean that he has maintained a clean record. In the cases of *Kabul Singh* (supra) and *Jog Dhian* (supra), two different Division Benches of this Court considered this aspect and came to take a view that even acquittal from a criminal charge would not be enough to ignore this fact while considering a person for appointment as Lambardar. After all, Lambardar is required to have a dealing with the people at large and they must have a confidence in Lambardar, which, to an extent, would get dented if someone has remained involved in a criminal case and is appointed. Acquittal in our system of criminal trial would

mean that the prosecution has not been able to prove the charge. On the other hand, the advance age of the petitioner otherwise would be a disadvantage against him, who is also 9th Class pass. The petitioner has to his credit that he has remained as Sarbrah Lambardar and is a son of Lambardar. He has been performing duties of a Lambardar after death of Pakhar Singh. Thus, he has a hereditary claim in his favour to show. He may have some disadvantage so far his education qualification and the land holding is concerned. Thus, both the candidates seem to be suffering from some infirmity or the other and do not appear to have a clear merit over each other for being appointed as a Lambardar. The process of selection as such, apparently has suffered because the authorities have not considered all these factors while appointing either the petitioner or respondent No. 4. The Collector was justified in ordering fresh proclamation, when the petitioner and respondent No. 4 alone were left in field, which order was set aside by the Commissioner. This is an appropriate case where the choice for appointment needs to be taken for wider consideration.

9. I would, thus, consider it appropriate to set aside the entire process and would quash the order passed by the Collector, Commissioner and the Financial Commissioner with a direction to the Collector to initiate a fresh process for appointment of Lambardar, by making a fresh proclamation and after receiving fresh applications.

10. The writ petition is disposed of in the above terms. The Collector would initiate the process of appointment of Lambardar in the village expeditiously as the issue is pending since long.