
(2008) 08 P&H CK 0141
In the Punjab And Haryana At Chandigarh

Harsunjit Singh

APPELLANT

Vs

The Financial Commissioner and Another

RESPONDENT

Date of Decision : 06-08-2008

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2008) 152 PLR 112 : (2008) 4 RCR(Civil) 794

Hon'ble Judges : Satish Kumar Mittal, J;Daya Chaudhary, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Daya Chaudhary, J.—The petitioner has approached this Court by way of present writ petition under Articles 226/227 of the Constitution of India for quashing of order dated May 30, 2007 (Annexure P-7) passed by Financial Commissioner vide which order dated July 21, 2005 (Annexure P-6) passed by Commissioner, Jalandhar Division confirming the order dated May 25, 2004 (Annexure P-5) passed by Collector appointing the petitioner as Lambardar has been remanded for fresh decision.

2. Briefly the facts of the case as mentioned in the writ petition are that on the death of Lambardar of village Khanpur Khiara, the process to fill-up the vacancy of the Lambardar was initiated and proclamation was made in the village calling applications from the willing candidates. Total 22 applications were received. During the pendency of the proceedings before the Naib Tehsildar, one candidate died and one was proceeded ex parte as he was not present. After completion of necessary formalities, the Naib Tehsildar recommended name of the petitioner to Sub-Divisional Magistrate. Before the District Collector, 16 candidates withdrew their candidature in favour of the petitioner as well as private respondent No. 2 and only the petitioner and respondent No. 2 were left in the field. The Collector appointed the petitioner as Lambardar vide order dated May 25, 2004. Aggrieved by the order of the Collector, respondent No. 2 filed an appeal before the Commissioner which was dismissed and order of the Collector was upheld. Still

feeling dissatisfied, respondent No. 2 filed revision petition before the Financial Commissioner, who after hearing the counsel for the parties, remanded the case for fresh decision on the ground that the District Collector has failed to give finding about the procedure adopted for appointment of the petitioner as Lambardar as he had applied for the post of Lambardar after the expiry of last date fixed for receiving the applications. It has also been mentioned in the remand order that the case was fixed for consideration of the applications of all the candidates on 26.5.2003, but the Naib Tehsildar suo motu ordered for fresh Munadi without taking prior permission from the District Collector, who is the competent authority to order for proclamation and no finding has been recorded by the Collector on this issue.

3. Dissatisfied with the remand order of Financial Commissioner the petitioner has filed the present petition for quashing of the impugned order.

4. Written statement has been filed by respondent No. 2 which is on record. In the written statement, it has been pleaded that the Financial Commissioner has rightly remanded the case for fresh decision as the date of Munadi was extended in order to accommodate the petitioner and no permission was sought from the District Collector who is the competent authority to order for proclamation. Moreover, the Collector has not recorded any finding with regard to extension of date and, as such, the finding recorded by the Collector is perverse, contrary to law and is liable to be set aside.

5. After hearing the arguments of the learned Counsel for the parties and perusing the orders passed by the authorities, we are of the view that the Financial Commissioner has passed a detailed speaking order and has given a finding that when the case was fixed for consideration of applications before the Naib Tehsildar on May 26, 2003, he could not suo motu order for fresh Munadi without seeking permission from the District Collector who is the competent authority to order for proclamation and, moreover, no finding has been recorded by the Collector on this issue while appointing the petitioner as Lambardar. Although it is a settled law that choice of the Collector should not normally be interfered with unless the same is perverse or contrary to law but in the present case, the date for application was extended in order to accommodate the petitioner and without taking prior permission of the District Collector. Even though this issue was before the Collector, but he had nowhere mentioned that the Naib Tehsildar was not competent to order for fresh Munadi without seeking permission from the District Collector.

6. In view of the above, we do not think it appropriate to interfere in the order of Financial Commissioner as the case has simply been remanded to the District Collector," Hoshiarpur with a direction to decide the whole issue afresh.

7. The writ petition is dismissed. However, the District Collector is directed to decide the matter within a period of six months.