

(2016) 08 P&H CK 0341

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 7556 of 2016.

Malkhan Singh - Petitioner @HASH Financial Commissioner Haryana and Others

Date of Decision : 30-08-2016

Acts Referred:

Citation : (2017) 1 PLJ 194 : (2017) 2 PLR 200 : (2017) 1 RCRCivil 96

Hon'ble Judges : Rameshwar Singh Malik, J.

Bench : Single Bench

Advocate : R.S. Budhwar, Advocate, for the Petitioner; Pawan Jhanda, AAG, Haryana, for the Respondent; Rajesh Arora, Advocate, for the Respondent No.5.; Chankya Pandit, Advocate, for the Respondent No.4.

Final Decision : Allowed

Judgement

Rameshwar Singh Malik, J. (Oral)—Feeling aggrieved against the impugned order dated 11.1.2016 (Annexure P-6) passed by the Financial Commissioner, Haryana, whereby order dated 7.3.2014 (Annexure P-4) passed by the Commissioner, Rohtak Division, Rohtak, remanding the case to Collector for fresh decision, for appointment on the post of Lambardar, was upheld, petitioner has approached this Court by way of present writ petition under Articles 226/227 of the Constitution of India, for quashing the impugned orders.

2. Notice of motion was issued and in compliance thereof, short reply by way of affidavit of Collector, Karnal-respondent No.3 has been filed. However, neither any reply has been filed either on behalf of respondent No.4 nor on behalf of respondent No.5, despite seeking and having been granted three opportunities. Today, they did not seek any further time for the said purpose.

Heard learned counsel for the parties.

3. Appointing authority for the post of Lambardar is the District Collector. Petitioner was appointed as Lambardar by the District Collector, Karnal, vide self contained order dated 25.10.2011 (Annexure P-2). A bare perusal of the order Annexure P-2 would show that learned District Collector examined, discussed

and considered all the relevant factors, including merits and demerits of all the contesting candidates, before passing his order. Nothing adverse was found against the petitioner. It is neither pleaded nor argued case on behalf of any of the respondents that petitioner was suffering from any kind of disqualification, at the time of his appointment as Lambardar by the District Collector, vide above said order dated 25.10.2011 (Annexure P-2).

4. Specific averments taken by the petitioner in the writ petition have gone completely uncontroverted. The only reason given by the Commissioner as well as Financial Commissioner in their respective impugned orders Annexure P-4 and P-6, was that during the pendency of appeals filed by respondents No.4 and 5 before the Commissioner, petitioner was found involved in a case of theft of electricity on 15.1.2013.

5. It is pertinent to note here that said electric connection was not in the name of the petitioner but was in the name of his father namely Sh. Singh Ram, which is a matter of record. However, petitioner was wrongly shown to be the user of said electric connection. This categoric averment taken on behalf of petitioner in para 12 of the writ petition has gone completely uncontroverted at the hands of the respondents. Since the learned Commissioner as well as Financial Commissioner have neither examined, nor discussed but altogether ignored the above said undisputed fact situation, while passing their respective impugned orders, the same cannot be upheld.

6. It is also a matter of record that case of alleged theft of electricity qua electric connection in the name of the father of petitioner was ordered to be compounded by the competent authority. Once compounding has taken place between the parties, in accordance with law, it does not appeal to reason as to how sword of said allegation shall be kept on hanging on the head of the petitioner for all times to come. In fact, respondents have not placed anything on record to show, even prima facie, that either the electric connection was in the name of the petitioner or he was held responsible for alleged theft of electricity, by any competent authority, by passing an appropriate order, in accordance with law.

7. In the absence of any such supporting material having been made available for perusal of this court, at the hands of the respondents, plea raised on behalf of the respondents has been found wholly misconceived. However, since the Commissioner as well as Financial Commissioner have fallen in serious error of law, while passing their respective impugned orders, the same cannot be sustained, for this reason also.

8. During the course of hearing, when a pointed question was put to learned counsel for the respondents, to refer to any relevant record which might have even remotely supported their contention against the petitioner, qua above said case of alleged theft of electricity, they had no answer and rightly so, it being a matter of record. However, learned counsel for respondent No.5 has placed reliance on three judgments of this Court in Gurdeep Singh v. Financial

Commissioner (Revenue), Punjab and others, 2011 (1) LLR 572; Dharma Pal v. Financial Commissioner, Haryana and others, 2011 (2) PLR 450 and Ram Kumar v. Financial Commissioner, Haryana and others, 2014 (1) LAR 564, to contend that since the appeal before the Commissioner and revision before Financial Commissioner were in continuation of the proceedings and petitioner suffered disqualification in between, remand orders passed by the Commissioner and upheld by the Financial Commissioner deserve to be upheld.

9. So far as judgments relied upon by learned counsel for respondent No.5 are concerned, there is no dispute about the observations made therein. However, on a careful perusal of the cited judgments, none of them has been found of any help to the respondents. It is so said, because fact situation in all the three cited judgments was totally different. In Ram Kumar's case (supra), allegation was already levelled against the candidate before he was appointed as Lambardar, but the District Collector did not consider the same. It is not the fact situation in the case in hand. Similarly, in Dharam Pal's case (supra), candidate appointed as Lambardar was removed after having been found convicted in a criminal case for the offence under Section 302 IPC. It is nobody's case here. Again, in Gurdeep Singh's case (supra), District Collector did not consider the issue of involvement of the candidate for the post of Lambardar in a criminal case, at the time of his appointment. It is also not the case here.

10. Keeping in view the above said clear distinguishing features, none of the above said judgments is applicable to the facts of the present case. It is the settled principle of law that peculiar facts of each case are to be examined, considered and appreciated first, before applying any codified or judgemade law thereto. Sometimes, difference of even one circumstance or additional fact can make the world of difference, as held by the Hon'ble Supreme Court in Padmausundara Rao and another v. State of Tamil Nadu and others, 2002 (3) SCC 533.

So far as merits and demerits of all the three candidates are concerned, the same have been pointed out by the petitioner in para 16 of the writ petition, which reads as under:-

Sr.No.

Petitioner Malkhan Singh

Respondent No.4 Satpal Singh

Respondent No.5 Prithvi Singh

1

Age

47 years

40 years

48 years

2

Education qualification

B.A. Pass

10+2

10th

3

Agricultural land

43 bighas in village Barana and 11K-8M at village Manchuri

2B-5B

41B-19B

4

Small saving

Rs. 13,50,000/-

Rs. 5,00/-

5

Recommendations

1. A.C. 2nd grade 11. Collector, Karnal

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6

Family planning cases

2 cases

2 cases

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7

Misc.

1. Rs. 1100/- Red Cross Society.

1. Rs. 200/- to Gaushala

ii. Rs. 511/- Viklang Kender

ii. Rs. 200 to Matribhumi Seva mission.

iii. 521/- Gaushala

iii. Belongs to the family of Freedom Fighter

iv. Permanent member of Bhartendu Natya Institute Village Udana and Indo Vertu Institute run by Govt. for Prevention of Foeticide of girl child and also participating in the social works etc.

11. A perusal of the order passed by the District Collector would show that all the above said relevant factors were taken into consideration before passing the impugned order, appointing the petitioner as Lambardar. Further, neither Commissioner nor Financial Commissioner recorded any finding that the order passed by the District Collector was suffering from any patent illegality or perversity. It is the settled proposition of law that choice of the District Collector in the matters of appointment of Lambardar is not to be interfered with, by the higher revenue authorities unless order passed by the District Collector has been found suffering from any patent illegality or perversity. It is neither pleaded nor argued case on behalf of any of the respondents that order passed by the District Collector was suffering from any patent illegality or perversity. Since the Commissioner as well as Financial Commissioner have failed to consider all the above said relevant aspects of the matter, while passing their respective impugned orders, the same are patently illegal which cannot be sustained, for this reason as well.

12. In fact, until and unless, higher revenue authorities, including Commissioner and Financial Commissioner, arrive at a definite conclusion recording cogent finding that order under appeal or revision before them is suffering from any patent illegality or perversity, they would be exceeding their jurisdiction, while setting aside the order passed by the District Collector, appointing the most suitable candidate as Lambardar. In the present case, no such finding has been recorded either by the Commissioner or by the Financial Commissioner that the order passed by the District Collector appointing the petitioner as Lambardar was, as a matter of fact, suffering from any patent illegality or perversity.

13. As noticed herein above, no such illegality or perversity in the order passed by District Collector has been pointed out by any of the learned counsel for respondents. Neither Commissioner nor Financial Commissioner have considered and appreciated true material fact in the correct perspective, qua baseless allegation levelled against the petitioner. One material aspect of the matter was that electric connection was in the name of father of the petitioner and the second equally important aspect of the matter was that allegation stood compounded. Since the Commissioner as well as Financial Commissioner took the said allegation against the petitioner, without there being any basis for it and altogether ignored the positive consequences of compounding, the impugned

orders have been found suffering from patent illegality and the same cannot be sustained.

No other argument was raised.

14. Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that since the impugned orders dated 7.3.2014 (Annexure P-4) and 11.1.2016 (Annexure P-6) passed by the Commissioner as well as Financial Commissioner respectively, have been found patently illegal orders, the same cannot be sustained. Accordingly, impugned orders Annexure P-4 and P-6 are hereby set aside.

15. Consequently, order dated 25.10.2011 (Annexure P-2) passed by the learned District Collector, Karnal, which has been found to be factually correct and legally justified order, appointing petitioner as Lambardar, is restored. Present writ petition deserves to be accepted.

16. Resultantly, with the above said observations made, instant writ petition stands allowed, however, with no order as to costs.