
(2013) 02 P&H CK 0073
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 2030 of 2011

Mohinder Pal

APPELLANT

Vs

The Financial Commissioner Haryana and Others

RESPONDENT

Date of Decision : 21-02-2013

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Penal Code, 1860 (IPC) — Section 323, 34, 376, 406, 419

Citation : (2013) 170 PLR 214

Hon'ble Judges : Rameshwar Singh Malik, J

Bench : Single Bench

Advocate : Lokesh Sinhal, for the Appellant; Kirti Singh, DAG, Haryana for the State and Mr. Mohit Jaggi, for the Respondent

Final Decision : Dismissed

Judgement

Rameshwar Singh Malik, J.—The petitioner impugns the order dated 16.12.2010 (Annexure P-3) passed by the Financial Commissioner, vide which the orders dated 28.11.2007 (Annexure P-2) and 14.12.2006 (Annexure P-1) passed by the Commissioner, Ambala Division and District Collector, Ambala respectively, appointing the petitioner were set aside and respondent No. 4 was appointed as Lambardar. The brief facts of the case are that consequent upon the death of earlier Lambardar Sh. Ajaib Singh, one post of Lambardar of general category fell vacant in the village of the parties. Proceedings were initiated to fill up the post of Lambardar. Finally, the District Collector appointed the petitioner as Lambardar, vide order dated 14.12.2006 (Annexure P-1). Dissatisfied, respondent No. 4 filed his appeal before the Commissioner, Ambala Division—respondent No. 2, who dismissed the same, vide order dated 28.11.2007 (Annexure P-2). Respondent No. 4 filed his revision before the Financial Commissioner and the same was allowed, vide order dated 16.12.2010 (Annexure P-3), appointing him as Lambardar in place of the petitioner.

2. Feeling aggrieved against the above said impugned order passed by the

Financial Commissioner, petitioner has approached this Court by way of instant writ petition under Article 226/ 227 of the Constitution of India, seeking a writ in the nature of Certiorari, for quashing the above said order.

3. Notice of motion was issued and pursuant thereto, written statement was filed only on behalf of respondent No. 4.

4. Learned counsel for the petitioner submits that the impugned order passed by the Financial Commissioner was patently illegal, because respondent No. 4 was facing criminal charge for an offence involving moral turpitude. He relies upon the order dated 2.5.2008 (Annexure P-4) passed by learned Chief Judicial Magistrate, Kurukshetra, framing charge against respondent No. 4 under Sections 419/ 420/ 467/ 468/ 471 IPC in criminal case No. 88 of 2009 in FIR No. 55 dated 11.2.2008, registered at Police Station City Thanesar. He further submits that the Financial Commissioner has taken an erroneous view while upsetting the factually correct and legally justified order passed by the District Collector and upheld by the Commissioner. Finally, he prays for setting aside the impugned order and for acceptance of the writ petition.

5. To substantiate his arguments, he relies upon the judgments of the Hon'ble Supreme Court in Inderaj Vs. Financial Commissioner and others, and judgments of this Court in Gurpreet Singh Vs. State of Punjab , Mahender Singh v. Financial Commissioner, Haryana and others, 2007 (1) LAR 542, and order dated 9.11.2010 passed in CWP No. 22436 of 2010 (Mohinder Singh v. state of Punjab & others).

6. On the other hand, learned counsel for respondent No. 4 submits that mere pendency of the criminal case, was no ground to deny the appointment to respondent No. 4, for the post of Lambardar. He further submits that the petitioner was outrightly disqualified for appointment to the post of Lambardar, for the reason that he was not owning any land when the proceedings for filling up this post were initiated. He next contended that the Financial Commissioner rightly followed the law laid down by a Division Bench of this Court to the effect that the land transferred during the pendency of the proceedings in favour of any candidate, will not be taken into account. He also submits that the petitioner was also involved in FIR No. 193 dated 16.9.2009 and the offence was involving moral turpitude. He submits that quashing of the FIR by this Court on the basis of compromise, will not entitle the petitioner for consideration for appointment to the post of Lambardar. He prays for dismissal of the writ petition.

7. Having heard the learned counsel for the parties at considerable length, after going through the record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered view that since both the candidates were having criminal background, initiating de novo proceedings to fill up this post of Lambardar, seems to be the only workable solution. To say so, reasons are more than one, which are being recorded hereinafter.

8. The Financial Commissioner has accepted the revision of respondent No. 4

against whom the charge has been framed by the court of competent jurisdiction, vide above said order dated 2.5.2008 (Annexures P-4 and P-5). He is further stated to be involved in another FIR under Sections 376/ 511/ 323/ 506/ 34 IPC. The offence committed by respondent No. 4 was involving moral turpitude. Similar was the case of the petitioner. He was also found involved in a criminal case involving moral turpitude. He was facing trial in FIR No. 193 dated 16.9.2009 u/s 420/ 406/ 467/ 468 IPC.

9. Further, it has also come on record that the petitioner was not having any land, which was one of the essential consideration, as per the relevant provisions of law. This was the only reason which weighed with the Financial Commissioner for upsetting the order passed by the Collector as well as by the Commissioner. In this view of the matter, it has become clear that when the proceedings were initiated for filling up this post of Lambardar, the petitioner as well as respondent No. 4 were not eligible. Having said that, this Court feels no hesitation to conclude that the Financial Commissioner has rightly set aside the appointment of the petitioner, however, he proceeded on an erroneous approach, while appointing respondent No. 4 as Lambardar, because he has also been charge-sheeted for an offence involving moral turpitude, as it is clear from Annexures P-4 and P-5.

10. In the cases of the appointment of Lambardar, endeavour of the revenue authorities should be to appoint a person of clean image and most suitable out of the contesting candidates. However, in a given fact situation, like the one in the present case, if no one is found suitable amongst the contesting candidates, the District Collector would do well while starting de novo proceedings, inviting fresh applications from the eligible and interested candidates, instead of appointing a tainted candidate.

11. In the present case, the petitioner as well as respondent No. 4 were not fully eligible on the date when proceedings were initiated to fill up this post. It is a different matter that they may become eligible for applying for the appointment to the post of Lambardar at a later point of time. Thus, while not completely ousting the parties from the zone of consideration, at any given point of time in future, as well, it is unhesitatingly held that the petitioner was not entitled to be considered for appointment to the post of Lambardar, when the proceeding were initiated in the present case. In this view of the matter, the only irresistible conclusion is that de novo proceedings be initiated inviting the applications from interested and eligible candidates, so as to appoint the most suitable candidate amongst them, in accordance with law.

12. So far as the judgments relied upon by the learned counsel for the petitioner are concerned, there is no dispute about the law laid down therein, however, the same are of no help to the petitioner, being clearly distinguishable on facts. Further, 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 judge made law thereto. Sometimes difference of one circumstance or additional

fact can make the world of difference, as held by the Hon''ble Supreme Court in Padmasundara Rao and Others Vs. State of Tamil Nadu and Others,

13. 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 the present writ petition is bereft of any merit and without any substance, thus, it must fail. No case for interference has been made out, either in favour of the petitioner or in favour of respondent No. 4, because of the observations made here-in-above.

15. In view of the above, the case is remanded back to the District Collector, Ambala-respondent No. 3 with a direction to initiate de novo proceedings for filling up this post of Lambardar by inviting fresh applications from eligible and interested candidates. Thereafter, the most suitable candidate enjoying good character and clean image be appointed as the Lambardar, by passing an appropriate order, in accordance with law. Resultantly, subject to the modification aforementioned, the instant writ petition stands dismissed, however, with no order as to costs.