

(2016) 12 P&H CK 0045

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 9326 of 2016 (O&M)

Mohinder Singh

APPELLANT

Vs

Financial Commissioner, Haryana

RESPONDENT

Date of Decision : 15-12-2016

Acts Referred:

Citation : (2017) 1 LawHerald 72 : (2017) 1 PLJ 299 : (2017) 2 RCRCivil 347

Hon'ble Judges : Rameshwar Singh Malik, J.

Bench : Single Bench

Advocate : S.S. Khurana, Advocate, for the Petitioner

Final Decision : Dismissed

Judgement

Rameshwar Singh Malik, J. (Oral) - Present writ petition is directed against the order dated 16.3.2016 (Annexure P-10) passed by the Financial Commissioner, Haryana, whereby revision of the petitioner was dismissed and order dated 10.12.2015 (Annexure P-4) passed by the Commissioner, Gurgaon Division, Gurgaon, appointing respondent No.4 as Lambardar, was upheld, thereby setting aside the order dated 29.10.2014 (Annexure P-3) passed by the District Collector, Rewari.

2. Heard learned counsel for the petitioner.

Facts are hardly in dispute. One post of the Lambardar fell vacant in the village of parties, because of the death of earlier Lambardar namely Sh. Ami Lal. Process for filling up this post was initiated. Petitioner as well as respondent No.4 were contesting for appointment to the post of Lambardar. District Collector, Rewari, appointed the petitioner as Lambardar vide order dated 29.10.2014 (Annexure P-3). Feeling aggrieved against the said order, respondent No.4 challenged it before the Commissioner, who accepted the appeal of respondent No.4, setting aside the order passed by the District Collector and appointed respondent No.4 as Lambardar in place of the petitioner. Revision filed by the petitioner against the order passed by the Commissioner was dismissed by the

Financial Commissioner, vide impugned order dated 16.3.2016 (Annexure P-10). Hence this writ petition.

3. The only argument raised by learned counsel for the petitioner, trying to explain the conduct of petitioner qua the allegation of theft of electricity, was that the amount of Rs. 38,714/- was deposited by the petitioner as penalty on account of theft of electricity but the said electricity connection was issued at the house of his brother. Since brother of the petitioner was serving in the Army, petitioner had deposited that amount. However, this solitary contention raised by learned counsel for the petitioner does not find support from any material on record. The contention seems to be based on an afterthought, which has not been substantiated.

4. When learned counsel for the petitioner was asked to point out any letter or communication or any other material available on record, whereby the petitioner might have clarified this aspect of the matter before any authority immediately after depositing of the above said amount, he had no answer and rightly so, it being a matter of record. Having said that, this Court feels no hesitation to conclude that the Commissioner, Gurgaon Division, Gurgaon, was well within his jurisdiction to pass the impugned order, appointing respondent No.4 as Lambardar, because petitioner was not found a suitable candidate to be appointed as Lambardar.

5. The Commissioner recorded cogent findings before passing the impugned order and the same have been found based on sound reasons. Operative part of the impugned order dated 10.12.2015 (Annexure P-4) passed by the Commissioner, appointing respondent No.4 as Lambardar, which deserve to be noticed here, read as under:-

"Collector, Rewari, while passing his order under appeal, did not properly appreciate the merits of all the candidates. Sher Singh appellant has contributed more than other than candidates in social works because he has donated more amount to various organisations and has got conducted more cases of family planning than other candidates. Two sons of Sher Singh are serving the nation by being in army and he is himself a retired employee. Gram panchayat has also made recommendation for appointing him nambardar by passing resolution. Sher Singh has more agricultural land than other candidates. Pritam Singh and Lal Singh has less contribution towards social organisations.

Against respondent Mohinder Singh raid was conducted by the electricity department, in which electricity of theft was found and electricity department had imposed penalty for theft of electricity and respondent Mohinder Singh has deposited Rs. 38714/- as penalty amount to Dakshin Haryana Bijli Vitran Nigam. Tehsildar, Bawal vide his order dated 23.1.2014 and Sub Divisional Officer (C), Bawal vide his order dated 13.5.2014 had sent their recommendation to appoint Sher Singh as lambardar of village Raiput, to the court of Collector, Rewari. Sub Divisional Officer (C), Bawal, vide his order dated 2.7.2014 has send his

recommendation report in favour of respondent Mohinder Singh on the basis that Sher Singh and Shri Lal Singh are retired employees. Thus, age of these candidates is more and because of more age the capability of a person to work reduces which is not justifiable because in the appointment of lambardar being healthy is important not being of more age. Candidate Sher Singh is better candidate than other candidates. Therefore, I set aside the order under appeal dated 29.10.2014 of the Collector, Rewari being flawed and by accepting appeal of the appellant appoint him Lambardar of village Raipur Tehsil Bawal District Rewari in place of deceased lambardar Shri Ami Lal. Collector Rewari is directed to issue sanad lambardari in favour of appellant Sher Singh and get recorded name of Sher Singh as Lambardar in the Police and Revenue Records."

6. While reconsidering the matter in the revision filed by the petitioner, the Financial Commissioner gave sufficient opportunity to the petitioner to substantiate his plea that the allegation levelled against him regarding theft of electricity was false, but the petitioner miserably failed to do so, by placing on record any relevant material. In this view of the matter, it is unhesitatingly held that the Financial Commissioner was well justified to uphold the above said order passed by the Commissioner, while dismissing the revision petition filed by the petitioner, vide impugned order dated 16.3.2016 (Annexure P-10) and the same also deserves to be upheld.

7. In compliance of the order dated 12.5.2016 passed by this Court, petitioner filed CM No. 16148-CWP-2016, seeking permission to place on record a copy of checking report dated 29.10.2013 as Annexure P- 11. Application is allowed, as prayed for. CM stands disposed of.

8. A bare perusal of Annexure P-11 would show that petitioner has been recorded as consumer. The observations made by the raiding team of Haryana Vidyut Prasaran Nigam Limited in this checking report (Annexure P-11), read as under:-

"Observation:- checked the premises in presence of Sh. Nand Lal uncle of Sh. Mahender Singh Miss Pinki D/o Sh. Mahender Singh and found direct supply taken from Main Lt Line through black colour PVC about 15 mtr which directly connected to the consumer fitting. Videography taken at site by deptt. Camera. Hence act of direct theft of Energy. Illegal wire used for theft removed from the site and taken in custody civil staff."

9. It is the settled proposition of law that choice of the District Collector, in the matters of appointment of Lambardar, is not to be upset lightly, unless the order passed by the District Collector is found suffering from any patent illegality or perversity. However, it is equally true that if the order passed by the District Collector is found suffering from patent illegality or perversity, higher revenue authorities would be well within their jurisdiction to upset such patently illegal order. That is what has been done by the Commissioner, while passing the impugned order dated 10.12.2015 (Annexure P-4). It is so said, because the

District Collector has miserably failed to take note of serious allegation against the petitioner about theft of electricity. Although the allegation was referred by the District Collector in the order passed by him at page 31 of paper book, yet he failed to appreciate true import of allegation, while appointing the petitioner as Lambardar.

10. It goes without saying that candidate for the post of Lambardar must enjoy clean image in the village, so that he may work as a role model for other residents of the village. Since the petitioner was found guilty of theft of electricity and he had deposited an amount of Rs. 38,714/-, as penalty to Dakshin Haryana Bijli Vitran Nigam Limited, with a view to avoid registration of FIR against him, the guilt of theft was, as a matter of fact, accepted by the petitioner. In such a situation, Commissioner as well as Financial Commissioner committed no error of law, while passing their respective impugned orders and the same deserve to be upheld, for this reason also.

11. During the course of hearing, learned counsel for the petitioner could not point out any patent illegality or perversity in either of the impugned orders passed by the Commissioner as well as Financial Commissioner. Further, no prejudice of any kind, whatsoever, has been shown which might have been caused to the petitioner by passing the impugned orders, warranting interference at the hands of this Court, while exercising its writ jurisdiction under Articles 226/227 of the Constitution of India.

12. No other argument was raised.

13. Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that instant writ petition is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

14. Resultantly, with the above said observations made, present writ petition stands dismissed, however, with no order as to costs.