
(2011) 07 P&H CK 0093
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 18322 of 2009 (O and M)

Ram Chander

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 26-07-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2011) 164 PLR 502

Hon'ble Judges : Alok Singh, J

Bench : Single Bench

Judgement

Alok Singh, J.—Petitioner has invoked extra ordinary jurisdiction of this Court under Article 226/227 of the Constitution of India assailing the order dated 19.6.2009 Annexure P-9 passed by the Financial Commissioner, Haryana whereby the Financial Commissioner was pleased to restore order passed by the Collector, Bhiwani, appointing respondent No. 2 as Lambardar of village Pantawas Kalan, Tehsil Charkhi Dadri, District Bhiwani and rejecting the candidature of the petitioner.

2. Brief facts of the present case; inter-alia, are that on the death of Jai Chand, the then Lambardar (Backward) of village Pantawas Kalan, applications were invited through proclamation. Initially only one application was received from the petitioner. However, proclamation was again got done and this time, petitioner, respondent No. 2 and Dharam Singh moved their respective applications for the post of Lambardar. Thereafter, Dharam Singh has withdrawn his candidature in favour of respondent No. 2 -Raghubir Singh. After adopting due procedure and going through the material evidence collected by the Assistant Collector, Second Class, name of respondent No. 2 was recommended by the Assistant Collector, Second Class. The SDM, Dadri having heard both the parties also recommended the name of respondent No. 2. The Collector having heard both the parties vide order dated 23.10.2007 has accepted the recommendations made by the Assistant Collector, First Class as well as Assistant Collector, Second Class and

was pleased to appoint respondent No. 2 as Lambardar of the village having held respondent No. 2 is better candidate than the petitioner. Order of the Collector was impugned before the Commissioner, Hisar Division, Hisar by the petitioner through an appeal. The Commissioner vide order dated 23.1.2009 has held that as per amendment in the Rules, candidate preferably should be 8th standard pass for the post of Lambardar and since both the parties are only 3rd/4th standard pass, therefore, let fresh Munadi be held inviting applications from the eligible candidates. Order of the Commissioner dated 23.1.2009 was challenged by the petitioner as well as by the respondent before the Financial Commissioner. Both the revision petitions were decided by the Financial Commissioner vide impugned judgement dated 19.6.2009 having observed that the amended Rules dated 23.7.2008 whereby qualification for the post of Lambardar, preferably 8th standard pass, is provided, cannot be applied to the pending applications retrospectively. Therefore, order of the Collector appointing respondent No. 2 as Lambardar should be restored.

3. I have heard learned counsel for the parties and have carefully perused the record.

4. Undisputedly, petitioner is 4th standard pass, while respondent No. 2 is 3rd standard pass. Undisputedly, before the Collector, objection was raised by the petitioner that respondent No. 2 is the defaulter of the electricity department and has not paid power consumption charges to the electricity department. Undisputedly, before the Collector, respondent No. 2 has asserted that bill of electricity is for the flour mill, which is in the joint name of respondent No. 2 and his brother and the department has permitted him to make the payment in installments and installments are being paid regularly as per the schedule, therefore, respondent No. 2 cannot be held to be defaulter. Undisputedly, the Collector while considering the candidature of both the candidates, has accepted assertion of respondent No. 2 herein that the electricity department has permitted him to make payment of the electricity dues in installments and respondent No. 2 is making payment of electricity dues as per the schedule fixed by the electricity department, therefore, he cannot be held to be defaulter.

5. In appeal, before the Commissioner, again petitioner herein raised the argument that respondent No. 2 is defaulter of the electricity department and respondent No. 2 has made a wrong statement before the Collector that installments as fixed by the electricity department are being paid. Before the first Appellate Authority i.e. the Commissioner, Hisar, respondent No. 2 herein has made statement that he has paid entire dues of Rs. 86204/- on 22.1.2009, one day before the appeal was decided by the Commissioner on 23.1.2009. Petitioner has produced on record Annexure P- 2, information supplied to the petitioner under the Right to Information Act, to show that respondent No. 2 has never paid any installment of the electricity dues as asserted by him before the Collector, rather he has paid entire electricity dues of Rs. 86204/- on 22.1.2009 during the pendency of the appeal before the Commissioner, which was

ultimately decided on 23.1.2009.

6. Hon"ble the Apex Court in the matter of Mahavir Singh Vs. Khiali Ram and Others, , in paras 20 and 21 has held as under:-

20. The High Court while exercising its jurisdiction under Article 226 of the Constitution of India is basically concerned with the correctness of the decision making process and not the merit of the decision. It has not been found by the High Court that Collector in expressing his opinion as regards comparative merit of appellant vis-a-vis respondent No. 1 committed an error in his decision making process. The principles of natural justice have been complied with. Procedure laid down in the Rules had also been complied with. It is also not correct to say, as has been contended by Mr. Mahajan that the Collector had not taken into consideration the services rendered by the respondent No. 1 to the State. He did acknowledge that the respondent No. 1 had rendered the services to the State as a member of the Armed Forces. The Collector also took into consideration that the views of the respectable of the village were in favour of appellant as also the fact that he had participated in the collection work of the village and helped the government officials at the time of their visit. He furthermore took into consideration the fact that the Naib Tehsildar, Hansi had also recommended his name. Even the Circle Revenue Officer had recommended therefor.

21. It is, therefore, not a case where the finding of the Collector can be said to be perverse. It has also not been established that the said statutory authority while taking a decision failed to take into consideration the relevant factors or based its decision on extraneous considerations or on irrelevant factors not germane therefor.

7. From the dictum of the Apex Court in the case of Mahavir Singh (supra), it is thus clear that choice of the Collector can be interfered with when higher authorities or this Court come to the conclusion that while taking a decision the Collector failed to take into consideration the relevant factors or based its decision on extraneous considerations or on irrelevant factors not germane therefor.

8. As discussed hereinabove, undisputedly, a statement was made by respondent No. 2 before the Collector that the electricity department has permitted electricity dues to be paid in installments and installments are being paid by respondent No. 2 as per schedule fixed by the electricity department. Above statement made before the Collector proves to be totally incorrect, false and misleading in the light of statement made by respondent No. 2 himself before the appellate authority i.e. the Commissioner on 23.1.2009 that in fact entire electricity dues were paid by him on 22.1.2009. Annexure P-2, the information supplied, by the department under the Right to Information Act also goes to prove that respondent No. 2 did not pay any installment as asserted by him before the Collector, rather he has paid total outstanding dues of Rs. 86204/- on

22.1.2009 during the pendency of the appeal before the Commissioner. Therefore, I have no hesitation to hold that respondent No. 2 has misled the Collector by making wrong, incorrect and false statement before him. He was defaulter at the time of consideration of his candidature. Therefore, his candidature ought to have been rejected by the Collector, which was wrongly accepted by the Collector as well as by the Financial Commissioner vide order impugned before this Court.

9. Undisputedly, petitioner is 4th standard pass and respondent No. 2 is also 3rd standard pass. Undisputedly, during the consideration of the candidature by the appellate authority, new Rule 15(i) came into force w.e.f. 2.6.2008 providing that candidate for the post of Lambardar should be literate preferably middle pass. This Court is conscious about the fact that any Rule prescribing qualification shall ordinarily be having prospective effect and cannot be made applicable retrospectively unless provided otherwise. However, in the peculiar facts and circumstances of this case where this Court finds that candidature of respondent No. 2 was wrongly accepted on the basis of wrong, incorrect and false statement and there is serious allegation against the Financial Commissioner that he has decided the appeal without hearing arguments of both the parties on merit on the day when he has heard the arguments on the stay application only. I find that to do complete justice, it would be proper to direct the authorities to call for fresh applications by fresh Munadi and preference should be given to the candidate, who is literate and preferably middle pass. The Collector shall complete the entire exercise within four months from today. Orders passed by the Collector and the Financial Commissioner are hereby quashed.

Petition stands disposed of accordingly.