
(2013) 09 P&H CK 0376
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 22550 of 2012

Satish Kumar

APPELLANT

Vs

Financial Commissioner, Social Security and Others

RESPONDENT

Date of Decision : 03-09-2013

Acts Referred:

Citation : (2014) 173 PLR 526

Hon'ble Judges : Rakesh Kumar Jain, J

Bench : Single Bench

Judgement

Rakesh Kumar Jain, J.—The post of Lambardar in Scheduled Caste category of village Shekhowal, Tehsil Garhshankar, District Hoshiarpur, fell vacant on 22.7.1994 on account of death of one Gurdass Ram. Initially, when proclamation was made inviting applications to fill up the vacant post, Pritam Dass and Kharaiti Lal filed their applications. Pritam Dass was the father of the petitioner. S.D.M. Garhshankar, recommended the name of Pritam Dass but the Collector, vide his order dated 13.3.1996, remanded the case back to the S.D.M Garhshankar, for inviting fresh applications as none of the candidate was found eligible for appointment. After the remand, fresh proclamation was done which attracted 8 applicants including the petitioner. At this stage, Pritam Dass did not contest. After completing necessary formalities, Tehsildar Garhshankar, recommended the name of the petitioner, who was ignored by the Collector on the ground that FIR No. 169 dated 22.11.2000 under Sections 323, 498A and 506 IPC was registered against him. Consequently, respondent No. 4 was appointed as Lambardar (Scheduled Caste).

2. The petitioner challenged the order dated 21.11.2006 passed by the Collector by way of appeal which was allowed and he was appointed as Lambardar. Respondent No. 4 filed appeal against the order of Divisional Commissioner. It was brought to the notice of the Financial Commissioner that FIR No. 169 dated 22.11.2000, registered against the petitioner at the instance of his wife, has been declared untraced and both the husband and wife are living happily with

their two sons after misunderstanding between them was over but the Financial Commissioner allowed the appeal of respondent No. 4 solely on the ground that once the FIR was registered against the petitioner, who though has been acquitted, but stigma still remains and such a person cannot be appointed as Lambardar.

3. Learned counsel for the petitioner has submitted that when the Collector remanded the case on 13.3.2006, he had specifically observed regarding respondent No. 4 that because of his poor education, he would not be able to discharge the duties of Lambardar properly. However, after remand, when there were no other candidates in the fray, the Collector vide his order dated 21.11.2006 observed that Satish Kumar petitioner is 35 years of age. He is 10+2 pass but he was involved in a criminal case in which he was later on acquitted and since he suffers from a stigma, he cannot be preferred. However, while appointing Kharaiti Lal, it has been observed that he is less educated but is a social worker. He remained as Panch for five year and has been selected by consensus.

4. The Commissioner while allowing the appeal of the petitioner has observed that the Collector has erred in ignoring the candidature of the petitioner on the sole ground that he suffers from stigma being involved in a criminal case in which he was acquitted later on, is a perverse finding because registration of FIR or a complaint is not a sufficient ground to ignore a candidate. The Financial Commissioner had, however, observed that the petitioner has now been acquitted, rather cancellation report has been accepted by the C.J.M., Hoshiarpur on 28.8.2010 on the statement of the wife of the petitioner in which she has stated that she does not want to pursue her case.

5. In this view of the matter, it was only an FIR in which no challan had been presented, therefore, there is no question of any stigma involved therein but the Financial Commissioner observed that if the petitioner is unable to conduct his family matter in a manner which is expected from a person of his stature, he would not be a good choice for appointment of a Lambardar.

6. On the other hand, while appreciating the appointment of Kharaiti Lal-respondent No. 4 by the Financial Commissioner, it is observed that he has been a Panch, though he has been working as a labourer, which is not a disqualification.

7. Learned counsel for the petitioner has submitted that Kharaiti Lal was not accepted for the post of Lambardar by the Collector, vide his order dated 13.3.1996 on the ground that he is poorly educated and would not be able to discharge the function of a Lambardar and the matter was thus remanded back for inviting more applications. The said order became final as respondent No. 4 did not challenge it by way of an appeal and the finding recorded in that order by the Collector that respondent No. 4 has a poor educational qualification, is practically maintained.

8. It is further submitted that the petitioner is 10+2 pass. Only allegation against him is that there was a case registered against him by his wife which has already been closed as the Investigating Officer submitted the cancellation report to the Ilqa Magistrate as no prima facie evidence was found against him and the wife of the petitioner had also suffered a statement that she does not want to pursue the said FIR. It was submitted that it was because of misunderstanding between the husband and wife which was ultimately removed and they are now living happily with their children.

9. Learned counsel for the petitioner has referred to a decision of this Court in the case of Shri @ Siri Niwas Vs. State of Haryana and Others, , to contend that involvement in a criminal-case from which a candidate has been acquitted, would not stand in his way to make him ineligible for the purpose of appointment as Lambardar.

10. On the other hand, learned counsel for the respondents has submitted that although the Investigating Agency has submitted untraced report to the Court which has been accepted by the C.J.M., Hoshiarpur, the fact remains that he is suffering from stigma being not a good husband.

11. I have heard learned counsel for the parties and after perusing the record, I am of the considered opinion that the impugned order is patently illegal and cannot be accepted because except the involvement of the petitioner in a criminal case registered vide FIR No. 169 dated 22.11.2000, there is no other deficiency pointed out by the Collector against him, who is otherwise 10+2 pass and obviously more educated than respondent No. 4 whose educational qualifications are not available on record except an observation that he was less educated and the allegation in the said FIR has not been found to be made out by the Investigating Officer who has submitted untraced report to the Ilqa Magistrate.

12. After the untraced report was submitted in accordance with law, opportunity was given to the complainant of the FIR to file objection. The complainant who happens to be the wife of the petitioner appeared before the Ilqa Magistrate and suffered a statement that she does not want to pursue her case, meaning thereby that she was not having any concrete evidence or any objection with regard to the untraced report. Accordingly, the case against the petitioner was closed which was initiated on the basis of aforesaid FIR without there being any trial. Thus, the position of the petitioner is much better than those persons who are acquitted after trial.

13. In these circumstances the finding recorded by the Financial Commissioner that the petitioner suffers from stigma is patently illegal. Moreover, respondent No. 4 has not been found to be suitable for appointment as Lambardar by the Collector vide his order dated 13.3.1996 on the ground that he has poor educational qualification, which has not been looked into by the Financial Commissioner in his order. Besides this, respondent No. 4 is also a labourer who

would not be having an edge over the petitioner, who happens to be a man of means and appropriately qualified being 10+2 pass. Consequently, the present writ petition is hereby allowed and the impugned orders are set aside.