
(2009) 10 P&H CK 0103
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 14956 of 2009

Shamsher Singh

APPELLANT

Vs

The Financial Commissioner, Haryana and Others

RESPONDENT

Date of Decision : 21-10-2009

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2010) 1 RCR(Civil) 410

Hon'ble Judges : S.S. Saron, J

Bench : Single Bench

Advocate : Vineet Chaudhary, for the Appellant;

Final Decision : Dismissed

Judgement

S.S. Saron, J.—This petition under Articles 226/227 of the Constitution of India has been filed seeking quashing of the order dated 15.07.2008 (Annexure- P1) passed by the District Collector, Kaithal (respondent No.3) the order dated (Annexure-P2) passed by the Commissioner, Ambala Division, Ambala (respondent No.2) and the order dated 26.05.2009 (Annexure-P3) passed by the Financial Commissioner, Haryana.

2. Ran Singh, Lambardar of Village Khanauda, Tehsil and District Kaithal died. On account of his death, the post of Lambardar fell vacant. Applications were invited from persons interested through proclamation conducted in the village by the Chowkidar. Several persons applied for consideration for appointment as Lambardar. The Tehsildar, Kaithal recommended the name of Jaipal (respondent No.4) to be suitable for appointment as Lambardar. The District Collector after considering the merits of the candidates vide order dated 15.07.2008 (Annexure-P1) also found respondent No.4 to be suitable for appointment as Lambardar and accordingly issued Sanad Lambardari in his favour. The petitioner aggrieved against the decision of the District Collector filed an appeal before the Commissioner, Ambala Division (respondent No.2) who vide order dated 28.01.2009 (Annexure-P2) dismissed the same. Aggrieved against the same, the

petitioner filed a revision petition before the Financial Commissioner, Haryana who vide his order dated (Annexure-P3) also dismissed the same. Aggrieved against the same the petitioner has filed the present petition.

3. Learned counsel for the petitioner has contended that the petitioner is more meritorious than respondent No.4. A pointed reference has been made to the inter se merit of the petitioner and respondent No.4 in para 7 of the petition. It is contended that the petitioner is younger in age. He has more agricultural land besides has done more social work than respondent No.4. Therefore, it is submitted that the petitioner should have been appointed. Reliance has been placed on the case of Mahavir Singh v. Khiali Rant & Ors., 2009 (2) ACJ 029 (S.C.) : 2009(1) RCR(Civil) 757 (SC).

4. I have given my thoughtful consideration to the contentions of the learned counsel for the petitioner and also gone through the record. It may be noticed that all the revenue authorities including the Assistant Collector 2nd Grade/ Tehsildar, Kaithal, the Assistant Collector 1st Grade/SDM (Civil), Kaithal, the District Collector (Kaithal) (respondent No.3), the Commissioner, Ambala Division (respondent No.2) and the Financial" Commissioner, Haryana (respondent No.1) have found Jaipal (respondent No.4) to be more suitable for appointment as Lambardar. The appointment of Lambardar is an administrative act and primarily prerogative of the District Collector and his choice is not to be lightly undone until and unless there is a gross irregularity, perversity or patent error in an order appointing a Lambardar which would warrant the order that has been passed to be nullified. There is no gross irregularity, perversity or patent error in the order appointing Jaipal (respondent No.4) as Lambardar. The contention of the learned counsel for the petitioner that the petitioner is more meritorious, it may be noticed that this Court is not to sit in appeal over the findings reached at by the revenue authorities in the matter of choice and appointment of Lambardar and substitute its own decision.

5. In exercise of power of judicial review under Articles 226/227 of the Constitution of India, this Court is not to substitute its decision for that reached at by the revenue authorities. In order to interfere with an order appointing a Lambardar in exercise of power of Judicial review it is to be ascertained whether there is any illegality, irrationality or procedural impropriety in the order appointing the Lambardar. In the context of illegality, it may be noticed that ultra vires is a facet of illegality which means that beyond the power of the authority appointing him. Under the head irrationality would be an exercise of discretionary power where it has been exercised on irrelevant considerations or for an improper purpose. In the case of procedural impropriety would be cases where there has been a breach of principles of natural justice, including that of not affording fair and reasonable opportunity to submit his case. Besides, where the authority has not taken into consideration all the facts and circumstances that were necessary to be taken into account in the decision making process or irrelevant facts and circumstances have been taken into consideration. The

decision is not to be perverse which would mean it is not to be improper or contradictory. In the context of irrationality would be a decision that is absurd or illogical. None of the said conditions are shown to have been infringed. Therefore, to interfere with the decision reached at by the revenue authorities in exercise of the supervisory jurisdiction of this Court would be to substitute its own decision. The revenue authorities having taken into consideration all the relevant facts and circumstances and material on record and reached at a conclusion that Jaipal (respondent No.4) is more suitable would not warrant interference of this Court. The case of Mahavir Singh v. Khiali Ram & Ors. (supra) referred to by the learned counsel for the petitioner in fact also lays down that appointment to the post of Lambardar by Collector after considering the merits of the candidate and the procedure laid down in the rules is not to be set aside when it is not perverse. In the said case the decision reached at by the Collector had been set aside by the High Court but the Supreme Court restored that of the Collector. It was observed that 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. Therefore, the merit of the decision admittedly is not to be gone into.

6. In the circumstances, there is no merit, in this petition and the same is accordingly dismissed.