

(2019) 04 P&H CK 0181

In the Punjab And Haryana At Chandigarh

Case No : Letter Patent Appeal No. 806 Of 2016 (O&M)

Vijay Kumar

APPELLANT

Vs

Financial Commissioner (Animal Husbandry-I)

RESPONDENT

Date of Decision : 01-04-2019

Acts Referred:

Indian Penal Code, 1860 — Section 465, 468, 471

Citation : (2019) 04 P&H CK 0181

Hon'ble Judges : Ajay Kumar Mittal, J; Manjari Nehru Kaul, J

Bench : Division Bench

Advocate : R.S. Chauhan, Pankaj Gupta, Kanwaljit Singh, Abhinav Aggarwal

Final Decision : Dismissed

Judgement

There is a delay of 44 days in filing and 170 days in re-filing the present Letters Patent Appeal.

For the reasons mentioned in the applications, the delay in filing as well as re-filing the present Letters Patent Appeal is condoned.

Applications are disposed of accordingly.

LPA No. 806 of 2016

1. In this intra-court appeal under Clause X of the Letters Patent the appellant has assailed the order of learned Single Judge dated 10.07.2015 whereby C.W.P. No. 13399 of 2015 filed by the petitioner (appellant herein) challenging the appointment of respondent No.4-Joginder Singh as Lambardar of village Muradpur by the Financial Commissioner was dismissed.

2. Brief facts of the case are that on the death of one Lachhman Singh Lambardar on 30.01.2005, the post of Lambardar of village Muradpur fell vacant. The Naib Tehsildar, Mukerian, initiated the requisite process for filling up the said post of Lambardar and in response thereto 12 applications were received including that of respondent No.4-Joginder Singh. When the Naib Tehsildar,

Mukerian, forwarded the applications to the Tehsildar, Mukerian, he recommended the appointment of the appellant as Lambardar, but the Sub Divisional Magistrate instead recommended respondent No.4-Joginder Singh in his place for appointment as Lambardar. Resultantly, an appeal was preferred by the appellant before the Commissioner, Jalandhar Division, Jalandhar, which was dismissed vide order dated 03.07.2006. A revision was preferred against the said order of dismissal before the Financial Commissioner who vide his order dated 24.12.2007 appointed the appellant as Lambardar of the village and the Sanad too was issued to him on 08.02.2008. Respondent No.4-Joginder Singh then filed a review application before the Financial Commissioner who dismissed the same on 22.10.2008. The respondent No.4 approached this Court by way of filing C.W.P. No. 10143 of 2009 which ended in dismissal on 22.03.2011. However, an LPA No.342 of 2012 preferred by respondent No.4 against the order of dismissal passed by the learned Single Judge in C.W.P. No.10143 of 2009 was allowed and the matter was remanded back to the Financial Commissioner for deciding it afresh. Vide order dated 29.08.2014 the Financial Commissioner gave a verdict in favour of respondent No.4-Joginder Singh and appointed him as Lambardar. The appellant thereafter approached this Court by way of C.W.P. No. 13399 of 2015 seeking a writ in the nature of Certiorari for quashing the order dated 29.08.2014 passed by respondent No.1-Financial Commissioner (Animal Husbandry-I), Punjab, vide which respondent No.4 had been appointed as Lambardar.

3. The learned Single Judge dismissed the writ by observing that the Collector had appointed respondent No.4 as Lambardar after comparing the inter se merits of the parties for which no interference was called for and specially so in the absence of any perversity in the order of the Collector.

4. The learned counsel for the appellant has contended that the appellant was not only more meritorious than respondent No.4 but had also been working as a Lambardar since 2007 till 29.08.2014 when the respondent No.1-Financial Commissioner (Animal Husbandry-I), Punjab, by a totally non-speaking order set aside the appointment of the appellant and instead appointed respondent No.4 as Lambardar. The learned counsel vehemently urged that the learned Single Judge erred in not appreciating that respondent No.4 was involved in a criminal case bearing FIR No. 153 dated 13.12.1999 under Sections 465, 468 and 471 IPC registered at Police Station Mukerian which culminated in his conviction as well and as such he was ineligible for appointment as Lambardar. He submitted that no doubt that the respondent was subsequently acquitted and his conviction set aside in appeal but the learned Single Judge failed to appreciate that the stigma still stood attached to the candidature of the respondent and the same could not be washed away by his subsequent acquittal. The learned counsel still further urged that the learned Single Judge also failed to take into account that the appellant was a young and energetic man of 50 years as against the respondent No.4 who was 85 years old. Another submission put forth by the learned counsel was that the Collector had erroneously granted the benefit of

hereditary claim to respondent No.4 being the son of the deceased Lambardar and the learned Single Judge gravely erred in not taking note of this illegality as it had already been declared ultra vires, unconstitutional and could not have been extended to respondent No.4 as per the law laid down in Karnail Singh v. Financial Commissioner (1973 PLJ 676) and Sharif v. Financial Commissioner and others reported in 2014 (3) RCR 431.

5. The learned counsel for respondent No.4 on the contrary submitted that the vacancy of Lambardar had occurred on 30.01.2005 on the demise of Lachhman Singh and at that point of time there was no order of conviction against the said respondent. In fact, even subsequently the respondent No.4 had earned an honorable acquittal. He submitted that as a matter of fact it was the appellant who stood convicted and sentenced by a criminal court vide order dated 01.02.2002 (Annexure R4/1) when the vacancy had arisen on the death of the then Lambardar Lachhman Singh and it was only later on at the time of appeal the matter was compromised in Lok Adalat to maintain harmony in the village. He further submitted that respondent No.4 had not got the job of Lambardar as a result of any hereditary claim but because he was more meritorious being administratively more experienced than the appellant coupled with the fact that he was an ex-serviceman having fought three wars while defending the country in 1962, 1965 and 1971.

6. We have heard learned counsel for the parties and have gone through all the material on record as well as the order of the learned Single Judge.

7. We are of the considered opinion that it is not a case where the findings of the Financial Commissioner can be said to be perverse. The Financial Commissioner while appointing respondent No.4 took into consideration all the relevant factors for the purpose of appointment to the post of Lambardar. The respective merits of both the candidates were considered in detail. The contention of the appellant qua stigma which would remain attached to the respondent even after his acquittal is totally devoid of any merit. We cannot ignore the fact that the appellant is an ex-serviceman having defended the country in three wars. If he is physically fit to perform his functions as Head man of a village, his age cannot come in his way of appointment as Lambardar. The job profile of a Lambardar is primarily administrative in nature and if he is physically and mentally fit to discharge his duties as such, he cannot be held ineligible on this ground.

8. As a sequel to the above discussion, we do not find any merit in this appeal. Accordingly, the same is dismissed.