

(2013) 03 P&H CK 0044

High Court Of Punjab And Haryana At Chandigarh**Case No:** CM No. 222 of 2013 in/and CWP No. 24480 of 2012 (O and M)

Rajinder Singh

APPELLANT

Vs

Financial Commissioner, Social
Security and OthersRESPONDENT

Date of Decision: March 13, 2013**Acts Referred:**

- Constitution of India, 1950 - Article 226, 227
- Penal Code, 1860 (IPC) - Section 302, 406, 498A

Hon'ble Judges: Rameshwar Singh Malik, J**Bench:** Single Bench**Advocate:** K.S. Dadwal, for the Appellant;**Final Decision:** Dismissed

Judgement

Rameshwar Singh Malik, J.

The instant writ petition is directed against the order dated 12.10.2012 passed by the Financial Commissioner, Punjab, thereby setting aside the orders passed by the District Collector, Commissioner and the appointment of the petitioner as Lambardar, directing to start de-novo proceedings for appointing the Lambardar. The brief facts of the case are that consequent upon the death of earlier Lambardar Sh. Krishan Dev, one post of Lambardar fell vacant in the village of the parties. Proceedings were initiated to fill up this post. As many as 10 persons applied, claiming themselves to be eligible for appointment to the post of Lambardar. However, finally only two persons remained in the fray, who were petitioner and respondent no.4. District Collector, Hoshiarpur, appointed the petitioner as Lambardar, vide order dated 31.7.2006 (Annexure P-1). Dissatisfied, respondent Surinder Singh filed his appeal before the Commissioner and the same was dismissed vide order dated 26.2.2007 (Annexure P-2). Thereafter, he approached the Financial Commissioner against the above said orders passed by the District Collector and the Commissioner. The Financial Commissioner, vide impugned order

dated 12.10.2012 (Annexure P-4) set aside both the orders passed by the District Collector and the Commissioner, vide which the petitioner was appointed as the Lambardar. The Financial Commissioner found that out of the two candidates, one was suitable for appointment to the post of Lambardar. He ordered to start the denovo proceedings for filling up this post of Lambardar. Feeling aggrieved against the order passed by the Financial Commissioner, petitioner has approached this court by way of instant writ petition, under Articles 226/227 of the Constitution of India, seeking a writ in the nature of Certiorari for setting aside the impugned order dated 12.10.2012 (Annexure P-4). That is how this court is seized of the matter.

2. Learned counsel for the petitioner submits that the impugned order passed by the Financial Commissioner was based on an erroneous approach. He further submits that the settled principle of law that the choice of the Collector is ordinarily not to be interfered with in the case of appointment of Lambardar, has been violated by respondent no. 1, while passing the impugned order. Relying upon the order dated 4.2.2010 (Annexure P-5), whereby FIR No. 145 dated 20.8.2008 under Sections 406 and 498-A IPC was quashed, learned counsel would contend that there was nothing against the petitioner holding him disentitled for appointment to the post of Lambardar, Finally he prays for setting aside the impugned order by allowing the present writ petition.

3. Having heard the learned counsel for the petitioner at a considerable length, after careful perusal of the record and also giving thoughtful consideration to the contentions raised, this court is of the considered opinion that present one is not a fit case for interference at the hands of this court, while exercising its writ jurisdiction, under Articles 226/227 of the Constitution of India. To say so, reasons are more than one, which are being recorded hereinafter.

4. It is a matter of record that the petitioner, as well as respondent no.4 have been found involved in criminal cases. Thus, none of them was enjoying good reputation. Before arriving at a just conclusion, Financial Commissioner has considered each and every aspect of the matter. The relevant part of the impugned order dated 12.10.2012 passed by the Financial Commissioner, reads as under:-

6. As far as Rajinder Singh respondent is concerned his case is still worst. His son Balwinder Singh kidnapped and raped a girl and was convicted for the offence. His wife Puja Rani has levelled serious charges against her husband, father in law (respondent) and mother in law Sudesh Dogra who was also candidate before the District collector. The charges against Rajinder Singh are of moral turpitude. On the basis of these charges an FIR was also registered Rajinder Singh his wife Sudesh Dogra was also candidate. It appears that the respondent knew very well that his reputation is not above board. Therefore, he made his wife a candidate so that in case Lambardari is not bestowed upon him, at least his wife will win the race. Further, if his own daughter-in-law does not feel safe and secure in his presence, how the other women of the village will be safe when they approach him for day to

day work. The Commissioner, Jalandhar Division, has failed to put on record the complaint of Puja Rani dated 9.6.2006 in the court of Shri Harbans Singh Lekhi PCS, A.C.J.M., Hoshiarpur. It was a significant fact to be taken on record for deciding the candidature of Rajinder Singh as Lambardar, because (i) the charges against him of molesting and browbeating his own daughter-in-law were of serious nature, (ii) subsequently, an FIR was also lodged on the basis of same charges.

7. In view of the facts and discussion in the foregoing paragraphs, I am convicted that both the candidates have shady past. They are not the fittest candidates for the post of Lambardar. The Lambardar has to be a person who has very neat and clean record and reputation with the local citizens. Accordingly, I reject the candidature of both the candidates and order that fresh proclamation may be made in the village to invite application for appointment of Lambardar. If the petitioner and respondent still become the candidates the facts mentioned in this order may be taken on record while deciding the Lambardar of the village.

5. In compliance of the order dated 11.12.2012 passed by this court, petitioner filed two Civil Miscellaneous Applications. C.M. No. 221 of 2013 is for seeking exemption from filing certified copy of Annexure P-6. This application is supported by an affidavit and the same is allowed subject to just exceptions. Another Miscellaneous Application No. is 222 of 2013, seeking to place on record the copy of FIR as Annexure P-6, which is also allowed and the FIR is permitted to be placed on record as Annexure P-6. A bare reading of the FIR (Annexure P-6) would show that it was lodged against the petitioner by none else, but his own daughter-in-law. Besides other allegations, direct allegation levelled against the petitioner in the FIR (Annexure P-6) involving mortal turpitude, read as under:-

That on 31.3.2004 my father in law namely Rajinder Thakur in a drunken condition came inside my room forcibly and also closed the door of the room and tried to forcing with me and by requesting them a lot saved my life. That on 31.3.2006, my mother in law and father in law after gave me beatings throw me out from the house with my child, but after compromising the matter, they took me to the house. My mother in law namely Sudesh Dogra is the President of Congress party and my father in law being Lambardar of the village at every moment created a atmosphere of fear in the house and also threatened me.

That on 15.4.2006 my mother in law, father in law and my husband after giving me beatings turned me out from the house alongwith my child and kept my dowry articles, ornaments and other articles kept in their custody and they are misappropriating the same without my consent.

6. When the impugned order passed by the Financial Commissioner is examined and considered in the context of above said allegations against the petitioner, the order passed by the Financial Commissioner has not been found to be suffering from any patent illegality or perversity. Further, although this court is alive to the

principle of law that ordinarily the choice of the Collector in appointment of Lambardar is not to be interfered with, yet it is equally true that it is not an absolute rule. It is also the settled proposition of law that peculiar facts of each case are to be examined, considered and appreciated first, before applying any codified or judge made law thereto. Sometimes, even one additional fact or circumstance can make the world of difference, as held by the Hon"ble Supreme Court in [Padmasundara Rao and Others Vs. State of Tamil Nadu and Others](#), . In view of the above, this court feels no hesitation to conclude that the Financial Commissioner has committed no error of law, while passing the impugned order.

7. The argument raised by learned counsel for the petitioner that the FIR against the petitioner had been quashed on the basis of compromise, vide order dated 4.2.2010 (Annexure P-5) appears attractive at first blush, but when examined deeply, the same has been found to be without any force and deserves rejection. In this regard, a Division Bench of this court in [Ranjit Singh Vs. Financial Commissioner and Another](#), held as under:-

We are further of the view that Rule 15 of the Rules would not exclude consideration of registration of criminal case alleging commission of an offence, inter alia, u/s 302 IPC although the appellant-petitioner has been acquitted.

8. In the present case, as per the allegations against the petitioner, he tried to molest his own daughter-in-law. Thus, considering the case from every angle, it is unhesitatingly held that the Financial Commissioner has rightly ordered for starting de-novo proceedings for filling up this post of Lambardar. In the given fact situation of the present case, no illegality, perversity or jurisdictional error can be attached to the impugned order passed by the Financial Commissioner.

9. No other argument was raised.

10. Considering the peculiar facts and circumstances of the present case noted above, coupled with the reasons aforementioned, this court is of the considered view that the present writ petition is misconceived, bereft of any merit and without any substance. Thus, it must fail. No case for interference has been made out. Resultantly, the present writ petition stands dismissed.