

(2012) 10 P&H CK 0194

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 19793 of 2012

Nishawar Singh

APPELLANT

Vs

Financial Commissioner, Punjab,
Chandigarh and Others

RESPONDENT

Date of Decision: Oct. 4, 2012

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 321
- Penal Code, 1860 (IPC) - Section 307, 353

Citation: (2012) 168 PLR 786

Hon'ble Judges: Ranjit Singh, J

Bench: Single Bench

Advocate: J.S. Toor, for the Appellant;

Final Decision: Dismissed

Judgement

Ranjit Singh, J.

The petitioner was a candidate for appointment to the post of Lambardar of village Gopal Pur, which fell vacant on the death of Hakam Singh, previous Lambardar. The petitioner and Malkiat Singh (respondent No. 3) filed applications for appointment to the post of Lambardar. Antecedents of the candidates were checked by Assistant Collector, 2nd Grade. He did not make any comment against the petitioner or the other applicants. Assistant Collector 1st Grade recommended the name of Malkiat Singh (respondent No. 3). After perusing the record, the Collector appointed petitioner as Lambardar on 26.5.2009. The petitioner claims that during the life time of Hakam Singh, previous Lambardar, he had been appointed as Sarbrah Lambardar as Hakam Singh himself had expressed his inability to perform his duties because of his old age and ill-health. Respondent No. 3 filed an appeal against this order passed by the Collector. He mainly raised two points to contest this appointment. Respondent No. 3 would first contend that the petitioner contested the election of the post of Sarpanch from the reserved category of Sirkiband, which is a scheduled

caste. Otherwise also, there were allegations against the petitioners that he was involved in an FIR for offences under Sections 353 and 307 IPC. Respondent No. 3 was also allegedly involved in some criminal case. The Commissioner, on the basis of pleas so raised, came to the conclusion that the petitioner had contested the election of Sarpanch by mentioning caste being a scheduled caste, but has now shown himself to be a Rajput, which is an open category for seeking the present appointment as Lambardar. The Commissioner, thus, found that the petitioner is not man having clean character and had not been honest in seeking this appointment.

2. Both the candidates were found involved in criminal cases, though they both had been acquitted. Commissioner found this to be a stigma, which, according to him was not completely washed of with the acquittal. He accordingly set-aside the appointment of the petitioner and issued directions for initiating a fresh process for appointment of Lambardar by inviting fresh applications. The petitioner filed a revision against this order before the Financial Commissioner, who allegedly without discussing merits of the candidates or the illegality in the order passed by the Commissioner has dismissed the revision on 30.5.2012. Certain allegations are also made that the Financial Commissioner, who heard the case has not passed the order. It is stated that the case was heard by Shri G. Vajralingam, IAS, Financial Commissioner on 7.12.2011 and he reserved the order for pronouncement. In the meantime, the said officer was transferred and the case was then taken up by the new incumbent. The case was shown to have been heard when the office of Financial Commissioner in place of the earlier officer was lying vacant. On this basis, it is stated that on 30.5.2012 the order was pronounced without hearing the parties. The order shows that both the parties were heard, which is factually inaccurate. Counsel for the petitioner has referred to two grounds considered by the Commissioner to upset the appointment of the petitioner as Lambardar by the Collector. He would first contend that no doubt FIR was registered against the petitioner under Sections 353 and 307 IPC, but prosecution itself moved an application u/s 321 Cr. P.C. for withdrawing from the prosecution against the petitioner in this case. The counsel has placed reliance on a few judgments of this court where it is held that mere involvement in FIR cannot be taken as a disqualification or disadvantage for appointment as a Lambardar. No judgment, however, was cited. Not only that, even in case of acquittal, no disqualification should result on mere involvement in FIR. If it is held in any other manner that mere involvement in the FIR would be stigmatic, the acquittal would be of no consequence. Acquittal would wash away the effect of allegations made against a person and such a person can say that this aspect cannot be held against him in any manner. This is correct view and the view formed by the Commissioner would not be in consonance with the well settled legal position. However, the view formed by the Commissioner on the second ground that the petitioner has not been honest in his approach for seeking appointment to the post of Lambardar is justified. The

petitioner, while contesting for the post of Sarpanch, showed himself to be a scheduled caste. Now, when the turn came for appointment of Lambardar, which is meant for general category, he has changed his stance and has shown himself to be being Rajput. The counsel has argued to take this case on much wider plank by pleading that Rajput cannot be termed as a caste. Plea obviously is that by showing himself as Rajput, the petitioner has not claimed that he is of this caste, it being no caste. It may be so, but that is not the issue which would arise for consideration. Fact is that the petitioner has not shown himself to be Sirkiband, which is a scheduled caste. The post of Lambardar in this case was for general category candidates. The plea that the reserved candidate can seek appointment to the post of Lambardar even if he is scheduled caste may not strictly apply in cases" of such type of appointments. Such appointments can not be fairly equated with the appointments which are made as per service rules, which is the basis of this submission. Appointment to Lambardar is as per the provisions of Punjab Revenue Act and is not meant for general public and is restricted to the resident of village concerned. Lambardar is not a post in that sense where the claim of persons of different categories can be considered inter se. A separate post is reserved for reserved category candidates where the general category cannot compete. The petitioner has not come clean even before this court to show that he is not belonging to scheduled caste. The petitioner definitely has made an attempt to hide and mislead the authorities concerned to seek this appointment. Such a person rightly has been held not entitled for appointment to the post of Lambardar where honesty may be one of the attributes. A person, who is seen to be dishonest, can not be considered for appointment to the post of Lambardar. The view formed by the Commissioner does not suffer from any infirmity which would call for any interference. I think, the Commissioner has adopted a fair approach in holding both the candidates disqualified and has rightly directed to initiate a fresh process, which would not suffer from any illegality to call for any interference in exercise of writ jurisdiction.

The writ petition is accordingly dismissed.