

(2014) 07 P&H CK 0740

High Court Of Punjab And Haryana At Chandigarh

Case No: C.W.P. No. 5440 of 2013

Bir Singh

APPELLANT

Vs

The Financial Commissioner

RESPONDENT

Date of Decision: July 16, 2014

Acts Referred:

- Constitution of India, 1950 - Article 226, 227

Hon'ble Judges: Paramjit Singh Patwalia, J

Bench: Single Bench

Advocate: Vijay Lath, Advocate for the Appellant; Suresh Singla, Addl. A.G. and P.K. Gupta, Advocate for the Respondent

Final Decision: Dismissed

Judgement

Paramjit Singh Patwalia, J.

C.M. No. 8148-CWP of 2014

1. Civil Misc. application is allowed subject to all just exceptions. Rejoinder to reply filed by respondent no. 4 is taken on record.

CWP No. 5440 of 2013

2. Instant writ petition has been filed by the petitioner under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing of order dated 10.11.2005 (Annexure P/2) passed by respondent No. 3-District Collector, Rupnagar whereby respondent no. 4-Mohinder Singh has been appointed as Lambardar of Village Bhanglan, Tehsil Anandpur Sahib, District Rupnagar, order dated 29.03.2007 (Annexure P/5) passed by respondent No. 2-Commissioner and order dated 12.03.2012 (Annexure P/9) passed by respondent no. 1, whereby appeal and revision petition filed by the petitioner have been dismissed.

3. Brief facts of the case are that to fill up the vacancy caused on account of death of Raghunath Singh, previous Lambardar of Village Bhanglan, Tehsil Anandpur Sahib, District Rupnagar, applications were invited from the interested persons by making proclamation in the village after obtaining necessary sanction from the competent authority. After completing formalities, matter came up for consideration before the Collector. The Collector after appreciating the comparative merit of the candidates found Mohinder Singh son of Sh. Amar Singh-respondent no. 4 to be fit and suitable candidate and vide order dated 10.11.2005 (Annexure P/2) appointed him as Lambardar of the Village. Petitioner-Bir Singh and Upinder Singh filed two separate appeals before the Commissioner. The Commissioner, Patiala Division, Patiala vide order dated 29.03.2007 (Annexure P/5) dismissed both the appeals. Thereafter, petitioner and Upinder Singh filed two separate revision petitions before the Financial Commissioner. The Financial Commissioner vide order dated 11.01.2008 (Annexure P/7) set aside the orders of the Collector as well as Commissioner and remanded the case to the District Collector. Against the order of the Financial Commissioner, three writ petitions bearing CWP Nos. 4863 of 2009, 5055 of 2009 and 1890 of 2008 filed by Bir Singh-petitioner, Upinder Singh-respondent No. 5 and Mohinder Singh-respondent No. 4, respectively, before this Court, were allowed and the matter was remanded to the Financial Commissioner. Thereafter, the Financial Commissioner vide order dated 12.03.2012 (Annexure P/9) has dismissed the revision petitions filed by the petitioner and respondent no. 5-Upinder Singh and upheld the orders passed by the Collector and the Commissioner. Hence, this writ petition filed by Bir Singh-petitioner.

4. I have heard learned counsel for the parties and perused the record.

5. Learned counsel for the petitioner vehemently contended that respondent No. 4 is not a truthful person. He has given a wrong date for enrollment in the Army. Such person cannot be appointed as Lambardar of the village. It is alleged that Mohinder Singh made a wrong statement before the Collector that his younger son is serving in the Military and the deceased lambardar was his uncle. Learned counsel further contended that application moved by respondent no. 4 for withdrawal of his candidature for the post of Lambardar has been dismissed by the District Collector vide order dated 10.11.2005 (Annexure P/1) by passing one line order "Heard & Dismissed".

6. On the other hand, learned counsel for the respondents contends that choice of the collector cannot be lightly set aside. If application for withdrawal of candidature is dismissed, there is no bar and the applicant may continue with contesting the proceedings. The Collector after appreciating the comparative merits found respondent No. 4-Mohinder Singh to be fit and suitable candidate and appointed him as such.

7. I have considered the contentions raised by learned counsel for the parties.

8. A perusal of the record shows that all the authorities have recorded concurrent findings. The District Collector after appreciating the comparative merits specifically the qualifications and age, found respondent No. 4-Mohinder Singh to be fit and suitable candidate and appointed him as such. The allegations are levelled for the first time in the writ petition, although some of the allegations were put before the Financial Commissioner. This Court is not required to appreciate the evidence which was not before the competent authority. It is a settled principle of law that the choice of the Collector cannot be lightly set aside. It can only be set aside if there is perversity or illegality in the impugned order of the Collector. Learned counsel for the petitioner has not been able to point out any perversity or illegality in the order passed by the District Collector. The finding of the District Collector has been affirmed by the Commissioner as well as Financial Commissioner.

9. In view of law laid down by Hon"ble the Supreme Court of India in the case of Mahavir Singh Vs. Khiali Ram and Others, followed by Division Bench of this Court in the case of Phool Kumar Vs. State of Haryana and others, 2010(2) RCR (Civil) 819, the choice of the District Collector cannot be lightly set aside.

10. In Mahavir Singh's case (supra) the Supreme Court of India has observed that there should be no interference with the choice made by the Collector in the matter of appointment of Lambardar even if two views are possible. It is only the prerogative of the Collector to compare the merits of the candidates for appointment to the post of Lambardar. There are concurrent findings recorded by the revenue authorities.

11. In view of above discussion, the present writ petition fails.

12. Dismissed. No order as to costs.