

(2016) 11 P&H CK 0088

High Court Of Punjab And Haryana At Chandigarh

Case No: CWP No. 16993 of 2014

Hari Singh

APPELLANT

Vs

Financial Commissioner Punjab

RESPONDENT

Date of Decision: Nov. 4, 2016

Acts Referred:

- Constitution of India, 1950 - Article 226
- Punjab Land Revenue (Lambardari) Rules, 1908 - Rule 16

Citation: (2016) 4 LawHerald 3536 : (2017) 1 RCRCivil 1022

Hon'ble Judges: Mr. Rameshwar Singh Malik, J.

Bench: Single Bench

Advocate: Mr. Naveen Sharma Bhardwaj, Advocate, for the Respondent No. 4; Mr. Umesh Kumar Kanwar, Advocate and Mr. Yatinder Sharma, Addl. A.G., Punjab, for the Petitioner

Final Decision: Dismissed

Judgement

Rameshwar Singh Malik, J.(Oral) - Present writ petition is directed against the order dated 19.03.2014 passed by the Financial Commissioner, Punjab, whereby he accepted the appeal of respondent No.4, set aside the order dated 13.04.2010 (Annexure P-5), passed by the Divisional Commissioner, Patiala Division, Patiala and restored the order dated 11.09.2009 (Annexure P-3) passed by District Collector, Ludhiana, appointing respondent No.4 as Lambardar.

2. Notice of motion was issued and in compliance thereof written statement was filed by contesting respondent No.4. Petitioner filed his replication.

3. Heard learned counsel for the parties.

4. Facts are hardly in dispute. One post of Lambardar of SC category fell vacant in the village of the parties, because of the death of Late Shri Lachhman Singh, Lambardar. Process for filling up the post of Lambardar was initiated by Naib Tehsildar. Proclamation in the village was got conducted through Shri Nazar Singh,

village Chowkidar. After conducting the proclamation, it was so recorded in Roznamcha, vide Rapat No.5291 dated 08.04.2009. Accordingly, the report dated 08.04.2009 (Annexure P-2) was furnished by the Patwari, which was duly signed by Nazar Singh, Chowkidar, Harpal Singh Lambardar as many as 17 other residents of the village. All the lower revenue authorities i.e. Naib Tehsildar, Tehsildar as well as Sub Divisional Magistrate, recommended the candidature of respondent No.4, for appointment as SC Lambardar.

5. After going through the record, including the reports made by the lower revenue authorities in favour of respondent No.4, the District Collector, Ludhiana, vide his order dated 11.09.2009 (Annexure P-3), appointed respondent No.4 as SC Lambardar. Petitioner filed his appeal, which was allowed by the Divisional Commissioner, Patiala Division, Patiala, vide his order dated 13.04.2010 (Annexure P-5), without issuing notice to respondent No.4, who had been appointed as SC Lambardar by District Collector.

6. Genuinely feeling aggrieved, respondent No.4 filed his appeal before the Financial Commissioner, who rightly allowed the same vide impugned order dated 19.03.2014 (Annexure P-6). A bare combined reading of the orders passed by the District Collector as well as Financial Commissioner, would show that none of them have committed any error of law, while passing their respective impugned orders and both these orders deserve to be upheld.

7. So far as the order passed by Divisional Commissioner, Patiala Division, Patiala (Annexure P-5) is concerned, the same has been found suffering from patent illegality and perversity. Appointment of respondent No.4 was set aside behind his back, thereby glaringly violating the principles of natural justice. In such a situation, Financial Commissioner was well within his jurisdiction to allow the appeal of respondent No.4, vide impugned order (Annexure P-6) and the same deserves to be upheld, for this reason also.

8. Thrust of the argument raised on behalf of the petitioner was that proclamation was not got conducted in the village of the parties. However, this argument raised by the learned counsel for the petitioner has been found wholly misconceived, for the reason that it runs counter to the official record available on the file in the form of report-Annexure P-2, referred to herein above. Financial Commissioner has also recorded a cogent finding in this regard, to the effect that proclamation report reveals that the same has been witnessed by many residents of village as well as Chowkidar of the village.

9. When confronted with this factual aspect of the matter, learned counsel for petitioner had no answer and rightly so, it being a matter of record. Perusal of the impugned order passed by Financial Commissioner, would show that he examined, considered and appreciated all the relevant aspects of the matter, before recording his cogent findings, which have been found supported by sound reasons.

10. The operative part of the impugned order dated 19.03.2014 passed by the Financial Commissioner, which deserves to be noticed here, reads as under:-

"I have heard both the parties and gone through the evidence on record. I am of the convinced opinion that the order of Collector appointing the appellant as Lambardar is a speaking order and based on correct appreciation of facts and laws. The perusal of proclamation report reveals that the same has been witnessed by many persons including the Lambardar and Chowkidar of the village. The contention of the learned counsel for the respondent that the said proclamation was actually not conducted in connivance with the revenue officials is therefore not sustainable. Further the commissioner condemned the appellant unheard thereby violating principle of natural justice and such an order is not sustainable in the eyes of law. I am also of the convinced opinion that the order of the Collector does not suffer from any illegality or perversity and hence the choice of the Collector in appointing the appellant as Lambardar cannot be interfered with. In such circumstances, I have no option but to accept the appeal and set aside the order of the Divisional Commissioner, Patiala. Order be communicated to the parties and the file be consigned to the record room."

11. Neither the principle of natural justice has been violated nor any prejudice has been shown, which might have been caused to the petitioner, by passing the impugned order by the Financial Commissioner, warranting interference, at the hands of this Court, while exercising its writ jurisdiction under Articles 226/227 of the Constitution of India.

12. It has also gone undisputed before this Court that respondent No.4 was a mature person of 35 years of age. He was 10+2 pass. He was enjoying good moral character. He was not found participating in any political party. He was also conversant with the work of Lambardar.

Under these circumstances, District Collector was well justified in appointing respondent No.4 as SC Lambardar. Since the impugned orders have not been found suffering from any patent illegality or perversity, the same deserve to be upheld, for this reason as well.

13. No other argument was raised.

14. Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the instant petition is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

15. Resultantly, with the above-said observations made, the present writ petition stands dismissed, however, with no order as to costs.