

ISHWAR SINGH

v.

SATBIR SINGH & ORS.

(Civil Appeal No. 5552 of 2009)

AUGUST 17, 2009

[TARUN CHATTERJEE AND R.M. LODHA, JJ.]

Service law – Appointment – Post of Lambardar – Collector appointing respondent as lambardar – Commissioner setting aside the same and appointing appellant – Upheld by Financial Commissioner – In writ petition, High Court restoring the order of Collector – Interference with – Held: Financial Commissioner held that the Collector did not apply its mind and his order is perverse and illegal – High Court overlooked the same – It could have interfered with the order of Financial Commissioner but must have given cogent and convincing reasons for such interference – Thus, order of High Court set aside – Matter remitted back to High Court for fresh consideration.

The question which arose for consideration in this appeal was whether the High Court was justified in setting aside the order of Financial Commissioner as well as the Commissioner by which appointment of the respondent as Lambardar by the Collector was set aside and appellant was appointed as Lambardar; and restoring that of the Collector.

Allowing the appeal, the Court

HELD: 1.1. The Lambardar is a village headman. His main job is the collection of revenue. He is paid fixed remuneration as well as some commission. The criterion for appointment to the post of Lambardar, inter-alia, includes educational qualification, age, experience in

- A working of Lambardari, land and property, character, ability and freedom from indebtedness. [Para 6] [364-E]

- 1.2. The High Court in the impugned order observed that there was nothing in the orders passed by the Commissioner as well as Financial Commissioner that the choice of the Collector is perverse, violative or against in rules or procedure. This is apparently founded on erroneous premise. The Financial Commissioner categorically held that the Collector did not apply his mind judiciously and his order is perverse and illegal. The High Court seems to have overlooked the said observation. It is not suggested that within permissible limits of judicial review, the orders of the Financial Commissioner and Commissioner could not have been interfered with, but then the High Court must have given cogent and convincing reasons for such interference. The impugned order lacks in that. The matter needs to be re-examined by the High Court afresh. The judgment passed by High Court is set aside and the writ petition is restored to the file of High Court for fresh consideration. [Paras 8 and 9] [365-E-H; 366-A-B]

Mahavir Singh v. Khiali Ram and Ors. 2009 (3) SCC 439, referred to.

Case Law Reference:

- F 2009 (3) SCC 439 Referred to. Para 7

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5552 of 2009.

- G From the Judgment & Order dated 11.04.2008 of the High Court of Punjab & Haryana at Chandigarh in Civil Writ Petition No.1672 of 2008.

- H Dinesh Chander Yadav, A.S. Rishi, Dr. Kailash Chand for the Appellant.

S.B. Sanyal, Dr. K.R. Punia, Santosh Singh, Rakesh A
Mudgal, Sharda Hooda for the Respondents.

The Judgment of the Court was delivered by

R.M. LODHA, J. 1. Leave granted. B

2. The controversy in this appeal by special leave relates to the appointment of Lambardar for village Pehladgarh, Tehsil and District Bhiwani. The said post fell vacant due to the death of the then Lambardar on August 1, 2000. Four persons applied for that post but later on two candidates withdrew their candidature and the present Appellant and Respondent No. 1 remained for selection. The Collector, Bhiwani by his order dated December 15, 2005 considered the candidature of these two candidates and issued an order of appointment in favour of Respondent No. 1 as Lambardar of village Pehladgarh. In the opinion of the Collector, Bhiwani, Satbir Singh, Respondent No. 1, was more suitable. This is how the Collector, District Bhiwani considered comparative merits of these two candidates :

“.....I have come to conclusion that Satbir Singh candidate is a suitable candidate. He is Matric pass and has passed the B.A. from Military. He has 7 acres of land which is sufficient for filing taxes. Satbir Singh candidate is younger in age than the other candidate and being healthy and active, he is capable to perform the job of Lambardari effectively. Shri Ishwar Singh candidate has cut the green, neem tree from the panchayat land and the allegation was leveled upon his brother Sudesh for cutting neem tree as his family members namely Sube Singh as the Sarpanch. It is thus clear that Ishwar Singh candidate is not person of a clean antecedents. Therefore on the basis of the above mentioned facts Shri Satbir Singh son of Shri Ram Jiwan is appointed as Lambardar of village at the place of Siri Chand deceased Lambardar of village Pehladgarh”

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- A 3. The present appellant assailed the aforesaid order of
 the Collector, District Bhiwani by filing an appeal before the
 Commissioner, Hissar Division. The Commissioner, Hissar
 Division did not agree with the view of the Collector, Bhiwani
 in respect of suitability of the present Respondent No. 1. The
 B Commissioner, Bhiwani held :

C ".....From the perusal of the record, it is found
 that the appellant has more land than the respondent and
 he is B.A. pass and retire from the Military service as
 Honorary Captain, whereas the respondent is Matriculate
 and retire as Havaladar. The appellant remained Sarbrah
 Lamberdar of his father for many years and he has the
 experience of Lambardar. No document was produced on
 the file which can prove the illegal possession of the
 D appellant. The allegation against the appellant for cutting
 the green neem tree from the panchayat land is also not
 proved whereas the Collector did not accept. The appellant
 having the good antecedents on this basis, which is not
 legally justified. Besides this, Tehsildar Bhiwani and
 S.D.O.(civil), Bhiwani have also recommended the name
 E of the appellant for his appointment. Though the Collector
 is the appointing authority of the post and his order should
 not be interfered in general conditions but I do not find that
 the order of Collector, Bhiwani is not justified on the
 grounds mentioned above and I hereby set aside on this
 F ground and appoint appellant-Shri Ishwar Singh as
 Lambardar of village Pehladgarh."

- G 4. The Respondent No. 1 challenged the order of the
 Commissioner, Hissar Division by filing a Revision Petition
 before the Financial Commissioner, Government of Haryana.
 The Financial Commissioner in his order dated January 18,
 2008, after hearing the parties, found no reason to interfere with
 the order of the Commissioner, Hissar Division. In the opinion
 of the Financial Commissioner, Government of Haryana, the
 order of the Collector was perverse and illegal and, therefore,
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rightly set aside by Commissioner, Hissar Division. The Financial Commissioner considered the matter thus :

"It is well settled law that the order of Collector should not be interfered with unless there is perversity or illegality therein. I am also of the opinion that mere allegation of cutting of tree-which was not substantiate subsequently should not have been the basis of Collector's conclusion that the respondent did not possess a good image. This clearly shows that the Collector has not applied his mind judiciously and his order is perverse and illegal and, therefore, rightly set aside by the Commissioner.

Further, what clinches the issue in favour of respondent is his active participation in social service by donating blood twice and organizing a Blood Donation Camp and also motivating cases for Family Planning. All other qualifications being almost similar, age factor only cannot weigh in favour of petitioner because he has not rendered the kind of social service and assistance in Government sponsored programmers as has been done by the respondent. In view of this, I am of the opinion that the order of the Collector was rightly set aside by the Commissioner and the respondent was a better candidate to discharge the functions of a Lambardar."

5. The order passed by the Financial Commissioner was challenged by the Respondent No. 1 in the writ petition before the High Court of Punjab and Haryana. The High Court upturned the orders of the Financial Commissioner as well as Commissioner, Hissar Division and restored the order of the Collector, District Bhiwani. The High Court held thus

"The Commissioner and Financial Commissioner have reversed the order of the Collector only on the ground that respondent No. 4 has more land and passed BA and was retired from Military Service as Honorary Capt., whereas petitioner is Matriculate and retired as Havaldar.

A The Collector has given a specific finding that petitioner is Matriculate and B.A. from Military and is younger in age and possesses more land in comparison to respondent No. 4. Moreover, contribution of the petitioner in social activities is much more than respondent No. 4 as petitioner has deposited Rs. 1.30 lacs with Small Saving Scheme and is a Member of Red Cross Society and has also constructed a room in village school. In addition also, the petitioner seems to be more active and energetic and as such he has rightly been appointed by the Collector being more meritorious.

C It is a settled law that choice of the Collector should not be interfered with unless the same is perverse or violative of any rule or procedure. Moreover, there is nothing in the orders passed by the Commissioner as well as Financial Commissioner that choice of the Collector is perverse, violative or against any rules or procedure."

E 6. The Lambardar is a village headman. His main job is the collection of revenue. He is paid fixed remuneration as well as some commission. The criterion for appointment to the post of Lambardar, inter-alia, includes educational qualification, age, experience in working of Lambardari, land and property, character, ability and freedom from indebtedness.

F 7. In *Mahavir Singh v. Khiali Ram and Others*¹ this Court was concerned with the controversy relating to appointment of Lambardar under Punjab Land Revenue Act, 1887 and rules framed thereunder. The court held that with regard to the appointment of a Lambardar in the State of Punjab, age of a candidate is a relevant factor. This court noticed few old cases of Lahore High Court which throw some light on the subject thus:

"15. In *Lt. Malik Abbas Khan v. Ghulam Haidar* (1940 Lah LT 25) it was stated:

H 1. (2009) 3 scc 439.

"... It is certainly not wise, save in very exceptional circumstances, to appoint for the first time, an Inamkhor or Zaildar whose age is 60 or more."

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16. In *Kalyan Singh v. Haidar* (1928 Lah LT 33) the Financial Commissioner held that ordinarily the Collector's choice appointing a Zaildar or Sufedpost should not be interfered with even though the appellate authority believes that his choice was not the best choice.

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17. Similar view was expressed in *Lila Ram v. Asa Ram* (1955 Lah LT 29) in the following terms:

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"2. ... While it is now an established principle that there should be no interference with the choice made by the Collector, it does not follow that where the Collector's order is based on a misrepresentation of facts, there should still be no interference."

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8. We heard the learned counsel for the petitioner and the learned Senior Counsel for Respondent No. 1 and their respective contentions. The High Court in the impugned order observed that there was nothing in the orders passed by the Commissioner as well as Financial Commissioner that the choice of the Collector is perverse, violative or against in rules or procedure. This is apparently founded on erroneous premise. The Financial Commissioner has categorically held that the Collector did not apply his mind judiciously and his order is perverse and illegal. The High Court seems to have overlooked the aforesaid observation. Whether Financial Commissioner was justified in his observation or not is altogether a different matter. We even do not suggest for a moment that within permissible limits of judicial review, the orders of the Financial Commissioner and Commissioner could not have been interfered with, but then the High Court must have given cogent and convincing reasons for such interference. We find that the impugned order lacks in that. As the matter needs to be re-examined by the High Court afresh, we refrain from dealing with

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A the matter further and leave the parties to agitate their contentions before the High Court.

9. Appeal is, accordingly, allowed and the judgment dated April 11, 2008 passed by the High Court is set aside. Writ
B Petition (Civil) No. 1672 of 2008 is restored to the file of the High Court for fresh consideration and decision. Needless to say that the contentions of the parties are kept open to be agitated before the High Court which obviously would be
C decide the aforesaid writ petition as expeditiously as may be possible. Parties will bear their own costs.

N.J.

Appeal allowed.