

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**C.W.P. No. 1910 of 2011
Date of Decision: February 29, 2012**

Pawan Kumar

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

Present: Mr. Amit Jhanji, Advocate,
for the petitioner.

Mr.Sandeep S.Mann, Sr.DAG, Haryana,
for respondent Nos. 1 and 2.

Mr. Vineet Chaudhary, Advocate,
for respondent No.3.

Paramjeet Singh, J. (Oral)

The instant writ petition has been filed by the petitioner under Articles 226/227 of the Constitution of India for quashing of order dated 08.12.2010 (Annexure P/4) passed by the Financial Commissioner, Haryana, and order dated 31.03.2010 (Annexure P/2) passed by respondent No.2 – Commissioner, Ambala Division, Ambala, whereby respondent No.3 – Dilshad has been appointed as Backward Class Lambardar of the Village.

Brief facts of the case are that a new post of Backward Class Lambardar in Village Sandhai, Tehsil Bilaspur, District Yamuna Nagar, was created keeping in view the population of Backward Class people in the village. Consequently, the Tehsildar, Bilaspur issued a

proclamation and invited applications for filling up the newly created post of Backward Class Lambardar. In pursuance of proclamation, six candidates, namely, Pawan Kumar son of Jyoti Ram, Prem Pal son of Janki Dass, Basant Singh son of Krishan, Ravinder son of Sing Ram, Dilsad son of Jan Mohammad and Pawan Kumar son of Rati Ram. During the proceedings, three candidates, namely, Prem Pal, Basant Singh and Pawan Kumar son of Rati Ram did not appear and they were proceeded against ex-parte. Ravinder Kumar expressed his desire not to pursue his application. As such, only two candidates, namely, Pawan Kumar son of Jyoti Ram (petitioner) and Dilsad son of Jan Mohammad (respondent No.3) remained in fray.

After completing all the formalities, the Tehsildar, Bilaspur recommended the name of the petitioner for the post of Lambardar and sent the case to the Sub Divisional Officer (C), Bilaspur. The Sub Divisional Officer (C) also recommended the name of the petitioner for the post of Lambardar. Thereafter, the case was sent to the Collector. The Collector, after appreciating comparative merits of both the candidates, appointed the petitioner as Backward Class Lambardar of the village vide order dated 15.07.2009 (Annexure P/1). Aggrieved against the order of the Collector, respondent No. 3 – Dilsad filed an appeal before the Commissioner. The Commissioner vide order dated 31.03.2010 (Annexure P/2) accepted the appeal and appointed respondent No.3 – Dilsad as Backward Class Lambardar of the Village. Thereafter, the petitioner filed a revision petition before the Financial Commissioner. The Financial Commissioner vide order dated 13.10.2010 (Annexure P/3) accepted the revision and set aside the order of the Commissioner. Thereafter, the Financial

Commissioner vide order dated 08.12.2010 (Annexure P/4) reviewed his order dated 13.10.2010 (Annexure P/3) on the application moved by respondent No.3 and dismissed the revision of the petitioner and uphold the order of the Commissioner. Hence, this writ petition.

Respondent No.3 has filed reply denying the averments and has stated that the petitioner is a tailor by profession and he will not available in the village.

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

Learned counsel for the petitioner has argued that the petitioner was appointed as Backward Class Lambardar of the village by the Collector. It is settled principle of law that choice of the Collector cannot be lightly set aside unless it is perverse. The Commissioner has set aside the appointment of the petitioner without recording a finding that the order of the Collector is perverse.

Learned counsel for respondent No.3 has opposed the contention of the learned counsel for the petitioner stating that respondent No.3 is more qualified. The Commissioner has appreciated the true facts and has taken into consideration two FIRs against respondent No.3 and set aside the order of the Collector.

Initially, the revision of the petitioner has been allowed by the Financial Commissioner, but subsequently it has been dismissed vide order dated 08.12.2010 (Annexure P/4). The order apparently is against the law.

I have considered the rival contentions of the learned counsel for the parties.

Admittedly, the petitioner was appointed as Backward

Class Lambardar of the Village by the Collector, after appreciating the comparative merits of both the parties. It is settled principle of law that choice of the Collector cannot be lightly set aside, unless it is perverse. It was concluded by the Commissioner that Pawan Kumar (petitioner) is 6th class pass and is having land, whereas, Dilsad (respondent No.3) is a landless person. He is matriculate and had been helping the Government in family planning schemes. The Collector has also recorded a finding that two FIRs i.e. FIR No. 70 dated 24.03.1997 under the Excise Act and FIR No.28 dated 04.02.1998 were registered against respondent No.3, subsequently FIR's were either quashed or withdrawn. In spite of the fact that FIRs have been withdrawn, still Pawan Kumar (petitioner) has been appointed as Backward Class Lambardar of the Village by the Collector.

I have considered the rival contentions of the learned counsel for the parties.

I am of the opinion that the Financial Commissioner has earlier allowed the revision of the petitioner, thereafter, dismissed the same vide order dated 08.12.2010 (Annexure P/4). This creates doubt in the mind of this Court, such an order of the Financial Commissioner is not on merit. The fact is that the Collector has taken into consideration the FIRs against respondent No.3, which have been either quashed or withdrawn. The Commissioner and the Financial Commissioner did not record a finding that order of the Collector is perverse. In view of these circumstances, it would be appropriate that the Collector is directed to decide the case afresh.

In view of the above, orders of the Collector,

Commissioner and the Financial Commissioners are set aside and the case is remanded to the Collector to re-examine the entire case after affording adequate opportunities of hearing to the parties and thereafter, pass a well-reasoned speaking order, preferably within a period of three months from the date of receipt of certified copy of this order.

The parties through their counsel are directed to appearing before the Collector on 16.04.2012.

Disposed of.

No order as to costs.

February 29, 2012
vkd

(Paramjeet Singh)
Judge