

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE IJAZ UL AHSAN

MR. JUSTICE SAJJAD ALI SHAH

AFR

Civil Petitions No.2379/2016 & 2826-L/2016.

(Against the consolidated judgment dated 14.6.2016 passed by the Lahore High Court Lahore in WP No.34259 of 2014)

Sohail Ahmed.

Petitioner (In CP 2379/2016)

Haji Shafqat Ali.

Petitioner (In CP 2826-L/2016)

Versus

Haji Shafqat Ali & others.

Respondents (In CP 2379/2016)

Sohail & others.

Respondents (In CP 2826-L/2016)

For the Petitioner(s) : Mr. Tariq Mahmood, Sr. ASC (CP 2379/2016)

For the Petitioner(s) : Malik Amjad Pervaiz, ASC
(CP 2826-L/2016)

For the Respondent(s) : Mr. Mazhar Iqbal Sindhu, ASC
(CP 2379/2016) Malik Amjad Pervaiz, ASC

For the Respondent(s) : N.R. (In CP 2826-L/2016)

Date of Hearing : 02.06.2021

ORDER

Sajjad Ali Shah, J.-

(C.P.No.2379/2016). The petitioner seeks leave of this Court to file an appeal against the judgment of the Lahore High Court whereby the said Court while allowing the respondent's writ petition challenging the appointment of the petitioner as Lambardar declared his appointment as illegal and directed the official respondents to initiate the proceedings for appointment of Lambardar of the Chak/village afresh.

2. Briefly, after dismissal of Lambardar of Chak No.8-R/B, Tehsil Safdarabad on account of non-payment of government dues, the father of respondent for sometime performed duties as Lambardar and thereafter the process for appointment of permanent Lambardar was initiated. The petitioner and one Akhtar Ali applied for the position, Akhtar Ali not only

withdrew his candidature but also on 26.8.2006 transferred 16 kanals of land in favour of petitioner. Consequently on 26.5.2007 the petitioner was appointed as Lambardar. The respondent's case was that the process of appointment of petitioner as Lambardar was kept secret till 12.3.2010, when the petitioner declared his appointment public, the respondent on the next date viz. 13.3.2010 challenged his appointment by moving an application which unfortunately was dismissed by Executive District Officer (Revenue), Sheikhpura. The order was challenged by filing a revision petition before the Board of Revenue Punjab and the Member (Judicial) BoR on 27.10.2014 affirmed the order of dismissal leaving no option for the respondent but to file a writ petition before the Lahore High Court which, after hearing the parties, was allowed through the impugned order by setting aside the appointment of petitioner as Lambardar and directed initiation of process afresh.

3. Mr. Tariq Mahmood learned Sr. ASC for the petitioner contends that the High Court in all fairness could not have interfered in the concurrent findings handed down by the officials in the revenue hierarchy dismissing the respondent's application challenging the appointment of petitioner as Lambardar as the scope of interference is very narrow. Reliance was placed on the judgment of this Court in the case of Noorwar Jan vs. Senior Member B.R., NWFP (PLD 1991 SC 531). It was next contended that the petitioner was appointed as Lambardar on 26.5.2007 whereas the respondent challenged his appointment on 13.3.2010 and, therefore, his application in the revenue hierarchy was rightly rejected concurrently by holding it to be barred by time and, therefore, interference by High Court was not warranted. It was next contended that it is by now settled law that in case a candidate has overcome some disqualification on the date of his appointment, then such disqualification at the time of his applying for the post cannot be made basis of his removal from office notwithstanding per counsel the petitioner, prior to his appointment i.e. 26.8.2006 had acquired 16 kanals of land and, therefore, he had become qualified for the position of Lambardar. ASC

referred to voter list and NIC of the petitioner to establish his residence at village 8-R/B and when it was pointed out that the voter list is of the year 2013 and NIC was issued in 2015 much after his appointment as Lambardar, he contended that his Chak 14-R/B is very near to Chak 8-R/B for which he was appointed as Lambardar. It was further contended that petitioner and one Akhtar Ali were the only two candidates for the position and after Akhtar Ali withdrew his candidature, the petitioner was the only candidate who was thereafter appointed after fulfilling all the codal formalities.

4. On the other hand, the learned ASC for the respondent contended that neither the petitioner was a resident of village 8-R/B for which he was appointed as Lambardar nor he had any landed property in the village. Per counsel notwithstanding the fact that the petitioner was a resident of Chak No. 14-R/B, he was surreptitiously appointed Lambardar of Chak 8-R/B when the other candidate not only withdrew his candidature but transferred 16 kanals of land in his favour enabling him to run for the post. In order to meet the bar of limitation, counsel submitted that since the petitioner was surreptitiously and secretly appointed as Lambardar and the respondent had no knowledge regarding his appointment, no sooner he became aware, he initiated proceedings. He further invited our attention to the orders passed by the EDO(R) and the Member, BoR to show that both the orders are non-speaking and non-reasoned. Per counsel, in the circumstances, neither the bar of limitation was applicable nor the High Court exceeded its jurisdiction while entertaining the subject petition declaring the petitioner's appointment as illegal.

5. We have heard the learned counsel for the respective parties and have perused the record as well as the case law cited at bar. The admitted position as emerges from the record appears to be that there were only two contesting candidates for the position of Lambardar; one from Chak No.8-R/B for which the Lambardar was required to be appointed and the second

candidate i.e. the petitioner, who was from Chak No.14-R/B and was facing criminal cases and it is not clear from the record that, as to whether both the Chaks shared common boundaries. Notwithstanding, the fact which could neither be justified nor appeared to be *bona fide* was that, the candidate who appeared to be more suitable for the position being from the same Chak and having holding therein not only surreptitiously withdrew from the contest but transferred some of his holdings in favour of the petitioner entitling him for the post. In addition counsel for the respondent has invited our attention to the address of the petitioner given in the memo of the instant petition to demonstrate that even today the petitioner was a non-resident and absentee Lambardar and therefore, his appointment was rightly struck down. It need not be reiterated that, in view of the duties a Lambardar is supposed to perform, it is necessary that he should be present all the time in the village or a Chak for which he is appointed so that he can discharge his functions efficiently, adequately and properly. Reference can readily be made to the case of Muhammad Yousaf Vs. Member Board of Revenue and four others (1996 SCMR 1581). However, it does not mean that appointment of a Lambardar from a village which shares common boundaries with the village for which a Lambardar is to be appointed be outrightly ruled out, in case the candidate otherwise qualifies by virtue of his interest by way of holding or otherwise. However, in the instant case the intrigue appointment with no contesting candidate from the village and suppression of the fact that the father of the respondent had been performing the duties of Lambardar for quite some time after the death of the regular Lambardar lacks *bona fide*. As to plea of learned counsel for the petitioner that the High Court was not justified in interfering in the concurrent findings of the revenue hierarchy, suffice it to observe that such rule is not absolute and in the instant case perusal of both the orders from the hierarchy reflect that they do not qualify the test of a valid order as provided in Section 24-A of the General Clauses Act being non speaking, as the first order after recording of the submissions

of both the parties only states that the arguments of the one party are more convincing and therefore, the appeal is dismissed; whereas in the second order also no reasons for dismissal of the revision are advanced. As to the plea of the learned counsel that the disqualification if any was met with by the petitioner before he was appointed as Lambardar, the submission has not impressed us at all for the reason that the process of appointment itself lacked *bona fide*. As to limitation, suffice it to observe that both the forums did not examine the plea taken by the respondent for seeking condonation of the delay, and therefore, in our opinion the High Court was justified in interfering with the orders of the revenue hierarchy.

6. In the circumstances, we do not find any justification legal or factual to interfere with the order of the High Court. The petition therefore is dismissed and leave is declined.

C.P.No.2826-L/2016/2016: After we had dismissed the above mentioned C.P. No.2379/2016, it was pointed out to the counsel for the petitioner that instant petition is barred by 41 days, the counsel stated that petitioner has instructed him to withdraw this petition. Dismissed as withdrawn.

sd/ — J
sd/ — J

Islamabad
02.06.2021

A.Rehman

~~Not Approved For Reporting~~