

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

\*\*\*\*\*

**LPA No. 144 of 2013 (O & M)**  
**Date of decision : 25.7.2013**

Kashmiri Lal .....Applicant/Appellant

Vs.

Financial Commissioner, Appeals-II, Punjab and others ....Respondents

**CORAM: Hon'ble Mr. Justice Jasbir Singh**  
**Hon'ble Mr. Justice G.S. Sandhawalia**Present:- Mr. G.S. Nagra, Advocate, for the appellant  
Mr. Aman Bahri, Addl. AG, Punjab  
Mr. Sanjeev Pandit, Advocate, for respondent No.4

---

**Jasbir Singh, J. (Oral)**

This appeal has been filed against an order passed by a Single Bench of this Court on 11.12.2012 dismissing CWP No. 12422 of 2011, filed by the appellant, namely; Kashmiri Lal.

Dispute in this case is with regard to appointment of *Lambardar* (SC) in village Jalalpur, Tehsil Dasuya, District Hoshiarpur. On accrual of post, applications were invited. Report was sought from the field revenue staff. Naib Tehsildar and Tehsildar recommended name of respondent No.4-Sadhu Ram for the said post.

Before the Collector, the appellant, respondent No.4 and one more person Rawal Singh were the contesting candidates. The Collector vide order dated 17.1.2008 preferred the appellant for the said post.

So far as respondent No.4 is concerned, it was noted that he

was more meritorious, however, his claim was rejected by stating that he was named as an accused in one FIR, from where he was acquitted later on.

Matter went to the Commissioner in appeal, filed by respondent No.4, which was allowed vide order dated 14.8.2008. Appointment of the appellant was reversed and in his place, respondent No.4 was appointed as *Lambardar* of the village. Relevant order of the order reads thus :-

“It is fully established that the appellant has a clear edge over the respondent. He is B.A., thus, is better educated. He is an Ex-serviceman, thus, deserves preferential consideration. His name was recommended by the Naib Tehsildar, Tanda and the Tehsildar, Dasuya, which cannot be ignored lightly. The District Collector, Hoshiarpur has in fact, rejected the claim of the appellant on the solitary ground that he was involved in FIR No. 141 dated 3.8.2003 thus, he has suffered reputation in village. Here the District Collector has erred in appreciating the settled principle that the appellant has not suffered any indictment rather was acquitted of the charge as innocent. The word innocent is quite significant. I find the appellant more meritorious than the respondent. As such, the impugned order is perverse and contrary to rules. The appeal is accordingly accepted, impugned order is set aside and the appellant is appointed as SC Lambardar of village Jalalpur.”

The appellant went in revision, which was dismissed by the Financial Commissioner vide order dated 27.10.2010.

The appellant came to this Court by filing CWP No. 12422 of 2011, which was dismissed on 11.12.2012. Hence, this appeal.

Before this Court also, it is stated that when, claim of applicants, for the post of *Lambardar* was considered, person of clean

image i.e. the appellant was available and on account of that, he was appointed against the said post. It is further argued that for being involved in a criminal case, from where respondent No.4 was discharged later on, he carries a stigma with him and as such, his appointment was not justified.

The above argument was dealt with by the learned Single Judge and answered by observing as under :-

“The star argument of learned counsel for the petitioner is that respondent No. 4 was involved in an FIR under Section 420 and 406 IPC at the time of consideration. Though he had been discharged but would still carry stigma irrespective of the fact of his discharge. The counsel for the petitioner has placed reliance in the case of *Kabul Singh vs. The Financial Commissioner, Punjab, 2006(3) R.C.R.(Civil) 313* and *Gurdev Singh vs. Financial Commissioner (Appeals-II), Punjab, Chandigarh and others, 2009(4) R.C.R. (Civil) 808*. As per counsel for the petitioner, some stigma still remains, in those cases where person is not harmoniously acquitted but is acquitted only on the ground of benefit of doubt.

The issue of this FIR against the petitioner and respondent No. 4 has been considered both by the Commissioner and the Financial Commissioner. The Commissioner found that respondent No. 4 who was appellant before him had acquired edge over the petitioner. The ground on which the claim of respondent No. 4 had been rejected was the FIR which was registered against him. The Commissioner found that the District Collector has erred in appreciating the settled principle that he had not suffered any indictment rather was acquitted of the charge as innocent. The Financial Commissioner had also considered this aspect and has agreed with the findings returned by the Commissioner. He has noticed that respondent No. 4 was discharged by JMIC being an innocent and thus the Commissioner has rightly set aside

the order of the District Collector and had appointed respondent No. 4 being more meritorious.

Division Bench of this Court in ***Kabul Singh's*** case (supra) has observed that person who is acquitted in the criminal case does not carry a clean record compared to a person who has a clean record. This order was passed in a case where the Court was not inclined to interfere on a petition filed by the person whose name was rejected for the post of Lambardar on the ground that he was involved in a case. These observations are in a different context. Here one the authorities have two persons one with clean record and other having a case in which he was involved than a person with clean record can be preferred. It is not that other is rejected as he carries a stigma. It is that the person has a better merit.

In ***Gurdev Singh's case (supra)***, the Court has observed that the candidate who is involved in a criminal case then his stigma is not completely washed out by his acquittal but those observations were made considering the facts in those cases. If the distinction between acquittal and convictions is not maintained and both are equated in this manner, obviously then acquittal would not meant anything but deem to be a conviction. In the present case respondent No. 4 had been discharged meaning thereby that he has not even been charged. No charge was framed against him. The submission is that respondent No. 4 could earn his discharge by paying the money which he allegedly took by sending a person abroad. This may not change the situation. Discharge is a discharge. There is no finding which can be read carrying stigma against respondent No. 4.”

It is true that when matter is before the Collector, he has to prefer a person with clean image.

In the present case, it is on record that so far as merits are

concerned, respondent No.4 has an upper hand and his claim is much superior as compared to his rival i.e. the appellant. Respondent No.4 was 58 years of age at the time of appointment. He is a graduate and Ex-serviceman. He also remained Panch of the village for 10 years.

To the contrary, the appellant was 42 years of age at that time and he is only 5<sup>th</sup> Class pass. He owns 5 marlas plot and a house. So far as merits are concerned, preference could not have been given to the appellant. Name of respondent No.4 was rejected only taking note of a fact that he was named as an accused in FIR No. 141 dated 3.8.2003, from which he was later on discharged.

Above fact has rightly been discussed in favour of respondent No.4 by the learned Single Judge. Not only as above, it is apparent from the records that after registration of the FIR, on investigation, respondent No.4 was found innocent by the police and an application was made to discharge him from the case. Relevant portion of the report dated 3.8.2003 reads thus :-

“Subject : Regarding discharging of above said Sadhu Ram  
Sir,

It is requested that on the basis of complaint by Satpal Singh s/o Ram Singh r/o Ibrahimwal a case has been registered that his son Sukhwant Singh who was earlier living at Dubai and Bakshish Lal, Sarpanch r/o Jalal Nagal, who was the relative of Satpal got introduced Sadhu Ram and Sadhu Ram said that he will sent his son to France where his nephew Sunderpal @ Raja had already gone to France who will further send him to German. Our deal was matured for 4 lacs and Satpal called his son Sukhwant from Dubai and Sadhu Ram in April 2001 has taken ₹ 2 lacs and passport from his

house in presence of Bakshish Lal Sarpanch, Jalal Nagal and Sewa Ram s/o Joginder Pal r/o Ibrahimwal and thereafter taken Sukhwant Singh to Delhi and sent him back after made him sit for three days and night and has taken total of ₹ four lacs in 35000/-along with passport and never sent his son to abroad. The complaint was investigated by AFS Kapurthala in which Tarsem Bansal and Ashwani Kumar were also found accused along with Sadhu Ram for which the case has been registered. The matter was investigated and Sadhu Ram was arrested on dated 3.8.2003 and was present on 4.8.2003 before the court, who was remanded to police custody till 6.8.2003 and thereafter from 6.8.2003 to 9.8.2003. Accused Tarsem Bansal and Ashwani Kumar r/o Dilshad Garden 213D, J & K Block, Delhi-95 were arrested on 7.8.2003 and during investigation the above said Tarsem Bansal and Ashwani Kumar have admitted that they have taken ₹ 38000/- and passport from Sukhwant Singh at Delhi for sending him to abroad. Sadhu Ram had only introduced Sukhwant to them. After investigation of the case, it was found that Sadhu Ram has not taken any money and passport from Satpal, therefore, Sadhu Ram is found innocent in this case. In the case Tarsem Bansal and Ashwani Kumar are found as accused. Sadhu Ram who was presented in the court is hereby discharged from the case because Sadhu Ram was found innocent.”

During investigation, it came to the notice of the Investigating Officer that money was not accepted by respondent No.4. He only had introduced the complainant to Tarsem Bansal and Ashwani Kumar, mentioned in that FIR.

Taking note of above said fact and also noting that money already stood paid, discharge order was passed by the Magistrate on 29.8.2003 :-

“Satpal, complainant, has placed on the file photocopy of his duly sworn affidavit stating that he has got his money back from accused Sadhu Ram, Tarsem Bansal and Ashwani Kumar. From the application for discharge of accused Sadhu Ram, it is clear that accused Sadhu Ram has been found innocent by police and there is no evidence against accused Sadhu Ram. As there is no incriminating evidence against accused Sadhu Ram, so accused Sadhu Ram is ordered to be discharged from custody. His release warrants be issued immediately.”

It is an admitted fact that the proceedings are still going on against Tarsem Bansal and Ashwani Kumar. The above fact clearly shows that it is on account of some mis-understanding that Sadhu Ram was named as an accused. He had not accepted the money. Otherwise also, his reputation in the village was very good as he had served as Panch of the village for 10 years.

In view of the facts mentioned above, no case is made out to interfere in the order passed.

Accordingly, the appeal is dismissed.

**(Jasbir Singh)**  
**Judge**

**(G.S. Sandhawalia)**  
**Judge**

**25.7.2013**  
*Ashwani*