

Judgment Sheet
IN THE LAHORE HIGH COURT
JUDICIAL DEPARTMENT

W.P. No.26203/2010

Nazar Hayat
Versus
Mohammad Ijaz Hussain, etc

JUDGMENT

Date of hearing: 15.03.2017 .

Petitioner by: M/S Zafar Iqbal Chohan and Ihsan Ahmad
Binhdar, Advocates .

Respondents by: Mr. Kazim Ali Malik, Advocate
Mr. Mohammad Arif Yaqoob Khan, AAG for
respondents No.4 to 6 .

CH. MUHAMMAD MASOOD JAHANGIR, J:- Un-deniably, Mohammad Feroze Khan son of Mohammad Aslam, father of respondent No.1 was permanent Lumberdar of the concerned Mauza and after his demise on 17.10.2008, the post of Lumberdar stood vacant and to fill it, sixteen candidates including petitioner as well as respondent No.1 applied for it. The Revenue Field Staff right from Patwari to Assistant Commissioner recommended the present petitioner being suitable out of the contestants and the District Collector while concurring with it appointed him against the said vacancy through order dated 21.10.2009, which could not hold the field when his superiors i.e. Executive District Officer (Revenue)/respondent No.5 and Member Board of Revenue/ respondent No.6 concurrently preferred respondent No.1 over the petitioner for the job of Headman through the impugned

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orders dated 05.05.2010 and 28.10.2010 respectively, which are under resistance of the instant constitutional petition.

2. It is submitted by Mr. Zafar Iqbal Chohan, Advocate, learned counsel for the petitioner that the impugned orders suffered from serious misreading and non-reading of material on record, which were passed in a mechanical manner without application of judicious mind; that the Revenue Field Staff as well as the District Collector after considering the merits and de-merits of the candidates rightly declared the petitioner to be eligible for the post under discussion, but both the higher forums without analyzing the credentials of the competitors erred in law while preferring respondent No.1, who did not possess any better qualification than the petitioner besides that the police hierarchy also made a negative report against him, which put a smudge on his character and respondents No.5 and 6 committed material illegality while passing the impugned orders without considering said reports; that respondent No.1 being a man of crummy character was not entitled for appointment against the post under discussion. Mr. Chohan lastly worded that petitioner had neither been involved in any criminal case nor was convicted rather he belonged to a popular, prominent and laudable family of the locality and that he also owned more chunk of land, better in age than that of his contestants and being the veracious choice of the District Collector, could not be ignored.

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3. Conversely, Mr. Kazim Ali Malik, Advocate, learned counsel for respondent No.1 submitted that the Revenue Field Staff as well as the District Collector had favoured the petitioner on account of his local political influence and respondents No.5 to 6 after comparing credentials of the petitioner viz-a-viz respondent No.1 were perfect in appointing the latter being son of outgoing Lumberdar, who on the day of appointment also possessed 15 years experience on his credit; that after appointment till today neither any complaint was lodged against his performance by the land owners under his command nor by the Revenue Field Staff, who gained another experience of 7 years till today and his such proficiency was to be given weight and was rightly considered, which deserves no interference; that in addition to experience, not only extra degree of hereditary claim tilted in favour of respondent No.1, but he also had better edge over the other candidates on account of strength of tribe, quantum of landed property and educational qualification. Mr. Malik, further added that concurrent findings of fact returned by respondents No.5 and 6 could not be disturbed while invoking constitutional jurisdiction, he while supporting his arguments has placed reliance upon the judgments reported as “Abdul Ghafoor Vs. The Member (Revenue) Board of Revenue and another” (1982 P.S.C 65) and “Maqbool Ahmad Qureshi Vs. The Islamic Republic of Pakistan” (PLD 1999 Supreme Court 484).

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4. After giving due consideration to the arguments of learned counsel for the parties and making probe of the record, before embarking upon merits of the case, it is noteworthy that while appointing permanent Lumberdar of the village the controversy of eligibility is to be decided according to law while taking into consideration all the requirements provided under Rule 17 of the West Pakistan Land Revenue Rules, 1968, among other matters which have to be seen conjunctively, those are (i) the hereditary claim of the candidates; (ii) extent of property in the estate, if there are no sub-divisions of the estate and in case there be sub-divisions of the estate the extent of the property in the sub-division for which appointment is to be made, possessed by the candidate; (iii) services rendered to the Government by him or by his family; (iv) his personal influence, character, ability and freedom from indebtedness; (v) the strength and importance of the community from which selection of a headman is to be made and (vi) his ability to undergo training in Civil Defence in the case or headman in Tehsils situated alongwith the Border. The post of Lumberdar is purely an administrative post and after the dicta laid down by the apex Court in **Maqbool's** case supra, the revenue authorities are bound to select the best among the candidates.

5. Reverting to the comparison of the contestants, it is found that respondent No.1 was son of outgoing Lumberdar, whereas the petitioner was not related to him and as such the

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former possessed hereditary claim, whereas no such qualification could be claimed by the latter. In the concerned revenue estate respondent No.1 was owner of 162-kanals 07-marlas and against it petitioner had a chunk of land measuring 132-kanals 05-marlas. The submission of Mr. Chohan that petitioner was owner of 252-kanals could not be proved by him by bringing any revenue record to corroborate the same, whereas Mr. Malik as well as the learned Law Officer responded that the petitioner might have been in cultivation of any further land in some other Mauza, but in the concerned revenue record he was owner of land not more than 15-Acres and their submission found support through the contents of the application preferred for the appointment against the post wherein petitioner himself averred that he was owner of about 15-Acres, which left nothing to conclude that in this circle of qualification respondent No.1 again had an edge over the petitioner. The latter belonged to Dhoon tribe, which was consisting of 145 land owners having property measuring 990-Acres against their title and in contra the former/respondent No.1 was a part of Pathan kinfolk and out of them 235 family members acquired 1881-Acres, which was double in quantum than the land of the Dhoon tribe. Respondent No.1 was a matriculate, but the petitioner was again not having such educational qualification. No doubt, the family of the petitioner was involved in local politics, but only two of the contestants

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could withdraw themselves in his favour, whereas seven out of sixteen candidates voluntarily receded for respondent No.1, which again was indicative of the fact that he had better influence in the Mauza than the petitioner. Although age wise the petitioner is younger than respondent, but to me, respondent No.1, who is present in the court appears to be healthy, strong and matured person. Above all, respondent No.1 was performing the duties of Headman being Sarbrah of his father fifteen years prior to his appointment and after that he was also engaged in the business for the last seven years and as such he possessed spotless career with a credit of experience on his part, which could not be equated with any of the qualifications, the petitioner might have other than referred above.

6. The contention of learned counsel for the petitioner that choice of the District Collector should be given preference, is ill founded because the said choice should be based on merits and cannot be treated as a last word. In present case, the order passed by the Collector was merely based on the negative reports furnished by the Revenue Field Staff as well as police hierarchy, but the same was not supplemented with any material. Even today despite query of this Court, learned counsel for petitioner failed to produce any record to show that respondent No.1 was involved in criminal activities and litigation or that he was engaged in unhealthy activities or that he was not free from indebtedness. It is, therefore, clear that

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credential-wise, respondent No.1 had a prominent edge over the petitioner and respondents No.5 and 6 while minutely considering the said aspects rightly passed the impugned orders on the valid reasons, which do not suffer from any illegality, perversity or jurisdictional defect to call for interference by this Court in the exercise of constitutional jurisdiction.

7. Sequel of the above discussion is that petition in hand being devoid of any merit is hereby dismissed.

(CH. MUHAMMAD MASOOD JAHANGIR)
JUDGE

Approved for reporting.

JUDGE

A.H.Qamar