

Before Ajai Lamba, J.

SANTOKH SINGH,—Petitioner

versus

**FINANCIAL COMMISSIONER, APPEALS-II PUNJAB,
CHANDIGARH—Respondents**

C.W.P. No. 12738 of 2008

28th January, 2011

Constitution of India, 1950—Art. 226—Appointment of petitioner as Lambardar of village—Commissioner directing appointment of respondent No. 4 as Lambardar—Financial Commissioner dismissing revision of petitioner—Respondent removed from Government Service on charges of embezzlement—After consideration of appeal/review, order of removal modified to that of compulsorily retirement of respondent while deducting four annual increments—Nature of misconduct involving moral turpitude—Respondent does not deserve to be appointed as a Lambardar—Petition allowed, orders of Commissioner and Financial Commissioner quashed being perverse and arbitrary.

Held, that the Assistant Director in the Department of Horticulture, Punjab (respondent No. 4) committed misconduct while in service by way of committing embezzlement. The said respondent was removed from service. A review application against penalty of removal from service was filed. The quantum of punishment/penalty has been reduced while passing order dated 7th June, 2002, Annexure P-6. The finding of misconduct, however, stands endorsed. Only the sentence/penalty has been modified. The nature of misconduct involves moral turpitude. This important and relevant circumstance could not have been ignored by the authorities while considering the issue of appointment of Lambardar, in the context of the duties to be discharged by Lambardar. Despite such facts being available on record, the Commissioner and the Financial Commissioner have directed appointment of respondent No. 4 as Lambardar, while setting aside the order passed by the District Collector. Thus, the important and relevant

circumstances in regard to the character of respondent No. 4 has been ignored. This has caused manifest injustice rendering the impugned orders perverse and arbitrary.

(Para 16)

M.S. Khaira, Sr. Advocate, with Dharminder Singh, Advocate, for the petitioner(s).

G. S. Attariwala, Addl. A.G., Punjab.

None for respondent No. 4.

AJAI LAMBA, J. (ORAL)

(1) This civil writ petition has been filed by Santokh Singh, s/o Malkiat Singh for issuance of a writ in the nature of certiorari quashing order Annexure P-3, dated 9th March, 2006 passed by Commissioner, Jalandhar Division, Jalandhar and order Annexure P-5 dated 23rd January, 2008 passed by Financial Commissioner (Appeals-II), Punjab. The said impugned order are concurrent in effect in setting aside order of District Collector, Hoshiarpur in appointing the petitioner as Lambardar of village Thinda, Tehsil Garhshankar, District Hoshiarpur.

(2) Short contention of learned counsel for the petitioner is that the respondent No. 4 was removed from service. The order of removal from service was later diluted by way of awarding a milder punishment. Learned counsel contends that the facts cannot be kept in oblivion while considering the appointment to the post of Lambardar.

(3) I have considered the contention of the learned counsel.

(4) Vide order Annexure P-1, District Collector appointed the petitioner as Lambardar of the village while considering that the petitioner is Ex-Panch, 54 years of age 11th class pass and owns 20 kanals and 15 marlas of land. The respondent No. 4 was not appointed while taking into account the fact that the said respondent had embezzled an amount of Rs. 1,07,141 during his service period and was removed from service.

(5) Vide impugned order Annexure P-3, the Commissioner, on an appeal having been filed by respondent No. 4, accepted the appeal while

holding that the respondent No. 4 had retired from service with effect from 31st August, 2001 and is drawing regular pension and, therefore, the factum of removal from service or the stigma attached to embezzlement of amount cannot be invited.

(6) The petitioner filed a revision petition which has also been dismissed *vide* the other impugned order Annexure P-5 while saying that no illegality can be traced in the order of Commissioner, Jalandhar Division appointing the respondent No. 4 as Lambardar.

(7) On consideration of the pleadings, I find that it has been specifically pleaded in para Nos. 8 and 9 of the writ petition that the respondent No. 4 was posted as Assistant Director in the Department of Horticulture, Punjab at Seed Farm, Mattewada and had committed embezzlement of Rs. 1,07,141 and, therefore, caused loss to the government. An inquiry was conducted and after report of the inquiry, the said respondent was ordered to be removed from service. In para No. 9 of the petition, it has been said that respondent No. 4 filed a review before Chief Minister, Punjab against order of removal from service. The order has been modified to the extent that four annual increments were to be deducted from his pay and he was ordered to be compulsorily retired.

(8) In the para-wise reply, the factum of passing order Annexure P-6 has been admitted as a matter of record. All that has been stated in defence of respondent No. 4 is that the contesting respondent was Assistant Director in the Department of Horticulture in Punjab and he had received all retiral benefits including gratuity, leave encashment etc. and is drawing regular pension.

(9) The specific fact asserted on behalf of the petitioner is that the respondent No. 4 was removed from service and on a review application having been filed, the effect of order had been diluted. This fact has not been specifically denied.

(10) Be that as it may, the document per se has been placed on record, which has been accepted by the respondent. The most relevant contents of the document Annexure P-6 i.e. an order passed by Financial

Commissioner and Secretary to Punjab Government, Agriculture Department dated 7th June, 2002 are paras No. 5, 8 and 9 and they read as under :—

- “5. *On the report submitted by Enquiry Officer, the comments of Director Horticulture Punjab were sought, who fully agreed with the Enquiry Officer. Director Horticulture Punjab while giving his comments mentioned that because of negligence of Shri Mohinder Singh Nagra, Assistant Director Horticulture (Horticulture Development Officer Grade II at that time) and Shri Sukhdev Singh Grewal, Farm Manager Mattewada, a loss of Rs. 1,07,141.02 was caused to the Government Treasury.*
8. *That now Shri Mohinder Singh Nagra, Ex-Assistant Director Horticulture has filed an appeal/review before the Hon'ble Chief Minister Punjab against the order dated 9th November, 2000 of this department which were notified vide Endst. No. 19/5/2000-Kh.B- 4(4)/5349 dated 13th November, 2000. That after considering the appeal/review by the concerned official it has been decided that the order to remove Shri Mohinder Singh Nagra, Ex-Assistant Director from service is modified to the extent that from the basic pay of Rs. 11,660 which he was getting on 9th November, 2000 from the pay scale of Rs. 7,220—11,660, four annual increments are deducted so as to make it Rs. 10,300. That this reduction will remain effective till his date of retirement.*
9. *Therefore, the order dated 9th November, 2000 of this department which was notified vide Endst. No. 19/5/2000-Kh.B- 4(4)/5349 dated 13th November, 2000 is modified and the order to remove Shri Mohinder Singh Nagra, Ex-Assistant Director from service is modified to the extent that from the basic pay of Rs. 11,660 which he was getting on 9th November, 2000 from the pay scale of Rs. 7,220—11,660, four annual increments are deducted so as to make it Rs. 10,300 and this order shall remain effective till his date of retirement 31st August, 2001.”*

(11) Considering the above extracted portion it follows that an inquiry was conducted in regard to the misconduct of the respondent No. 4. It has been found that a loss to the tune of Rs. 1,07,141 was caused to the Government Treasury. In so far as the penalty is concerned, the order of removal has been modified to the extent that from basic pay of Rs. 11,660, which respondent No. 4 was getting on 9th November, 2000, four annual increments have been deducted so as to make it Rs. 10,300. The order has been made effective till the date of retirement.

(12) Considering the facts and circumstances of the case noticed above and in particular the extracted portion from order Annexure P-6, I am of the considered opinion that order Annexure P-3 is founded on erroneous facts, causing manifest injustice. Effect of order Annexure P-6 has been totally ignored. Retirement of respondent No. 4 is not the only relevant circumstance to consider the conduct of the said respondent. If the conduct of the respondent as depicted from order Annexure P-6, portion of which has been extracted above is considered, it is a clear case indicating the fact the respondent No. 4 does not deserve to be appointed as a Lambardar. The order of finding of misconduct has not been reversed. Only penalty imposed has been diluted.

(13) The duties of a Lambardar are given out in Rule 20 of the Punjab Land Revenue Rules, which when extracted, reads as under :—

“20. Duties of headman.—*In addition to the duties imposed upon headman by law for any purpose, a headman shall—*

- (i) *collect by due date all land revenue and all sums, recoverable as land revenue from the estate, or sub-division of an estate in which he holds office, and pay the same personally or by revenue money order or by remittance of currency notes through the post [or at places where treasury business is conducted by the {State Bank of India or any Scheduled Bank as notified by the State Government from time to time}, by cheque on a local Bank] at the place and time appointed in that behalf to the Revenue Officer or assignee empowered by Government to receive it;*
- (ii) *collect the rents and other income of the common land, and the account for them to the persons entitled thereto;*

- (iii) *acknowledge every payment received by him in the books of the landowners and tenants;*
- (iv) *defray joint expenses of the estate and render accounts thereof as may be duly required of him;*
- [*(v) report to the Tehsildar the death or any assignee of land revenue or Government pensioner residing in the estate, or the marriage or re-marriage of a female drawing a family pension and residing in the estate, or the absence of any such person for more than a year*];
- [*(vi) report to the Tehsildar and Collector all encroachments on and injury to the roads, public streets and Government, Nazul and Panchayat land*];
- (vii) *report any injury to Government buildings made over to his charge;*
- (viii) *carry out, to the best of his ability, any orders that he may receive from the Collector requiring him to furnish information or to assist in providing on payment supplies or means of transport for troops or for officers of Government on duty;*
- (ix) *assist in such manner as the Collector may from time to time direct at all crop inspections, recording of mutations, surveys, preparation of records of right, or other revenue business carried on within the limits of the estate;*
- (x) *attend the summons of all authorities having jurisdiction in the estate, assist all officers of the Government in the execution of their public duties, supply, to the best of his ability any local information which those officers may require, and generally act for the landowners, tenants and residents of the estate or sub-division of the estate in which he holds office in their relations with Government;*

- (xi) *report to the Patwari any outbreak of disease among animals [or human beings];*
- (xii) *report to the Patwari the deaths of any right-holders in their estates;*
- (xiii) *report any breach or cut in a Government irrigation canal or channel to the nearest canal officer, or canal Patwari;*
- (xiv) *under the general or special directions of the Collector, assist by the use of his personal influence and otherwise all officers of Government and other persons, duly authorised by the Collector, in the collection and enrolment of recruits for military service whether combatant or non-combatant;*
- (xv) *render all possible assistance to the village postman, while passing the night in the village, in safeguarding the cash and other valuables that he carried."*

(14) Considering the nature of duties, a Lambardar is required to collect rent and other income of common land and account for them to the persons entitled; acknowledge every payment received by him in the books of the land owners and tenants; make reports to the revenue officers in regard to various important issues in the estate; make reports to the Tehsildar in regard to all encroachments in the estate; make a report in regard to any injury to the government buildings made over to the charge of the Lambardar; assist the Collector in various works such as crop inspections; recording of mutations, survey etc. In such circumstances, he is required to intermingle with the residents of the area and seek information on regular basis so as to discharge the functions of a Headman effectively.

(15) The Division Bench of this Court considered a related issue in **Jog Dhian versus Financial Commissioner, Haryana & others (1)**. Following is the relevant portion from Para 13 of the judgment :-

".....As mentioned above, it is admitted position, so specifically averred in the writ petition, that the petitioner was involved

in a murder case, even though it is stated that he was acquitted, and which order was upheld by the High Court. It may be true that once an accused is acquitted on a criminal charge framed against him, even though by giving benefit of doubt, he is presumed to be innocent but at the same time, such a person cannot command respect from the public as, surely, the people cannot have much confidence and rely upon a person, who even though might have been acquitted but who has been tried for murder and remained in custody, either in judicial or police.....”

(16) In view of the statute position giving out the duties of a Headmah, case law and the facts and circumstances of this case, it follows that the respondent No. 4 committed misconduct while in service by way of committing embezzlement. The said respondent was removed from service. A review application against penalty of removal from service was filed. The quantum of punishment/penalty has been reduced while passing order Annexure P-6 portion whereof has been extracted above. The finding of misconduct, however stands endorsed. Only the sentence/penalty has been modified. The nature of misconduct involves moral turpitude. This important and relevant circumstance could not have been ignored by the authorities while considering the issue of appointment of Lambardar, in context of the duties to be discharged by Lambardar. Despite such facts being available on record, the Commissioner and the Financial Commissioner have directed appointment of the respondent No. 4 as Lambardar, while setting aside the order passed by the District Collector. Thus the important and relevant circumstance in regard to the character of respondent No. 4 has been ignored. This has caused manifest injustice rendering the impugned orders perverse and arbitrary.

(17) In view of the above, the petition is allowed.

(18) Order Annexures P-3 dated 9th March, 2006 and order Annexure P-5 dated the 23rd January, 2008 are hereby quashed.