

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Reserved on: 07.03.2025

Pronounced on: 02.05.2025

WP(C) No. 465/2023

CM No. 4394/2023, 1103/2023

c/w

CCP(S) No. 69/2024

- 1. Vipin Kumar** Appellant(s)/Petitioner(s)
Aged 46 Years, S/O Sh. Kewal
Krishan, R/O Village Salalpur
Tehsil Mahreen, District Kathua.

Through: Mr. Ankesh Chandel, Advocate.

Vs

- 1. Union Territory of Jammu and Kashmir** Respondent(s)
Th. Commissioner/Secretary, Revenue
Department, Civil Secretariat,
Jammu/Srinagar.
- 2. Deputy Commissioner, Kathua**
- 3. Sub Divisional Magistrate,
Hiranagar, District Kathua.**
- 4. Tehsildar, Tehsil Mahreen, District
Kathua.**
- 5. Naib Tehsildar, Kore Punnu, Tehsil
Mahreen, District Kathua.**
- 6. Rajinder Parshad,**
S/O Tilak Raj, R/O Salalpur Tehsil
Mahreen, District Kathua.

Through: Ms. Monika Kohli, Sr. AAG
Mr. Mayank Gupta, Advocate.

Coram: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

JUDGMENT

WP(C) No. 465/2023

1. The case projected by the petitioner in this petition is that a notification dated 11.01.2023 was issued by the respondent No. 4, whereby applications were invited from the interested candidates for filling up of

the vacant posts of Lambardar for various villages of Tehsil Mahreen including the village Salalpur, within a period of fifteen days of the publication of the notice. The petitioner applied on 23.01.2023 i.e. within the period of fifteen days from the date of issuance of the notification with the respondent No. 4. The respondent No. 4 on receipt of the application endorsed the same to Naib-Tehsildar i.e. the respondent No. 5 with a direction to prepare the file after completing all the formalities. The respondent No. 5 in turn endorsed the application to Patwari Halqa for report on the same date itself. The respondent No. 6 also in response to the notification dated 11.01.2023 applied for his appointment as Lambardar for village Salalpur by submitting his application on 20.01.2023, but as the respondent No. 4 was having ulterior motive and interested in appointing the respondent No. 6 only as Lambardar for village Salalpur, the respondent No. 4 without waiting for expiry of fifteen days' period prescribed in the notification for submitting the application, in utter contravention and violation of the Lambardari Act of 1972 and Jammu and Kashmir Lambardari Rules, 1980, issued the order impugned on 23.01.2023, and appointed the respondent No. 6 temporarily as Lambardar by exercising powers vested in him under the Rule 14 (4) of the Lambardari Act/Rule of 1972/1980 respectively.

2. It is alleged by the petitioner that when he came to know about the illegal temporary appointment of the respondent No. 6, he immediately raised objection in writing by filing a complaint dated 24.01.2023 with the respondent No. 4, thereby bringing to the notice of respondent No. 4 that the respondent No. 6 was not eligible for appointment as Lambardar on account of having a status of defaulter, as his loan had been declared

NPA by the Jammu Central Cooperative Bank Ltd. Salalpur. Complaint dated 24.01.2023 was endorsed by the respondent No. 4 to the respondent No. 5 with a direction to get report from the concerned bank. The concerned Manager in response thereof recorded a certificate dated 24.01.2023 under his seal and signature that the respondent No. 6 had obtained M. T. Retail Trade loan from Salalpur Branch of the Jammu Central Cooperative Bank Ltd. to the tune of Rs. 2,00,000/ and the said loan amount of the borrower i.e. the respondent No. 6 had turned NPA as on date 31.03.2020 and remained NPA till date. As the respondent No. 4 did nothing in the matter even after submission of the report of the concerned bank, the petitioner availed the statutory remedy of appeal under Rule 13 of the Rules of 1980 and filed an appeal, though styled as cancellation of temporary appointment order of Lambardar of village Salalpur, before the Deputy Commissioner, Kathua i.e. respondent No. 2 on 25.01.2023. The respondent No. 2 on receipt of the appeal endorsed the same to the respondent No. 4 to submit report, which in turn was marked by the respondent No. 4 to the respondent No. 5 for detailed report within a period of six days. It is further alleged by the petitioner that as the respondent No. 6 is highly influential person, therefore, he has got the proceedings stalled in the complaint dated 24.01.2023 filed before the respondent No. 4 and appeal dated 25.01.2023 before the respondent No. 2.

3. By placing these facts, the petitioner has sought quashing of appointment order dated 23.01.2023. Further, a prayer has been made for directing the respondent No. 2 to decide the appeal for cancellation of temporary appointment of the respondent No. 6 as Lambardar and further for

commanding the respondents to appoint the petitioner as Lambardar of Village Salalpur, Tehsil Mahreen.

4. The official respondents in their response have stated that notification dated 11.01.2023 was issued from the office of Tehsildar, Mahreen but the same was withdrawn on 16.01.2023 as there was no provision of issuing notification for filling vacant post of Lambardar in Lambardari Rules 1980. The application of the respondent No. 6 was received from Naib-Tehsildar Kore Punnu after verification vide office letter dated 23.01.2023 and on the same day, he was temporarily appointed as Lambardar for a period of six months. The application of the petitioner was received on 24.01.2023, which was rejected as the order for temporary appointment of Lambardar stood already issued on 23.01.2023. The official respondents have admitted that on 27.01.2023, he liquidated whole of the amount of Rs. 2,00,000/ and produced the NOC from the Jammu Central Cooperative Bank Ltd and the respondent No. 4 intimated the same to Deputy Commissioner, Kathua i.e. respondent No. 2 vide letter dated 03.02.2023.
5. The respondent No. 6 too has filed the objections, stating therein that relief sought by the petitioner cannot be granted and this Court cannot issue the writ of mandamus to compel the respondents to exercise their discretion in the manner as desired by the petitioner, as the statute clearly places discretion with the area collector, who is to notify it, in such manner as he deems appropriate. It is further stated that the order in question was yet to be confirmed by the respondent No. 2, therefore, this Court lacks jurisdiction to address legality or illegality of the order at this stage. It is stated that the petitioner and the respondent No. 6 belong

to same family and when the allegations were levelled by the petitioner against the respondent No. 6, he obtained NOC from the same Cooperative Bank, which had declared the respondent No. 6 as defaulter.

6. **Mr. Ankesh Chandel**, learned counsel for the petitioner has argued that the way in which the respondent No. 6 has been appointed clearly reeks of arbitrariness on part of the respondent No. 4. The respondent No. 6 had concealed the fact that he was a defaulter of the Central Cooperative Bank Ltd and succeeded in getting himself appointed as Lambardar, therefore the order impugned is required to be quashed.
7. *Per contra*, **Mr. Mayank Gupta**, learned counsel for the respondent No. 6 has argued that the respondent No. 2 has yet to confirm the appointment of the respondent No. 6, therefore, this Court cannot interfere at this stage. In the written arguments, it is stated that the respondent No. 6 was an eligible candidate as per the official notification and had previously held the post of Lambardar and the petitioner has deliberately concealed this fact. He has laid much stress that the respondent No. 6 has obtained NOC negating the claim of the petitioner that the respondent No.6 was defaulter.
8. **Heard learned counsel for the parties and perused the record.**
9. The petitioner has stated that notification dated 11.01.2023 was issued by the respondent No. 4 inviting applications from the interested candidates for filling up the vacant post of Lambardar within a period of fifteen days from the publication of the notification. The respondent No. 6 too has admitted in his written arguments that he was eligible candidate as per the official notification. The official respondents have stated that they had withdrawn the notification, however, no notification

in respect of withdrawal of the notification issued earlier, has been produced before this Court.

- 10.** Be that as it may, the fact remains that the petitioner and the respondent No. 6 applied for the post of Lambardar pursuant to that notification only. But for that notification, neither the petitioner nor the respondent No. 6 could have become aware of the filling up of the vacant post of Lambardar for the village Salalpur, Tehsil Mahreen, though on temporary basis. Interestingly, in the order impugned dated 23.01.2023, it has been mentioned that one application has been received in this office on 20.01.2023. It is difficult to comprehend as to how the person desirous of seeking appointment as Lambardar, would come to know that Tehsildar is going to appoint substitute (temporary Lambardar), thereby filling up the vacant post of Lambardar. The official respondents may be right in submitting that under the rules there is no requirement for publication of notification inviting applications, but once the Tehsildar is appointing Lambardar, though on temporary basis, it is imperative that equal opportunity is provided to all the interested candidates, and the best candidate is appointed as Lambardar though temporarily. Tehsildar cannot as per his own sweet will appoint any person as Lambardar without affording any opportunity of equal participation in the process for appointment of Lambardar though on temporary basis, to the other interested candidates.
- 11.** This Court is of the considered view that issuance of notification inviting applications from the interested candidates, though is not the requirement of Rule 11 of the Lambardari Rules, but such requirement is inherent in the power vested in the Revenue Officer to make temporary

appointment of Lambardar. Providing equal opportunity to all the interested candidates to participate in the process of appointment of Lambardar, even on temporary basis, is possible only if the proper information in respect of intention of Tehsildar to make temporary appointment of Lambardar, is disseminated to the interested candidates. Otherwise, it would vest the Revenue Officer i.e. Tehsildar with absolute and unbridled discretion to appoint any person of his choice as temporary Lambardar. The respondent No.4 has stated that the application of the petitioner was received on 24.01.2023 but the same was rejected because the order impugned stood already issued. The copy of the application placed on record by the petitioner reveals that the application submitted by him was marked by respondent No.4 to respondent No. 5 on 21.01.2023 and the same was marked by the respondent No.5 to Patwari concerned on 23.01.2023. It appears that the person at the helm of affairs of office of respondent No.4 has made a brazen attempt to mislead this court. It is strange that when the application was submitted on 24.01.2023, then how the report came to be called from Patwari on 23.01.2023. These facts speak about the conduct of the respondent No.4 that he wanted to appoint the respondent No.6 by hook or by crook. If the actions and demeanour of the respondent No. 4 are tested on the anvil of concept of equality, as enshrined in Article 14 of the constitution of India, it is found that the respondent No.4 has acted in an illegal and arbitrary manner.

12. More so, the respondent No. 6 was a defaulter of Jammu Central Cooperative Bank Ltd. and the official respondents also have stated that no dues certificate was submitted by the respondent No. 6 only on

27.01.2023, meaning thereby that when he applied for and was appointed as Lambardar, he was a defaulter of Jammu Central Cooperative Bank Ltd. It clearly establishes that the respondent No. 6 had concealed his status of being defaulter from the respondent No. 4, which was subsequently cleared by the respondent No. 6 on 27.01.2023.

- 13.** Though the petitioner has preferred an appeal before the respondent No. 2, but it appears that the same has not been decided. This Court vide order dated 01.03.2023 had stayed the operation of the order dated 23.01.2023. It is the stand of the respondent No. 6 that his appointment as temporary Lambardar has not been approved by the respondent No. 2. This Court could have directed the respondent No. 2 to decide the appeal preferred by the petitioner, but taking into consideration that the whole process of engaging the respondent No. 6 is illegal as initial notification was issued on 11.01.2023, whereby the applications were invited from the interested candidates within a period of fifteen days of publication of notification and the petitioner applied for the same on 23.01.2023 i.e. well within the time of fifteen days from the publication of notification, but was not considered on account of self-conceived opinion formed by the respondent No. 4 that notification was not required at all, resulting into denial of opportunity to the petitioner to seek appointment as Lambardar though on temporary basis and before expiry of 15 days, the respondent No. 6 was appointed as Lambardar on 23.01.2023. The appointment of the respondent No. 6, though yet to be confirmed, cannot be held to be sustainable in the eyes of law. The period of temporary appointment of the respondent No. 6 was for six months only and this writ petition has been pending before this Court for nearly two years, as

such, directing the respondent No. 2 to decide the appeal of the petitioner would further prolong the matter.

- 14.** For what all has been considered, discussed and analysed hereinabove, the order impugned dated 23.01.2023 is quashed and the respondent No. 1 is directed to ensure that the election for the post of Lambardar of Village Salalpur, Tehsil Mahreen is held within a period of six months from today and in the event, the respondent No. 4 intends to appoint Lambardar temporarily for the period of six months, the respondent No. 4 shall issue notification inviting applications from all the interested candidates to participate in the selection process and thereafter, only appoint Lambardar for the period prescribed under the Lambardari Rules.

- 15. Disposed of along with connected applications.**

- 16.** Original record retained be returned to the Ms. Monika Kohli, learned senior AAG forthwith on proper receipt.

CCP(S) No. 69/2024

1. In view of disposal of the main petition, the instant contempt petition arising out of the interim order passed in the main petition, accordingly, is **disposed of** and the contempt proceedings are closed.

(RAJNESH OSWAL)
JUDGE

Jammu
02.05.2025
Sahil Padha

Whether the order is speaking:	Yes
Whether the order is reportable:	Yes