

In the High Court of Punjab and Haryana at Chandigarh

C.W.P. No. 12873 of 2014

Date of Decision: August 18, 2015

Hemant Sharma

... Petitioner

Versus

Financial Commissioner, Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

Present: Mr. S.S. Dinarpur, Advocate,
for the petitioners.

Mr. Shivendra Swaroop, AAG, Haryana,
for respondent nos. 1 to 3.

Mr. Rajesh Lamba, Advocate,
for respondent No.4.

None for respondent no.5.

Paramjeet Singh, J. (Oral)

Instant writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari quashing the impugned order dated 31.03.2009 (Annexure P/4) passed by respondent no.2-Commissioner, Ambala Division, Ambala Cantt., appointing respondent no.4 – Pushp Raj as Lambardar of Patti Motan of

respondent no.1 – Financial Commissioner, Haryana whereby ROR filed by father of the petitioner is dismissed as infructuous.

Brief facts of the case are that on account of death of Naranjan Dass, previous lambdardar of Patti Motan of Village Pehowa, proceedings were initiated for appointing new lambardar. In pursuance of that, various candidates contested the said post. After considering the comparative merit of the candidates, the Collector appointed Sh. Jai Parkash, father of the petitioner as Lambardar of the village vide order dated 15.11.2006 (Annexure P/1). Against that order, respondent no.4 filed an appeal before the Commissioner. Vide order dated 14.08.2007 (Annexure P/2), the Commissioner set aside the order of the Collector and remanded the case to the Collector for fresh decision. Thereafter, the Collector again appointed Jai Parkash as Lambardar vide order dated 10.10.2008 (Annexure P/3). Against that order, respondent no.4 filed an appeal before the Commissioner. Vide order dated 31.03.2009 (Annexure P/4), the Commissioner set aside the order of the Collector and appointed respondent no.4 as Lambardar of the Village. Thereafter, Jai Parkash preferred a ROR before the Financial Commissioner, which was dismissed as infructuous on account of death of Jai Parkash. Hence, present writ petition.

I have heard learned counsel for the parties and perused the

record.

Learned counsel for the petitioner argued that case should have been started afresh *de novo* and fresh applications should have been invited as the claim of Jai Parkash was never determined on merit. Learned counsel further argued that choice of the Collector cannot be lightly set aside. Learned counsel further relied upon a judgment of Division Bench of this Court in **Shamsher Singh vs. Financial Commissioner (Revenue) Haryana and others, 1997(2) PLJ 358** to contend that once Lambardar is appointed by the Collector and if he dies during the pendency of revision petition, then fresh applications should be invited and process for filling up the vacancy be started *de novo* in accordance with law.

On the other hand, learned counsel for respondent no.4 submitted that he has no objection if the matter is considered *de novo* by the Collector by inviting applications afresh. However, till then, respondent no.4, who has been appointed as Lambardar by the Commissioner, should be allowed to continue in the office of Lambardar of the village.

Said submission of learned counsel for respondent no.4 is not opposed by learned counsel for the petitioner. However, he submits that direction may be issued to the Collector to decide the case in a

stipulated period.

In *Shamsher Singh's case (supra)*, the Division Bench of this Court has held as under:-

“.... After hearing learned counsel for the parties, we are of the view that the proceedings for the appointment of a Lambardar of the village should be started de novo in the present case. Admittedly, the claim of Tek Chand could not be examined on merits in view of his death. May be there are better candidates available in the village. It does happen that villagers do not come forward by seeing one candidate or the other in field for appointment for the post of Lambardar. Once one or the other candidate out of the two in field dies, the other candidates may choose to apply for the post. In any case, no Lambardar can be allowed to remain on the post only because the other contesting candidate dies during the pendency of the case. Khazan Singh, respondent no.3 is admittedly working as Lambardar. He is allowed to continue as Lambardar till a fresh decision is taken.

2. Before parting with the judgment, it is necessary to observe that the learned Collector would examine the merits and demerits of the candidates who will apply for the post and that he will not be influenced by any report which has been submitted during the pendency of the proceedings. Khazan Singh need not apply for the post as he is already working as Lambardar. Fresh applications be invited....”

The matter is squarely covered by the judgment of the

Division Bench in **Shamsher Singh's case (supra)**.

Accordingly, order dated 18.12.2013 (Annexure P/5) passed by Financial Commissioner is set aside. Instead of sending the matter to the Financial Commissioner for fresh decision, this Court deems it fit and proper that Collector should decide the matter *de novo* after inviting fresh applications from the residents of the village. Needful shall be done within a period of six months from the date of receipt of certified copy of this order. It is made clear that respondent no.4 is allowed to continue as Lambardar till a fresh decision is taken. The experience gained as ad-hoc arrangement shall not be taken as a ground for considering the experience of respondent no.4 on merits. It is further made clear that the applicants who earlier applied for the said post before the Collector, need not apply afresh for the said post. However, they may move fresh applications mentioning their upto date qualifications etc.

The parties through their counsel are directed to appear before the Collector on 28.09.2015.

With the above observations, instant writ petition is disposed of.

August 18, 2015

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**[Paramjeet Singh]
Judge**