

CWP No.144 of 2015

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.144 of 2015
Date of decision: 06.02.2015

Manjit Kaur

....Petitioner

Versus

Financial Commissioner (Appeal), Punjab and others

....Respondents

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

- 1) Whether Reporters of the local papers may be allowed to see the judgment ?
- 2) To be referred to the Reporters or not ?
- 3) Whether the judgment should be reported in the Digest ?

Present: - Mr. K.S. Dadwal, Advocate, and
Ms. Neha Jain, Advocate, for the petitioner.
Mr. Rupam Aggarwal, DAG, Punjab.
Mr. Vikas Mehsempuri, Advocate, for respondent No.4.

PARAMJEET SINGH, J. (ORAL)

Instant writ petition has been filed under Articles 226/227 of the Constitution of India for quashing the order dated 07.10.2011 (Annexure P-7) passed by respondent No.3 – District Collector – cum – Deputy Commissioner, Ludhiana, order dated 14.03.2013 (Annexure P-9) passed by respondent No.2 – Commissioner, Patiala Division, Patiala, and order dated 02.07.2014 (Annexure P-10) passed by respondent No.1 – Financial Commissioner, Punjab.

Brief facts of the case are that to fill up the vacancy caused on

CWP No.144 of 2015

account of death of Balwinder Singh, Lambardar of village Bhairon Munna on 15.04.2009, applications were invited from interested persons by making publication/proclamation in the village after obtaining necessary sanction from the Collector. In response to the proclamation, two persons i.e. Petitioner and respondent No.4 applied for the post of Lambardar. After completion of all the formalities, matter came up for consideration before the Collector. The Collector after appreciating the comparative merit of the candidates appointed the petitioner as Lambardar of the village. Aggrieved against the order of the Collector, respondent No.4 filed an appeal before the Commissioner. The Commissioner by order dated 04.01.2011 allowed the appeal and remanded the case to District Collector for fresh decision. On remand, after considering the comparative merits of both the candidates, Collector found respondent No.4 more suitable for the post of Lambardar and appointed him as such by order dated 07.10.2011 (Annexure P-7). Aggrieved against the order of the Collector, petitioner preferred appeal before the Commissioner, which was dismissed by order dated 14.03.2013 (Annexure P-9). Thereafter, petitioner filed revision petition before the Financial Commissioner, which has been dismissed by order dated 02.07.2014 (Annexure P-10). Hence, this writ petition.

I have heard learned counsel for the parties and perused the record.

CWP No.144 of 2015

Learned counsel for the petitioner vehemently contends that petitioner has been ignored only on the ground that she is a lady. Learned counsel for the petitioner further contends that petitioner is the wife of deceased Lambardar and is in a position to discharge her duties in the same capacity as a man can do. Learned counsel for the petitioner further contends that respondent No.4 is working at Ludhiana with C.S. Mechanical Works, therefore, he is not in a better position to perform the duties of Lambardar. He had not mentioned regarding his employment in the application for the post of Lambardar.

On the other hand, learned counsel for respondent No.4 submits that he is more meritorious and qualified than the petitioner. Now-a-days educational qualification is one of the important factors for appointment as Lambardar as he/she has to interact with Government officials and go through the documents which he/she may have to attest. Many a times less educated person is not in a position to understand the documents. An educated Lambardar is able to better serve the cause of the residents of the village.

I have considered the contentions raised by learned counsel for the parties.

A perusal of the record shows that District Collector after appreciating the comparative merit found respondent No.4 – Jang Singh to be fit and suitable candidate and appointed him as such. In view of law laid down by Hon'ble the Supreme Court of India in the case of

CWP No.144 of 2015

Mahavir Singh Vs. Khiali Ram & others, 2009(3) SCC-439, Lila Ram Vs. Asa Ram, 1995 Lahore Law Times-29 followed by Division Bench of this Court in the case of ***Phool Kumar Vs. State of Haryana and others, 2010(2) RCR (Civil) 819***, the choice of the District Collector cannot be lightly set aside. It can only be set aside if there is perversity or illegality in the impugned order of the Collector. Learned counsel for the petitioner has not been able to point out any perversity or illegality in the order passed by the District Collector. The finding of the District Collector has been affirmed by the Commissioner and Financial Commissioner.

In ***Mahavir Singh's*** case (supra) the Hon'ble Supreme Court of India has observed that there should be no interference with the choice made by the Collector in the matter of appointment of Lambardar even if two views are possible. It is only the prerogative of the Collector to compare the merits of the candidates for appointment to the post of Lambardar. All the authorities have concurrently found respondent No.4 as fit and suitable candidate.

So far as the contention of the learned counsel for the petitioner that he had not mentioned regarding his employment in the application is concerned, same is insignificant in view of the fact that nothing has been placed on record that petitioner was in employment on the date of submission of application for the post of Lambardar.

Be that as it may, there is no bar to appoint a government

CWP No.144 of 2015

servant as Lambardar. It is settled law that if a Government servant is appointed as a Lambardar, his appointment as Lambardar will not in any way interfere in the discharge of his duties as a Government servant. A Division Bench of this Court in ***Sukhminder Singh vs. Financial Commissioner 1993 (1) R.R.R. 19*** has held as under: -

“3. We do not find any merit in the contention of the learned counsel. To be in the service of the Government, cannot be a disqualification for appointment as Lambardar, especially when the post of a Lambardar is itself a civil post and dismissal or removal therefrom also attracts the provisions of Article 311 of the Constitution of India as the same are attracted in the case of other Government servants. Moreover, the provision for appointment of a Sarbarah Lambardar itself indicates that the actual performance of duties of the office of Lambardar can be done by the person other than the Lambardar himself, meaning thereby that if a Government servant is appointed as a Lambardar, his appointment as Lambardar will not in any way interfere in the discharge of his duties as a Government servant, Therefore, we are in complete agreement with the view taken by the learned Financial Commissioner Appeals, that a Government servant is fully eligible for appointment as Lambardar and he cannot be ignored only on that account if he is otherwise eligible and suitable for that post.”

The said view has been upheld by a Division Bench of this Court in ***Amarjeet Singh vs. Financial Commissioner Appeal II 2000 (2) PLJ 456*** wherein it has been held as under: -

“3. It is undoubtedly correct that every eligible person has a

right to aspire for the office of the village Lambardar. It is also true that under the terms of Rule 15 as observed by their Lordships in Sukhminder Singh's case the mere factum of employment with the State Government or any of its instrumentalities cannot per se be a disqualification for appointment. Yet the onus of determining the suitability of an individual for appointment as village Lambardar rests with the prescribed authority. In this case three senior officers of the Government in the hierarchy of the Revenue Department viz. the Collector, the Commissioner and the Financial Commissioner are unanimous in their view. They have considered the petitioner's claim. They have found the respondent suitable. The petitioner's claim has been duly considered. The orders passed by them do not violate any provision of law. There is no error of jurisdiction. Thus no ground for interference under Article 226 is made out."

This Bench in ***Duli Chand vs. State of Haryana and another*** **2013 (1) R.C.R.(Civil) 1010** has held that a person who is working at some reasonable distance, cannot be ignored for the appointment of Lambardar. There is common tendency to move towards urban area as the better educational and employment opportunities are not available in the rural areas. A relevant extract of ***Duli Chand's*** case (supra) reads as under:

"7. It is a settled principle of law that the order of the Collector can only be set aside if the order suffers from illegality or perversity. The Commissioner as well as Financial Commissioner have not recorded any finding with regard to perversity in the order passed by the District

CWP No.144 of 2015

Collector. The order of the District Collector has been set aside by the Commissioner on the ground that petitioner is working at Faridabad which is at a distance of 25 kilometers from the village and this fact has not been considered by the District Collector. This cannot be a ground to hold the order of the district Collector illegal. Being non-resident of the village does not amount to perversity. As per the provisions contained in Rule 15 of the Lambardari Rules, the person is required to have estate/land in the same revenue estate/village. Only relevant condition is the property of the candidate possessed in the estate to secure the land revenues which he is to collect as Lambardar. There is no specific provision that he must be having residence in the village. Otherwise also for sake of livelihood the tendency to move towards the urban area is commonly seen as the better educational and employment opportunities are not available in the rural areas at par with those available in the urban areas. In my view it will not make any difference if one works at some reasonable distance. Merely on the ground that he is working at some distance, he cannot be ignored on this score alone. Otherwise also there is a specific provision in rule 27 of the Lambardari Rules for appointment of substitute Lambardar. In cases where the Government servants, who were working at different places and appointed as Lambardar, appointment of substitute Lambardar/Sarbrah Lambardar to work on behalf of actual Lambardar, has been allowed.

8. In view of peculiar facts and circumstances of the case, I deem it fit and appropriate to set aside the orders passed by the District Collector, Commissioner and Financial Commissioner. Matter is remanded to the District Collector for fresh decision who after taking into consideration the

CWP No.144 of 2015

provisions of the Lambardari Rules specifically Rules 15 and 27, shall pass a speaking order.”

In view of above discussion and concurrent findings recorded by authorities below with regard to suitability of respondent No.4, present writ petition fails.

Dismissed.

No costs.

(Paramjeet Singh)
Judge

February 06, 2015
R.S.