

CWP No. 18639 of 2013(O&M)

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

**CWP No. 18639 of 2013(O&M)
Date of Decision : 03.09.2015.**

Rajesh Kumar

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

Present: Mr. J.S. Chahal, Advocate for the petitioner.

Mr. Rajneesh Chadwal, D.A.G., Haryana.

Mr. Shiv Kumar, Advocate for respondent No. 7.

Paramjeet Singh, J.(Oral)

CM No. 131 of 2015

Application is allowed, as prayed for.

Documents as Annexures P-12 to P-17 are permitted to be taken on record.

CM No. 130 of 2015

Application is allowed, as prayed for, subject to all just exceptions.

Documents as Annexures P-12 to P-17 are taken on record.

CWP No. 18639 of 2013

The instant petition has been filed under Articles 226/227 of

the Constitution of India for quashing the order dated 27.05.2013 passed by the Financial Commissioner, Haryana, after the remand by this Court vide order dated 04.04.2012 in CWP No. 13841 of 2009.

Brief facts of the case are that one Murad Ali, the Lambardar of Backward Class of Village Attali, Tehsil Ballabgarh died as a result of which, vacancy of Lamberdar fell vacant. The Competent authorities directed the officials of the Revenue Department to fill the said vacancy. The parties had earlier come to this Court in CWP No. 13841 of 2009, which was disposed of vide order dated 04.04.2012 and the case was remanded to the Financial Commissioner by observing as under :-

“The learned counsel for private respondent failed to rebut these documents. In these circumstances, the matter is required to be re-examined by the Financial Commissioner that whether private respondent is a resident of Okhla as mentioned in Annexure P-6 and also to verify from revenue record after getting the report from revenue patwari that petitioner is having land in the village as he categorically assert that this finding is wrong.”

In pursuance of that order, a report was sought and the Financial Commissioner has come to a conclusion that petitioner Ishaq Khan belongs to village Attali, Ballabgarh and has 1 kanal 5 marlas of land on which a residential house exists and he resides in the village. Otherwise also, he has been appointed by the District Collector, Faridabad.

Learned counsel for the petitioner contends that respondent

No. 7 is not available in the village as he is running a shop at Ballabgarh.

Per contra, learned State counsel and learned counsel for respondent no.7 vehemently oppose the contentions of learned counsel for the petitioner and contend that impugned order is legal and justified.

I have considered the rival contentions of learned counsel for the parties.

A perusal of the record shows that all the authorities have recorded concurrent findings. The District Collector after appreciating the comparative merits found respondent No. 7-Ishaq Khan to be fit and suitable candidate and appointed him as such. It is a settled principle of law that the choice of the 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 as well as Financial Commissioner.

In view of law laid down by Hon'ble the Supreme Court of India in the case of ***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.

In ***Mahavir Singh's*** case (supra) the 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. There are concurrent findings recorded by the revenue authorities.

Coming back to the facts of the present case, as far as the contention that respondent No. 7 is running a shop at Ballabgarh and most of the time he remains at Ballabgarh is concerned, it is rather in the interest of the Villagers. The Ballabgarh is a Tehsil. The Villagers have to go to Tehsil immediately as and when they need the assistance of the Lambardar. As respondent No. 7 remains most of the time at Ballabgarh, it will be convenient for the villagers to contact him when they require his assistance. Even otherwise, working at a shop is not disqualification for appointment as Lambardar. Even if a candidate is in Govt. service that is also not a disqualification as has been held by a Division Bench of this Court in ***Sukhminder Singh Vs. Financial Commissioner, 1993(1) RRR-19.***

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."

The import of judgment by a Division Bench of this Court in ***Sukhminder Singh's*** case (supra) is that a person, who is doing some other work or doing Govt. job, can work through a Sarbarah Lambardar.

In view of the above, the present writ petition is dismissed being devoid of any merit.

However, no order as to costs.

September 03, 2015.
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(PARAMJEET SINGH)
JUDGE