

CWP-17107-2014

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

CWP-17107-2014

Date of Decision: 13.10.2015

Attar Singh

... Petitioner(s)

Versus

State of Haryana and others

... Respondent(s)

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. Pankaj Chauhan, Advocate,
for the petitioner.

Mr. Rajneesh Chadwal, DAG, Haryana.

Mr. Vipul Dharmani, Advocate,
for respondent No.4.

Paramjeet Singh, J.

Instant writ petition has been filed under Articles 226/227 of the Constitution of India for setting aside the order dated 29.05.2014 (Annexure P-3) passed by respondent No.1-Financial Commissioner, Haryana whereby orders dated 27.09.2012 (Annexure P-1) and 26.03.2013 (Annexure P-2) passed by respondent No.3-District Collector, Yamunanagar and respondent No.2-Commissioner, Ambala Division, Ambala, respectively, appointing petitioner-Attar Singh as Lambardar, have been set aside and respondent No.4-Udham Singh has

CWP-17107-2014

been appointed as Lambardar.

Brief facts of the case are to the effect that to fill up the vacancy caused on account of death of Banwari Lal, Lambardar (General) of village Hafizpur, Sub Tehsil Mustafabad, Tehsil Jagadhari, District Yamuna Nagar, applications were invited from the interested persons by making proclamation in the village after obtaining necessary sanction from the Collector. In furtherance of proclamation, 13 candidates submitted their applications out of which 11 candidates withdrew their applications and ultimately, two candidates i.e. petitioner and respondent No.4 remained in fray. Naib Tehsildar, Mustafabad and Sub Divisional Magistrate recommended the name of petitioner for the post of Lambardar. The Collector after appreciating the comparative merit of the candidates found petitioner-Attar Singh to be fit and suitable candidate and vide order dated 27.09.2012 (Annexure P-1) appointed him as Lambardar of the village. Feeling aggrieved, respondent No.4 filed appeal before respondent No.2-Commissioner, Ambala Division, Ambala which has been dismissed vide order dated 26.03.2013 (Annexure P-2). Thereafter, respondent No.4 filed revision before respondent No.1-Financial Commissioner, Haryana, who allowed the revision filed by respondent No.4 and appointed him as Lambardar and set aside the orders dated 27.09.2012 (Annexure P-1) and 26.03.2013 (Annexure P-2) passed by respondent No.3-District Collector, Yamunanagar and respondent No.2-Commissioner, Ambala Division, Ambala, respectively. Hence, this writ petition.

CWP-17107-2014

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

Learned counsel for the petitioner vehemently contended that after considering the comparative merits of the candidates and recommendations made by the Naib Tehsildar and Sub Divisional Magistrate, respondent No.3-District Collector appointed the petitioner as Lambardar. The choice made by the Collector cannot be set aside unless there is perversity or illegality in the order. The father of petitioner is not in unauthorized possession of the Panchayat Land and moreover, the petitioner is residing separately from his father. The illegal possession of his close relative cannot be a disadvantage for the petitioner.

Per contra, learned State counsel and learned counsel for respondent No.4 vehemently opposed the contentions of learned counsel for the petitioner and supported the impugned order dated 29.05.2014 (Annexure -P-3). Respondent No.4 is having higher educational qualification than the petitioner.

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

A reference to the relevant Rule 15 of the Punjab Land Revenue Rules, as applicable in the State of Haryana, for appointment of Village Headman, would be beneficial to decide the controversy. The said rule reads as under:-

“15. Matters to be considered in first

CWP-17107-2014

appointments- *In all first appointments of headman, regard shall be had among other matters to-*

- (a) his hereditary claims;*
- (b) extent of property in the estate possessed by the candidate;*
- (c) services rendered to the State by himself or by his family;*
- (d) his personal influence, character, ability and freedom from indebtedness;*
- (e) the strength and importance of the community from which selection of a headman is to be made;*
- (f) services rendered by himself or by his family in the national movements to secure freedom of India.*

In case of an ex-headman of an estate or sub-division thereof in the territory now comprising the State of Haryana who had resigned or was dismissed on account of his participation in a national movement before partition and another headman was appointed in his place, the present incumbent of the post shall be removed irrespective of the provisions of rule 16 and the ex-headman would be appointed in his place if he has not rendered himself unfit for appointment for any of the reasons given in Rule 16 except imprisonment for a political offence before 15th August, 1947. In case the ex-headman is no longer alive, a person of his family who would under the Rules have been entitled to be headmen if the resignation or dismissal had not intervened, would be appointed as headman. But when no such person exist there would be no need to remove the existing Lambardar;

- (g) services rendered by himself to the community and development programmes;*

CWP-17107-2014

(h) he shall be not less than 21 years of age at the time of inviting the application for the appointment of Lambardar;

(i) he should be literate, preferably middle pass.”

While appointing Lambardar, there is no criteria that all the parameters should be fulfilled by a candidate. Only the bare minimum qualification is to be taken into consideration and choice to find out a suitable candidate lies with the Collector only. The District Collector after appreciating the comparative merits of the petitioner and respondent No.4 found the petitioner-Attar Singh to be fit and suitable candidate for the post of Lambardar and appointed him as such. The finding recorded by the Collector has been affirmed by the Commissioner, Ambala Division, Ambala. Moreover, there are recommendations of villagers, Naib Tehsildar and SDM concerned in favour of the petitioner.

Respondent No.1-Financial Commissioner has non-suited the petitioner on the ground of his unavailability in the village and illegal possession of his father in the land of Gram Panchayat.

It is a settled principle of law that choice of the Collector cannot be lightly set aside. It can only be set aside if there is perversity or illegality in the order of the Collector. The Financial Commissioner, has appointed respondent No.4 as Lambardar on the ground of his availability in the village more than that of the petitioner. It cannot be treated as perversity in the order of the authorities below and the petitioner cannot be disqualified.

CWP-17107-2014

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 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*

CWP-17107-2014

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

Furthermore, 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 Hon'ble Supreme Court

CWP-17107-2014

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.

The petitioner cannot be non-suited to the post of Lambardar on the ground that his father has been allegedly found in unauthorized possession of the land of Gram Panchayat. A Division Bench of this Court in ***Ram Pal vs. The District Collector, Karnal and others*** 2012 (5) R.C.R.(Civil) 493 has held as under:

“3.....It has also been noticed that the Financial Commissioner has further non-suited respondent No.4 on the ground that his father and grand-father are in unauthorised possession of Panchayat property. It has been held that unauthorised possession of relatives, howsoever close, cannot visit a candidate with adverse consequences unless it is established that he has drawn benefit of their unauthorised possession. Since there was no such evidence, therefore, the learned Single Judge set aside the order of the Financial Commissioner and remitted the matter to him to re-consider the revision afresh.”

I am of the definite view that adverse possession of a close relative on public property cannot be taken as a ground to non-suit a candidate for the post of Lambardar. In this case, there is no evidence on record to show that the petitioner has drawn any benefit from the property which is allegedly in possession of the father of the petitioner.

CWP-17107-2014

The Financial Commissioner has wrongly drawn adverse inference against the petitioner on the ground of illegal possession of his father.

In view of above discussion, the present writ petition is allowed, the impugned order dated 29.05.2014 (Annexure P-3) passed by respondent No.1-Financial Commissioner, Haryana is set aside and the the order dated 27.09.2012 (Annexure P-1) passed by respondent No.3-District Collector which has been affirmed vide order dated 26.03.2013 (Annexure P-2) passed by the Ambala Division, Ambala is restored and the petitioner is appointed as Lambardar (General Category) of village Hafizpur, Sub Tehsil Mustafabad, Tehsil Jagadhari, District Yamunanagar.

No order as to costs.

13.10.2015
parveen kumar

(Paramjeet Singh)
Judge