

In the High Court of Punjab and Haryana at Chandigarh

C.W.P. No. 16633 of 2015

Date of Decision: August 13, 2015

Sucha Singh

... Petitioner

Versus

State of Punjab and another

... Respondents

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

Present: Mr. Deepak Thapar, Advocate,
for the petitioner.

Paramjeet Singh, J. (Oral)

Instant petition has been filed under Articles 226 and 227 of the Constitution of India seeking quashing of order dated 04.05.2010 (Annexure P/11) passed by District Collector, Patiala, appointing respondent no.2 – Kuldip Singh as Lambardar of Village Panjeta, Tehsil Patiala and order dated 27.05.2015 (Annexure P/13) passed by Financial Commissioner, Punjab, whereby appeal filed by respondent no.2 has been allowed and order dated 08.03.2011 passed by Divisional Commissioner has been set aside.

Brief facts of the case are that on account of death of Pritam

a vacancy arose for the post of Lambardar. The Collector appointed the petitioner as Lambardar of the Village on 30.10.2001 (Annexure P/4). Thereafter, mother of respondent no.2 filed an appeal before the Commissioner, which was dismissed on 25.02.2002 (Annexure P/5). However, vide order dated 04.03.2008 (Annexure P/6), the Financial Commissioner set aside the orders of the Collector and Commissioner and remanded the case to the Collector and directed that fresh proclamation be made and applications be invited. In pursuance of that, applications were invited and respondent no.2 applied as one of the candidates. The Collector, after considering the comparative merit of the candidates, appointed respondent no.2 as Lambardar of the village vide order dated 04.03.2010 (Annexure P/11). Thereafter, petitioner preferred an appeal which was allowed and case was remanded to the Collector for fresh decision by the Divisional Commissioner, vide order dated 08.03.2011 (Annexure P/12). Against that order, respondent no.2 preferred an appeal before the Financial Commissioner. Vide order dated 27.05.2015 (Annexure P/13), the Financial Commissioner upheld the order of Collector dated 04.03.2010 (Annexure P/11) and set aside the order of the Commissioner dated 08.03.2011 (Annexure P/12). Hence, present writ petition.

I have heard learned counsel for the petitioner.

Learned counsel for the petitioner vehemently contended that petitioner has been working as Lambardar of the Village since 2001 and has sufficient land and qualifications for performing the duties of Lambardar. He further contended that respondent no.2 has wrongly been given the benefit of experience that he has grown up seeing his grandfather and mother working as Lambardar. At that point of time, respondent no.2 was minor.

I have considered the contentions raised by learned counsel for the petitioner and perused the record.

The Financial Commissioner has recorded the following findings:-

“8. After hearing the arguments of the counsel for parties and the documents available on the record, I am of the view that Commissioner has wrongly interfered in the choice of Collector. Hon'ble High Court and Hon'ble Supreme Court have held in various judgments that the choice of the Collector should not be disturbed in appeal or revision till there is some illegality or perversity in the order of the Collector appointing the lambardar. The appellant is younger in age, more educated, having sufficient land, besides the fact that his grandfather and mother remained lambardars of the village. The respondent has claimed of 13 years experience as lambardar whereas the appellant is having no such experience. In this regard it may be pointed

out that the respondent was appointed as Lambardar on 30.10.01 by collector which remained under litigation and the Financial Commissioner set aside the order of the Collector because mushtri munadi was not held.

9. *The Hon'ble High Court vide order dated 20.5.08 upheld the order of the Financial Commissioner. However, the respondent was allowed to continue as lambardar till the fresh appointment is made. This experience was obtained by the respondent by virtue of the orders of the Hon'ble High Court otherwise his appointment as lambardar had been set aside by the Financial Commissioner and Hon'ble High Court. Thus the experience gained by the respondent was only a stop gap arrangement otherwise his appointment as lambardar was not found proper by Hon'ble High Court. Hereditary claim should not be the only basis of appointment of lambardar but where the merits of the candidates are equal and then the hereditary claim may be considered while appointing lambardar. In the present case, the appellant has also better merits as discussed above, besides having hereditary claim."*

Perusal of order of the Divisional Commissioner reveals that he has not recorded a finding that order of the Collector was illegal and perverse. The order of the Collector can only be set aside if the appellate authority comes to the conclusion that the order is illegal and perverse.

There is no finding to that effect in the order of the Commissioner. I

is +2 pass, whereas petitioner is only 5th pass. Secondly, the petitioner is having 10 acres of land, whereas respondent no.2 is having 32 bighas of land. Perusal of order of the Financial Commissioner (Annexure P/13) reveals that petitioner was 50 years of age at that point of time, whereas respondent no.2 was only 32 years old. Besides this, Rule 15 of the Punjab Land Revenue Rules specifically provides the matters to be considered in first appointments. Rule 15 of the Punjab Land Revenue Rules reads as under:-

“15. Matters to be considered in first appointments – In all first appointments of headman, regard shall be had among other matters to --

- a) his hereditary claims;*
- b) the property in the estate possessed by the candidate to secure the recovery of land revenue;*
- 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.”*

Admittedly, the petitioner is less qualified and older in age.

His experience gained as stop gap arrangement cannot be taken into

consideration. It is only to be seen when the applications were invited. The petitioner has only gained experience during pendency of present litigation. Besides this, there is categorical evidence on record that majority of the villagers i.e. more than 120 have supported the claim of respondent no.2. As per Rule 15(e), the strength and importance of the community from which selection is to be made, is one of the factors which should be taken into consideration for the appointment of Lambardar. Besides this, preference should be given to the person who has hereditary claim when other qualifications are equal. The grandfather and mother of respondent no.2 had remained lambardar, so he has preferential right. Otherwise also, respondent no.2 is more meritorious.

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 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

compare the merits of the candidates for appointment to the post of Lambardar.

Learned counsel for the petitioner has not been able to point out any perversity or illegality in the orders passed by the Collector and the Financial Commissioner. The Financial Commissioner has rightly set aside the order of the Commissioner. The findings of the Collector have been rightly affirmed by the Financial Commissioner.

In view of above discussion, the present writ petition fails.

Dismissed. No order as to costs.

August 13, 2015
vkd

[Paramjeet Singh]
Judge