

CWP No. 22751-2014

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

CWP No. 22751-2014 (O & M)

Date of Decision: 13.01.2015

Satbir

... 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. Karan Singh, Advocate for
Mr. Rakesh Dhiman, Advocate for
the petitioner.

Mr. Sandeep S. Mann, Sr. DAG, Haryana.

Mr. Harish Nain, Advocate,
for respondent no.4.

Paramjeet Singh, J.

CM-15743-2014

Allowed, as prayed for. Annexures R-4/4 and R-4/5 are taken
on record.

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Instant writ petition has been filed under Article 226 of the
Constitution of India for setting aside the order dated 19.07.2013
(Annexure P-4) passed by respondent no.2-Commissioner, Gurgaon
Division, Gurgaon whereby appeal filed by respondent no.4-Satpal

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against the order dated 08.05.2012 (Annexure P-3) appointing the petitioner as Lambardar has been accepted and respondent no.4 has been appointed as Lambardar and also against the order dated 17.09.2014 (Annexure P-5) passed by respondent no.1-Financial commissioner, Haryana whereby revision filed by the petitioner against the order dated 19.07.2013 (Annexure P-4) has been dismissed.

Brief facts of the case are that to fill up the vacancy caused on account of death of Mool Chand, Lambardar (SC) of village Makalwas, Tehsil Farrukh Nagar, District Gurgaon, applications were invited from the interested persons by making proclamation in the village after obtaining necessary sanction from the Collector. In furtherance of proclamation, petitioner-Satbir and respondent no.4-Satpal applied for the post of Lambardar. The Assistant Collector-IIInd Grade, Farrukh Nagar made recommendations in favour of respondent no.4-Satpal. The Collector, Gurgaon after appreciating the comparative merit of the candidates found petitioner-Satbir to be fit and suitable candidate and vide order dated 08.05.2012 (Annexure P-3) appointed him as Lambardar of village Makalwas. Feeling aggrieved, respondent no.4-Satpal preferred an appeal which has been allowed by respondent no.2-Commissioner, Gurgaon Division, Gurgaon vide impugned order dated 19.07.2013 (Annexure P-4) and order dated 08.05.2012 (Annexure P-3) passed by the Collector has been set aside and respondent no.4 has been appointed as Lambardar of village. Against that, the petitioner preferred revision before respondent no.1-Financial Commissioner, Haryana which

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has been dismissed vide impugned order dated 17.09.2014 (Annexure P-5). Hence, this writ petition.

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

Learned counsel for the petitioner has vehemently contended that respondent no.4 was not residing in village Makalwas on the date of presentation of the application and he had obtained the electricity connection after about five years from the date of filing of application in order to fill the lacunae. In fact, respondent no.4 is residing in village Bhora Kalan which is situated 3 K.M. away from village Makalwas. However, the petitioner is permanent resident of village Makalwas and is easily available to the people for performing the day-to-day functioning of the Lambardar. There is a recommendation of Gram Panchayat in favour of the petitioner for his appointment as Lambardar. Learned counsel further contended that the petitioner is having 3 acres of agricultural land and is more qualified than respondent no.4. Learned counsel further contended that the petitioner being son of Lambardar is well-versed with the duties of Lambardar. The Collector has rightly appointed the petitioner as Lambardar of the village. Learned counsel further contended that the impugned orders are illegal, null and void.

Per contra, learned State counsel and learned counsel for respondent no.4 have vehemently opposed the contentions of learned counsel for the petitioner and contended that the impugned orders are legal and justified. Learned counsel further contended that respondent

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no.4 has got conducted six family planning cases whereas petitioner has got conducted only four family planning cases. Learned counsel further contended that respondent no.4 is younger than the petitioner and has passed 10th standard. Respondent no.4 is more meritorious than the petitioner. Respondent no.4 is resident of village Makalwas which is clear from the voter-list, rather-card. He has studied in the school of village Makalwas.

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

It is settled law 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 order of Collector can only be set aside if the order suffers from illegality or perversity. Vide impugned order dated 19.07.2013 (Annexure P-4), the Commissioner, Gurgaon Division, Gurgaon has set aside the order passed by the Collector on the ground that respondent no.4 is younger and more meritorious than the petitioner. The Collector has rejected the claim of respondent no.4 only on the ground that he had obtained the electricity connection in the year 2011 after applying for the post of Lambardari and he is not residing permanently in village Makalwas, however, the Commissioner, Gurgaon Division, Gurgaon has recorded the finding that respondent no.4 is a permanent resident of village Makalwas since birth and ration-card and

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voter-card show respondent no.4 to be a resident of village Makalwas. Respondent no.4 has also studied at G.H.S.Makalwas. Naib Tehsildar, Farrukh Nagar has also reported that respondent no.4 is a resident of village Makalwas. The Commissioner, Gurgaon Division, Gurgaon has rightly set aside the order passed by the Collector being based on non-reading of evidence on record, thus, perverse. The Financial Commissioner, Haryana has rightly held that Sarbarah or substitute Lambardar is not permissible in the case of Scheduled Caste, Lambardar and it cannot be inferred that the petitioner was having experience on the post of Lambardar.

In view of above, I do not find any illegality or perversity in the impugned orders.

Dismissed.

13.01.2015

parveen kumar

(Paramjeet Singh)
Judge