

CWP-23974-2014

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

CWP-23974-2014

Date of Decision: 12.10.2015

Malkiat Singh

... Petitioner(s)

Versus

Financial Commissioner (Revenue), Punjab 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. P.S.Jammu, Advocate,
for the petitioner.

Mr. Suresh Singla, Addl. A. G. Punjab.

Mr. Sheery K. Singla, 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 02.09.2014 (Annexure P-5) passed by respondent No.1 whereby respondent No.4 has been appointed as Lambardar of village Bahmanian while setting aside the orders dated 10.06.2009(Annexure P-1) passed by respondent No.3 and dated 19.11.2009 (Annexure P-2) passed by respondent No.2- Additional Commissioner (Appeals), Jalandhar, Division, Jalandhar.

Brief facts of the case are to the effect that to fill up the

CWP-23974-2014

vacancy caused on account of death of Fazil, Lambardar (SC) of village Bahmanian, Tehsil Shahkot, District Jalandhar, applications were invited from the interested persons by making proclamation in the village after obtaining necessary sanction from the Collector. In furtherance of proclamation, 9 candidates submitted their applications out of which 5 candidates namely Sukhdev Raj (respondent No.4), Faqir Chand (respondent No.5), Malkiat Singh (petitioner), Dharamjit and Bachan Lal remained in fray. However, Dharamjit Singh and Bachan Lal withdrew their applications in favour of Faqir (respondent No.5). The Tehsildar 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-Malkiat Singh to be fit and suitable candidate and vide order dated 10.06.2009 (Annexure P-1) appointed him as Lambardar of the village. Feeling aggrieved, respondent Nos4 and 5 filed separate appeals before respondent No.2-Additional Commissioner (Appeals), Jalandhar Division, Jalandhar which have been dismissed vide order dated 19.11.2009 (Annexure P-2). Thereafter, respondent Nos.4 and 5 filed separate revisions before respondent No.1-Financial Commissioner, who allowed the revision filed by respondent No.4-Sukhdev Raj and appointed him as Lambardar, however, dismissed the revision filed by respondent No.5, vide order dated 17.04.2012 (Annexure P-3). Being dissatisfied, the petitioner filed writ petition i.e. CWP No.12967 of 2012 which has been disposed of vide order dated 11.02.2014 whereby order dated 17.04.2012 (Annexure

CWP-23974-2014

P-3) has been set aside and matter has been remanded to Financial Commissioner (R), Punjab for decision afresh after hearing the parties. In pursuance of the order dated 11.02.2014 (Annexure P-4) passed by a Coordinate Bench of this Court, respondent No.1 proceeded with the matter and upheld the appointment of respondent No.4 as Lambardar, vide impugned order dated 02.09.2014 (Annexure P-5). Hence, this writ petition.

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

Learned counsel for the petitioner vehemently contended that after considering the comparative merits of the candidates and recommendations made by the 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 and until there is perversity or illegality in the order. The petitioner, who is a contractor of Orchid, is having employees for his business and is easily available in the village, rather respondent No.4 is a wooden contractor/carpenter and he used to go outside the village.

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 02.09.2014 (Annexure P-5). Respondent No.4 is more meritorious than the petitioner. Respondent No.4 is a carpenter and is easily available to the villagers.

CWP-23974-2014

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

The District Collector after appreciating the comparative merits of the petitioner and respondent Nos.4 and 5 and their availability in village, found the petitioner-Malkiat 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 Additional Commissioner (Appeals), Jalandhar Division, Jalandhar. Moreover, there are recommendations of villagers, Tehsildar, SDM concerned in favour of the petitioner.

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 only on the ground of his availability than the petitioner in the village, but only on this ground the petitioner cannot be disqualified.

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*

CWP-23974-2014

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 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

CWP-23974-2014

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 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.

In view of above discussion, the present writ petition is allowed, the impugned order dated 02.09.2014 (Annexure P-5) is set

CWP-23974-2014

aside and the order dated 10.06.2009 (Annexure P-1) passed by respondent No.3 which has been affirmed vide order dated 19.11.2009 (Annexure P-2) passed by respondent No.2-Additional Commissioner (Appeals), Jalandhar, Division, Jalandhar is restored and the petitioner is appointed as Lambardar (SC) of village Bahmanian, Tehsil Shahkot, District Jalandhar.

No order as to costs.

12.10.2015
parveen kumar

(Paramjeet Singh)
Judge