

**CWP No.2332-2015**

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

**CWP No.2332-2015**

**Date of Decision:28.09.2015**

Rajbir

... Petitioner(s)

Versus

Financial Commissioner, 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. Bhoop Singh, Advocate,  
for the petitioner.

Mr. Gaurav Goel, AAG, Haryana.

Mr. Naveen S. Bhardwaj, Advocate,  
for respondent No.4.

**Paramjeet Singh, J. (Oral)**

Instant writ petition has been filed under Article 226 of the Constitution of India for setting aside the order dated 21.10.2008 (Annexure P-4) passed by the Collector, Jind whereby respondent No.4 has been appointed as Lambardar of Sindher Patti of village Barta, orders dated 26.05.2009 (Annexure P-5) passed by the Commissioner, Hisar Division, Hisar and the order dated 23.01.2014 (Annexure P-8) passed by the Financial Commissioner, Haryana whereby appeal and revision, respectively, filed by the petitioner have been dismissed.

Brief facts of the case are that to fill up the vacancy caused

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on account of death of Amar Singh, Lambardar of village Barta, applications were invited from the interested persons by making proclamation in the village after obtaining necessary sanction from the Collector. In furtherance of proclamation, 11 candidates submitted their applications out of which 9 withdrew their candidature. Petitioner-Amar Singh and respondent No.4-Balwan were left in the fray. The Collector after appreciating the comparative merit of the two candidates found respondent no.4-Balwan Singh to be fit and suitable and vide impugned order dated 21.10.2008 (Annexure P-4) appointed him as Lambardar of the village. Petitioner filed an appeal before the Commissioner, Hisar Division, Hisar who set aside the order dated 21.10.2008 vide order dated 26.05.2009 (Annexure P-5) and directed the Collector to initiate de novo process to fill up the vacant post of Lambardar. Being dissatisfied, the petitioner and respondent No.4 preferred separate revision petitions before the Financial Commissioner, who vide order dated 02.12.2010 (Annexure P-6) set aside the order dated 26.05.2009 (Annexure P-5) and restored the order passed by the Collector appointing respondent No.4 as Lambardar. Thereafter, the petitioner filed CWP-16259 of 2011 which was allowed and matter was remanded to the Financial Commissioner, Haryana for deciding the matter afresh by passing an appropriate order in accordance with law after granting due opportunity of being heard to the parties. Thereafter, vide impugned order dated 23.01.2014 (Annexure P-8), Financial Commissioner, Haryana dismissed the revision filed by the petitioner upholding the appointment of respondent No.4 as Lambardar. Hence,

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this writ petition.

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

Learned counsel for the petitioner vehemently contends that respondent No.4 does not fulfill the qualifications as prescribed under Rule 15 of the Punjab Land Revenue Rules (as applicable to Haryana) according to which a person must be literate, preferably middle pass. The qualification of a candidate for the post of Lambardar is to be seen on the date of appointment. In support of his contentions, learned counsel relies upon judgment of the Hon'ble Supreme Court in ***Inderaj vs. Financial Commissioner and others*** AIR 1994 Supreme Court 753 and judgment of a Division Bench of this Court in ***Jarnail Singh vs. Financial Commissioner (Appeals), Punjab*** 2012 (1) L.A.R. 605.

Per contra, learned State counsel and learned counsel for respondent No.4 vehemently oppose the contentions of learned counsel for the petitioner and contend that prescription of qualification of a candidate for the post of Lambardar cannot operate retrospectively. The condition of educational qualification applicable upto the cut off date of filing the application is to be taken into consideration.

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

Rule 15 of the Punjab Land Revenue Rules (as applicable to Haryana) 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 experience as substitute/ Sarbarah Lambardar;*
- (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 15<sup>th</sup> 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;*
- (h) he shall be not less than 21 years of age at the time of inviting the application for the appointment of Lambardar;*

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

Perusal of file reveals that proceedings for appointment of Lambardar were initiated in the year 2000 and remained under process for many years. The Govt. vide notification dated 23.07.2008 inserted educational qualification Clause 15 (i) for Lambardar. Therefore, the said notification laying down qualification of preferably middle pass cannot operate retrospectively. The remaining qualifications with regard to influence, character, ability and freedom from indebtedness can be considered.

In *Inderaj's case (supra)*, the appellant, who was under debt to the Land Mortgage Bank, had paid the amount on 28.06.1988 i.e. after applying to the post of Lambardar but before appointment was made. In those circumstances, the Hon'ble Supreme Court has held that question of serious financial embarrassment due to indebtedness does not arise as it stood cleared before appointment.

In *Jarnail Singh's case (supra)*, the Division Bench of this Court has held that if a candidate is defaulter of loan of a bank/institution on the date of submission of application as well as date of his appointment, he is disqualified for appointment as Lambardar and if loan is paid before appointment, he cannot be treated as defaulter. In fact, in both the judgments (*supra*), the persons were defaulters of loan and they had paid it before appointment and educational qualification was not the matter in issue.

Otherwise also, 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

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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 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. There are concurrent findings recorded by the revenue authorities.

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

Dismissed.

No order as to costs.

**28.09.2015**

parveen kumar

**(Paramjeet Singh)**  
**Judge**