

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

CWP-4899-2015 (O&M)
Date of decision : 19.03.2015

Gurinder Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. J.S. Virk, Advocate for the petitioner.

JITENDRA CHAUHAN, J. (Oral)

1. The petitioner seeks quashing of order dated 5.12.2014 (Annexure P-7), passed by respondent No.1 and order dated 1.1.2013 (Annexure P-2) passed by respondent No. 2, whereby respondent No. 4 was appointed as Lamberdar by setting aside the order dated 23.11.2010, (Annexure P-1), passed by respondent No. 3, appointing the petitioner as Lamberdar of Village Bajwara.

2. Upon the death of Pal Singh, Lamberdar of Village Bajwara, Tehsil and District Hoshiarpur on 26.7.2009, the post of Lamberdar fell vacant and the applications were invited to fill up this vacancy through proclamation. In response to the proclamation, ten persons namely, S/Sh. Charanjit Lal, Munish Kumar, Raj Kumar, Gurdev Singh, Jai Pal, Parveen Kumar, Dilbagh Singh, Manjit Kumar, Phool Chand and Gurinder Singh applied for the vacant post. The verification with regard to the antecedents of the applicants was carried

out. The Naib Tehsildar, Hoshiarpur, afforded personal hearing to the prospective candidates with a direction to appear before the Court of Tehsildar, Hoshiarpur. S/Sh. Charanjit Lal, Munish Kumar, Gurdev Singh, Parveen Kumar, Dilbagh Singh, Phool Chand and Gurinder Singh appeared before the Tehsildar, Hoshiarpur, whereas S/Sh. Raj Kumar, Jai Pal and Manjit Kumar did not come present and they were proceeded ex-parte. The Ld. Tehsildar after affording personal hearing to the candidates, recommended the name of the petitioner and sent to the District Collector, Hoshiarpur. S/Sh. Munish Kumar, Gurdev Singh, Parveen Kumar and Dilbagh Singh were not present in the Court of District Collector, Hoshiarpur, hence they were proceeded ex-parte. The District Collector, Hoshiarpur after examining the record and hearing the arguments of learned counsel for the applicant-Gurinder Singh, recommended the name of the applicant as a suitable candidate for the post of Lamberdar, being 48 years of age, a B.Sc (Hons.)Agriculture, owning 7 acres, 3 kanals of land. He is son of deceased Lamberdar and is well versed with the job of Lamberdar. He is employed with Horticulture Department.

3. The case of the petitioner is that after having been found most meritorious amongst the aspirants, was appointed as Lamberdar, vide order dated 23.11.2010 (Annexure P-1). Feeling aggrieved, respondent No.4, went in appeal before respondent No.2, which was allowed vide impugned order dated 01.01.2013 and respondent No.4,

was appointed as Lamberdar, in his place. The revision petition filed by the petitioner against order dated 01.01.2013, was also dismissed vide impugned order dated 05.12.2014, on the ground of jurisdiction. The learned counsel placed reliance on ***Sukhminder Singh Vs. F.C., 1992 PLJ 325***, to contend that appointment of a person as Lamberdar cannot be ignored only on account of his being a government servant, provided, he is eligible and suitable otherwise.

4. The learned Commissioner, while passing impugned order dated 01.01.2013, has observed that as the petitioner is a government employee, he may not be able to do justice with both the assignments, simultaneously. It is specifically noticed in the impugned order that the Collector has ignored a well deserving and well educated person available to public against a person, who cannot be available to anybody without compromising his official duty.

5. It is contended on behalf of the petitioner that the Ld. Commissioner as well as the Financial Commissioner (respondent No.3) erred in appointing respondent No. 4, as Lamberdar despite the fact that the case of the petitioner was recommended by the Tehsildar and Sub Divisional Magistrate on the basis of superior qualification i.e B.Sc (Hons.)Agriculture and is the son of deceased Lamberdar.

6. Heard.

7. Para 307 of the Land Administration Manual, prescribes the duties of a Headman (i.e. Lambardar), which reads as under:-

“307.Duties of headmen. The headmen of a village act on behalf of the landowners, tenants and other residents in their relations with the state. They are bound to attend when summoned by officers of govt., and to aid them in the execution of their public duties. Their important functions as regards the prevention and detection and detection of crime do not fall within the scope of this work. Their chief duties are set forth in some detail in a vernacular memorandum which is given to each headmen on his appointment. Those connected with land administration may be summarized as follows:-

A duties government-

1. to collect and pay into the treasury the land revenue and all sums recoverable as land revenue.
2. To report to the tahsildar-
 - (a)the deaths of assignees and pensioners, and their absence for over a year
 - (b)encroachments on, or injury to, government property.
3. to aid-
 - (a)in carrying out harvest inspections, surveys, the record of mutations and other revenue business;
 - (b)in providing, on payment, supplies or means of transport for troops and officers of government.
4. to render all possible assistance to the village postman, while passing the night in the village, in safeguarding the cash and other valuables

that he carries.

B. Duties to landowners and tenants of estate-

1. to acknowledge every payment received from them in their parcha books.
2. To collect and manage the common village fund, and account to the shareholders for all receipts and expenditure”

8. In *Anand Kumar Vs. State of Haryana, 2009(4) R.C.R. (Civil) 844*, this Court has held as under:-

“5. This Court in exercise of its supervisory writ jurisdiction does not sit in appeal over the findings reached at by the revenue authorities. It may be noticed that the Commissioner, Rohtak Division, Rohtak and the learned Financial Commissioner have on appreciation of the material on record reached at the conclusion that Rajender (respondent No.4) is more meritorious for appointment as Lambardar. Nothing is shown that the decision reached at by the revenue authorities that is the Commissioner, Rohtak Division, Rohtak and the Financial Commissioner, is, in any manner, erroneous or perverse which would warrant interference of this Court in exercise of its writ jurisdiction under Articles 226/227 of the Constitution of India. It may be noticed that the Commissioner, Rohtak Division, Rohtak in his order dated 24.4.2009 (Annexure-P.2) has observed that respondent No.4 is the son of the deceased Lambardar. Although a hereditary claim for

appointment of Lambardar for appointment as Lambardar is not the sole factor on which appointment of Lambardar is to be made but it may be noticed that the same is a relevant factor to which regard is to be had in the consideration process in terms of Rule 15 of the Punjab Land Revenue Rules ('Rules' – for short). The said rule 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) 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.”

6. A perusal of the above Rule 15 of the Rules shows that in first appointment of Headman regards shall be had among others to hereditary claims. Therefore, even though the claim based on hereditary for consideration for appointment of Lambardar is not the sole factor for consideration for appointment as Lambardar but it is one of the factors to which

regard is to be had to. The Commissioner and the Financial Commissioner having taken the said factor into consideration which is in consonance with the Rules, this Court is not to upset the decision validly reached at in the consideration process. In exercise of the powers of judicial review of this Court, the Court is concerned more with the decision making process rather than the decision reached at. The decision having been validly reached at on the consideration of the material and evidence on record and the said decision is not, in any manner, shown to be illegal or perverse would warrant no interference by this Court in exercise of its supervisory jurisdiction.”

9. The above duty charter clearly demonstrates that the availability of the Lambardar to the village community is essential to do full justice to the duties of a Lambardar. It is not a part-time job, rather a Lambardar has to remain in the village round to clock.

10. The qualifications of the petitioner are not in dispute. However, the petitioner is employed with the State of Punjab. In the present context, merit of the petitioner is to be seen from the view point of his utility to the village community. For rendering service to the village community, as enumerated in the Land Administration Manual, the presence of the Lamberdar in the village has to be ensured. In the event of non-availability of the Lamberdar, the superior qualifications of the petitioner are of no consequence. The post of the petitioner being

transferable, in the eventuality of his transfer, the village community will be deprived of the services of the Lamberdar. Therefore, in the given context, the availability of Lamberdar is of paramount importance as against the superior academic qualification. The respondent No.4 fulfills all essential qualifications.

11. The learned Commissioner, while setting aside the appointment of the petitioner, considered the relative merit of petitioner viz-a-viz respondent No.4. Respondent No.4 was aged 38 years, whereas, the petitioner's age was 50 years. Respondent No.4 is M.A., B.Ed., available round the clock, while the petitioner is a Government servant and will not be available to the public and the officers all the time. Moreover, no permission was sought from the employer. The petitioner being on public duty at least for eight hours daily, cannot attend the duties of a Lambardar at the cost of his Government duty. In any case, the petitioner will not be available to the village community to accompany a villager to some office as the timings of all the offices are common. So, the respondent No.4 has rightly and justifiably been appointed as Lambardar, on merits, by ignoring the petitioner.

12. There is no illegality or perversity in the impugned order. This Court, in its writ jurisdiction, will not act as a Court of Appeal and re-appreciate the merits of the candidates. So, this writ petition is not maintainable. In the circumstances, this Court finds no irregularity or perversity in the orders dated 1.1.2013 (Annexure P-2) and dated

5.12.2014 (Annexure P-7).

13. In view of the above, this Court does not find any ground to interfere in the orders passed by the Executive Authorities. Impugned orders dated 01.01.2013 (Annexure P-2) and dated 05.12.2014 (Annexure P-7) are affirmed. Consequently, the present petition is hereby dismissed.

19.03.2015

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**(JITENDRA CHAUHAN)
JUDGE**

Note : Whether to be referred to Reporter : Yes