

CWP No.8192-2014

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

CWP No.8192-2014

Date of Decision: 09.02.2015

Rishi Pal

... 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. P.S.Sullar, Advocate,
for the petitioner.

Mr. Gaurav Jindal, Addl. A. G. Haryana.

Mr. R.S.Budhwar, Advocate,
for respondent no.4.

Paramjeet Singh, J.(Oral)

Instant writ petition has been filed under Articles 226/227 of the Constitution of India for setting aside order dated 20.04.2011 (Annexure P-1) passed by respondent no.3-Collector, Yamuna Nagar whereby respondent no.4-Raj Pal has been appointed as Lambardar(BC) and orders dated 21.08.2012 (Annexure P-2) passed by respondent no.2-Commissioner, Ambala Division, Ambala and dated 24.12.2013 (Annexure P-3) passed by respondent no.1-Financial Commissioner,

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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 on account of death of Ishwar Chand, Lambardar (BC) of village Nathanpur, Tehsil Chhachhrauli, District Yamuna Nagar, applications were invited from the interested persons by making proclamation in the village after obtaining necessary sanction from the Collector. In furtherance of proclamation, seven candidates submitted their applications out of which two candidates withdrew their candidature and three candidates were proceeded against *ex parte*. Petitioner-Rishi Pal and respondent no.4-Raj Pal were left in the fray. The Collector after appreciating the comparative merit of the candidates found respondent no.4-Raj Pal to be fit and suitable candidate and vide impugned order dated 20.04.2011 (Annexure P-1) appointed him as Lambardar of the village. Petitioner filed an appeal before the Commissioner, Ambala Division, Ambala which was dismissed vide impugned order dated 21.08.2012 (Annexure P-2). Being dissatisfied, the petitioner filed revision petition before respondent no.1-Financial Commissioner, Haryana which was dismissed vide impugned order dated 24.12.2013 (Annexure P-3). Hence, 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 is practising as a doctor in some other village, therefore,

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respondent no.4 is not easily available in the village to perform the duties of a Lambardar. Learned counsel further contends that respondent no.4 is not having any land, rather the petitioner is having 11 acres of land. In support of his contentions, learned counsel relied upon the decision rendered by a Division Bench of this Court in **LPA No.1357 of 2013**, titled, 'Devinder Sharma vs. Financial Commissioner and others', decided on 05.08.2013.

Per contra, learned State counsel and learned counsel for respondent no.4 vehemently oppose the contentions of learned counsel for the petitioner and supported the impugned orders.

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

The revenue authorities have recorded a concurrent finding that respondent no.4 is a better candidate than the petitioner for the post of Lambardar (BC). The alleged show cause notice issued to respondent no.4 is not a final order. All the courts below have rightly held that no substantive was led by the petitioner with regard to the employment of respondent no.4 when issue of appointment was considered by the Collector. There is no substantive evidence to prove that respondent no.4 is practising as a doctor, therefore, the judgment cited by learned counsel for the petitioner is not applicable to the facts and circumstances of the present case.

Rule 19-C of the Punjab Land Revenue Rules (As applicable to Haryana) reads as under:

“19-C. (1) Notwithstanding anything to the contrary contained in these rules, where the population of members of Backward Classes in an estate is fifty or more, there shall be appointed one additional headman from amongst members of Backward Classes for that estate.

(2) The conditions specified in rule 19-B shall also be applicable to the appointment made under sub-rule (1).”

Rule 19-B (i) reads as under:

“(i) In appointing the headman, regard shall be had among other matters to -

(a) services rendered to the State by himself or by his family;

(b) his personal influence, character, ability and freedom from indebtedness.”

(ii) He shall be dismissed when he is sentenced to imprisonment for one year or upwards or to any heavier sentence.

(iii) He may be dismissed when-

(a) criminal proceedings which have been taken against him show that he is unfit to be entrusted any longer with the duties of his office; or

(b) he is seriously embarrassed by debt;

(c) owing to age or physical or mental incapacity or absence from the estate, he is unable to discharge the duties of his office; or

(d) there is reason to believe that he has taken part in or concealed illicit distillation, or the smuggling or cocaine, opium or charas;

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- (e) *he takes part in any unconstitutional agitation against the Government or fails to give his active support to the Government in the maintenance of law and order; or*
- (f) *he neglects to discharge his duties or is otherwise shown to be incompetent.”*

Rule 19-C of the Punjab Land Revenue Rules (As applicable to Haryana) does not stipulate as a necessary condition that a backward class candidate for the post of Lambardar shall own some land. In view of this, the contention of learned counsel for the petitioner with regard to non-holding of land by respondent no.4 is not tenable. Furthermore, criminal cases have been registered against the petitioner.

In view of law laid down by the Hon'ble 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. It can only be set aside if 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 and Financial Commissioner.

In ***Mahavir Singh's*** case (supra) the Hon'ble Supreme Court of India has observed that there should be no interference with the

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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. All the authorities have concurrently found respondent No.4 as fit and suitable candidate.

In view of above discussion and concurrent findings recorded by authorities below with regard to suitability of respondent No.4, present writ petition fails.

Dismissed.

No order as to costs.

09.02.2015
parveen kumar

(Paramjeet Singh)
Judge