

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

LPA No.1304 of 2014 (O&M)
Date of Decision:- 15.05.2015.

Rishipal

.....Appellant

Versus

State of Haryana and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE P.B. BAJANTHRI**

1. Whether Reporters of 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: Ms. Deepika Bawa, Advocate for the appellant.

Mr. G.S. Wasu, Additional A.G. Haryana.

Mr. Tara Chand Chanjal, Advocate for
respondent No.7.

SURYA KANT, J. (ORAL)

1.) The controversy pertains to appointment of Lamberdar from the reserved category of Scheduled Castes of village Jawa, Tehsil Charkhi Dadri, District Bhiwani.

2.) It appears that five candidates applied and the Assitant Collector 2nd Grade after comparing their inter se merit, vide a self-speaking report dated 25.10.2007 recommended appellant's name for appointment. The Sub-Divisional Officer (Civil), on the other

hand, recommended the name of respondent No.7. The Collector, Bhiwani, being the Competent Authority accepted the candidature of respondent No.7 and appointed him. The appellant went in appeal but the Commissioner, Hisar Division dismissed his appeal. He then filed a revision petition before the Financial Commissioner who vide order dated 20.09.2011, compared the inter se merit of two candidates left in fray and having found that the appellant is matriculate; he has got experience as Sarbrah Lambardar; he owns land in the village, his financial condition is sound and is a more mature person, set aside the orders passed by Collector and Commissioner and ordered the appointment of appellant.

3.) Respondent No.7 approached this Court and learned Single Judge vide impugned judgment has set aside the order of the Financial Commissioner primarily on the ground that the discretion exercised by the Collector must prevail unless found to be suffering from any illegality.

4.) We have heard learned counsel for the parties and gone through the record.

5.) It is true that ordinarily the choice made by the Collector prevails unless found to be tainted with an element of perversity.

6.) Seeing from this angle, we find that the Collector appointed respondent No.7 on the ground that he is youngest, healthy person, matriculate and has sound financial position. While holding so, the Collector did not attach any weightage to the

experience gained by the appellant as 'Sarbrah Lambardar' or the fact that he also owns agricultural land and thus, has a better financial condition. Should the age of the appellant (53) be also a merit on account of the maturity he has gained or it is a demerit in the context of the duties of a Lamberdar is also an issue which ought to have been independently considered either by the Collector or the learned Single Judge.

7.) There is no discretion vested in the Collector to adopt the rule of pick and choice. The discretion to be exercised by him must be based upon sound and valid reasons and on objective consideration of inter se merit of the candidates. If the Collector highlights the merit of one candidate and overlooks those of others, it will amount to be a tainted consideration.

8.) That apart, during the course of hearing, counsel for the parties have raised various other factual issues touching the merits and demerits of the respective candidates. We have purposefully not mentioned those facts as their correctness is yet to be ascertained. The Collector is the best person who can verify those facts so as to find out the best candidate for the post of Lamberdar. We are, thus, of the considered view that it would be in the fitness of things to remit the case to the Collector to secure additional information in respect of both the candidates and thereafter determine as to who is the best out of them for appointment as Lamberdar of the village.

9.) As a sequel to the above stated discussion, the orders

passed by learned Single Judge, Financial Commissioner, Commissioner and the Collector are set aside. The matter is remitted to the Collector, Bhiwani for redetermination of the inter se merit of the candidates and make the consequential appointment. Till such appointment is made, the appellant shall continue to work as Sarbrah Lambardar. Let the Collector take a fresh decision within a period of four months from the date of receipt of certified of this order.

10.) Parties shall appear before the Collector on 06.07.2015.

**(SURYA KANT)
JUDGE**

**(P.B. BAJANTHRI)
JUDGE**

May 15, 2015.

sandeep sethi