

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA,
AT CHANDIGARH.

Letters Patent Appeal No. 220 of 2015(O&M)

Date of Decision: September 24, 2015

Harbhajan Singh

...Appellant

Versus

Financial Commissioner, Punjab and others

...Respondents

CORAM: **Hon'ble Mr. Justice Satish Kumar Mittal**

Hon'ble Mr. Justice Mahavir S. Chauhan

Present: Shri Sherry K. Singla, Advocate, for the appellant.

Shri B.S. Chahal, Deputy Advocate General, Punjab for
respondent Nos. 1 to 3.

Shri S.S. Hira, Advocate, for respondent No. 4.

1. *Whether Reporters of local papers may be allowed to see the judgment? Yes/No*
2. *To be referred to the Reporter or not? Yes/No*
3. *Whether the judgment should be reported in the Digest? Yes/No*

Mahavir S. Chauhan, J.

Consequent upon demise of incumbent Lambardar of Village Chak Gujran, Tehsil and District Hoshiarpur, proceedings for appointment of a new Lambardar were initiated. Harbhajan Singh (the appellant herein), Paramjit Singh (respondent No.4) and Daljit Singh staked their respective claims for the post. District Collector, Hoshiarpur, on comparison of respective merits of the three candidates, found respondent No. 4 to be the best candidate for the post and, as such, appointed him as Lambardar of the village vide order dated October 09, 2007 (Annexure P1). Unsuccessful

candidates, namely Daljit Singh and the appellant assailed order dated October 09, 2007 before Commissioner, Jalandhar Division, Jalandhar who, vide order dated April 10, 2008 (Annexure P2) concurred with the choice of the District Collector but the Revisional Authority (i.e., Financial Commissioner, Animal Husbandry, Punjab), vide order dated January 31, 2014 (Annexure P4), reversed the orders of the District Collector and the appellate authority and appointed the appellant as Lambardar of the village. On being challenged vide Civil Writ Petition No. 12540 of 2014 by respondent No.4 herein, the learned Single Judge, vide order dated January 05, 2015 has set aside the order dated January 31, 2014 (Annexure P4) of the revisional authority and has remitted the matter back to the District Collector for reconsideration and taking decision afresh after hearing the parties and in case none of the candidates is found to be suitable/competent, to initiate fresh process.

02. Finding himself unable to reconcile with the order of the learned Single Judge, appellant has invoked Clause X of the Letters Patent to lay a challenge to the said order by way of the instant intra court appeal.

03. We have heard learned counsel for the parties besides scanning the documents forming part of the record.

04. It is argued on behalf of the appellant that he is 44 years old, has studied upto Pre-University class, owns 15 Kanals 13 Marlas of agricultural land, a tractor and a motor cycle, is a social worker and has no liability to take care of and, therefore, is a betterly placed as compared to respondent No.4, who though eligible for appointment as a Lambardar, is not suitable for the post because he remains busy in his office for whole of the day being

employed as a peon in Cooperative Bank at Village Singriwala situated ten kilometers away from village Chak Gujran and, as such, would not be available to carry out multifarious functions attached to the post of Lambardar and Daljit Singh, the only other candidate in the fray has accepted the validity of the order passed by the Revisional Authority.

05. *Per Contra*, on behalf of the respondents it has been contended that employment of respondent No. 4 as a peon in Cooperative Bank cannot be taken to be a disqualification and it is settled law that if choice of the District Collector is found to be neither perverse nor illegal, therefore, it must prevail.

06. No other or further point has been urged on either side.

07. It has not been disputed before us that respondent No.4 is working as a Peon with Cooperative Bank at Singriwala which is situated ten kilometers away from village Chak Gujran. Being a bank employee and in discharge of his official duties, he is supposed to remain in his office throughout the day, on each and every working day. A Lambardar of the village has to remain in the village throughout the day to help villagers. He has to accompany them to various offices to identify them for the purpose of attestation of various documents, execution of sale deeds, etc. Therefore, respondent No.4, being a bank employee posted ten kilometers away from village Chak Gujran at Singriwala will not be available in the village to perform his duties as Lambardar of the village. The District Collector overlooked this aspect of the matter, whereas, the Revisional Authority while taking into consideration this fact, and further taking into consideration merits and de-merits of the other candidates, rightly came to

the conclusion that though there was no restriction for appointment of a bank employee to the post of Lambardar yet in the event of availability of other suitable candidate, preference need not be given to him, because respondent No.4 has to stay away from the village and would not be available to the villagers throughout the day whereas a Lambardar should reside in the village so as to make himself available in the village to the residents of the village throughout the day. It may be apposite to reproduce Rule 20 of Punjab Land Revenue Rules, 1909 (for short 'the Rules'), which prescribes the duties to be performed by a village Lambardar. It reads as under:-

“20. Duties of headman:- In addition to the duties imposed upon headman by law for any purpose, a headman shall-

- (i) collect by due date all land revenue and all sums, recoverable as land revenue from the estate, or sub-division of an estate in which he holds office, and pay the same personally or by revenue money order or by remittance of currency notes through the post of at places where treasury business is conducted by the State Bank of India or any Scheduled Bank as notified by the State Government from time to time, by cheque on a local Bank at the place and time appointed in that behalf to the Revenue Office or assignee empowered by Government to receive it;*
- (ii) collect the rents and other income of the common land, and account from them to the persons entitled thereto;*
- (iii) acknowledge every payment received by him in the books of the landowners and tenants;*
- (iv) defray joint expenses of the estate and render accounts thereof as may be duly required of him;*
- (v) report to the tehsildar the death of any assignee of land revenue or Government pensioner residing in the estate, or the marriage or re-marriage of a female drawing a family pension and residing in the estate; or the absence of any such person for more than a year;*

(vi) *report to the tehsildar and Collector all encroachments on and injury to the roads, public streets and Government, Nazul and Panchayat land;*

(vii) *report any injury to Government buildings made over to his charge;*

(viii) *carry out, to the best of his ability, any orders that he may receive from the Collector requiring him to furnish information or to assist in providing on payment supplies or means of transport for troops or for officers of Government on duty;*

(ix) *assist in such manner as the Collector may from time to time direct at all crop inspections, recording of mutations, surveys, preparation of records of right, or other revenue business carried on within the limits of the estate;*

(x) *attend the summons of all authorities having jurisdiction in the estate, assist all officers of the Government in the execution of their public duties, supply, to the best of his ability any local information which those officers may require, and generally act for the landowners, tenants and residents of the estate or sub-division of the estate in which he holds office in their relations with Government;*

(xi) *report to the Patwari any outbreak of disease among animals (or human beings).*

(xii) *report any breach or cut in a Government Irrigation canal or channel to the nearest canal officer (or canal Patwari);*

(xiv) *under the general or special directions of the Collector, assist by the use of his personal influence and otherwise all officers of Government and other persons, duly authorized by the Collector, in the collection and enrolment of recruits for military service whether combatant or non-combatant;*

(xv) *render all possible assistance to the village postman, while passing the night in the village, in safeguarding the cash and other valuable that he carries."*

08. In **Devender Singh v. Narender Singh and others**, 2012 (2)

PLR 716, the appellant therein was appointed as Lambardar. His

appointment was set aside by the Commissioner but was restored by the Financial Commissioner. However, learned Single Judge set aside order of the Financial Commissioner and remitted the matter to the District Collector with a direction to decide it afresh. However, the Letters Patent Bench of which one of us (Satish Kumar Mittal, J.) was a member, set aside the order passed by the learned Single Judge and restored the order passed by the District Collector appointing the appellant as Lambardar of the village by observing as under:-

*“6. In our view, in the matter of appointment of Lambardar of the village, more emphasis should be given to the availability of the person to the public in the village. If an eligible person, may be less meritorious, is available, he should be given preference over and above the person who is slightly more meritorious, but being in Government employment, he has to perform his duties and functions and due to his occupation throughout the day in his office, he may not be available in the village. Thus, in our view, the Collector had rightly appointed the appellant as Lambardar of the village. The Commissioner and the learned Single Judge were not justified in setting aside the said appointment. It is well settled law, as has been held in **Ujagar Singh Versus State of Punjab, 2008 (3) RCR (Civil) 28** and **Gurdial Singh Versus Iqbal Singh, 2008 (4) RCR (Civil) 283**, that choice of the Collector should not be interfered by the higher authorities, until and unless the order of the Collector is totally perverse or the person appointed is ineligible. In the facts and circumstances of the case, it cannot be said that order of the Collector in this case was perverse. The Collector, after taking into consideration the factum of non-availability of respondent No.1 in the village, due to his engagement being employed as Assistant Development Officer in the Agriculture Department, Haryana, found the appellant as more suitable person for appointment to the post of Lambardar. Such order cannot be said to be illegal or perverse and was not required to be interfered by the Commissioner. Therefore, while setting aside the order of the Commissioner, the order of the Collector was rightly restored by the Financial Commissioner. In our opinion, the learned Single Judge was not justified to set aside the well reasoned orders of the Collector and the*

Financial Commissioner, and remand the matter to the Collector.”

09. In **Naib Singh v. Financial Commissioner (Revenue), Punjab and others**, 2014(1) L.A.R., 316, appellant therein, who was working as a Typist in the office of Deputy Commissioner, Mansa, was appointed as a Lambardar of village Bheniwal, by the District Collector. The order was affirmed by the Appellate Authority but the Revisional Authority set aside the order appointing the appellant as a Lambardar and, instead, appointed Sewak Singh (respondent No.5 therein) as Lambardar. A Division Bench of this Court while affirming order dismissing a writ petition brought by the appellant therein against order of the Revisional Authority, observed as under:-

“5. It was rightly noticed that the Financial Commissioner's decision not to give post to a person who is working as a Typist in the compound of the office of Deputy Commissioner is perfectly justified. It was noticed that Lambardar is supposed to go to the office of Deputy Commissioner and if this post is given to a person who is permanently sitting in the office of the Deputy Commissioner, probably he may make some malpractice. We are satisfied with the observations made by the Financial Commissioner and the learned Single Judge.”

10. A similar question came up for consideration before a Division Bench of this Court in **Tek Singh Versus State of Punjab and others (LPA No. 874 of 2011, decided on May 17, 2011)**. In that case, the appellant was employed in the Punjab State Electricity Board. This Court, while affirming the orders of the revenue authorities, rejected the contention of the appellant to appoint him on the post of Lambardar, and observed that though a person being a Government servant is not barred from being appointed as Lambardar, but if the District Collector comes to a specific conclusion that

due to his non-availability to the public, the candidate will not be a suitable candidate for appointment as Lambardar, then such an order of the Collector should not be set aside merely on the ground that the Government servant is eligible for appointment as Lambardar and he is more meritorious than the person appointed.

11. In **Devinder Sharma Vs. Financial Commissioner and others (LPA No.1357 of 2013, decided on August 05, 2013)**, the Collector has appointed the appellant as Lambardar. Appeal against his appointment was dismissed but the Financial Commissioner allowed the revision and set aside his appointment saying that he being in permanent government service might not be in a position to perform his duties as a Lambardar in an effective manner. When the matter came before this Court, the learned Single Judge by referring to Rule 20 of the Rules came to the conclusion that order of the Financial Commissioner was perfectly justified. The Letters Patent Bench affirmed the order passed by the learned Single Judge by observing as under:-

*“At the time of arguments, reliance has been placed upon a Division Bench judgment of this Court in **Sukhminder Singh v. Financial Commissioner**, 1992(3) S.C.T. 28, to say that to be in government service is not disqualification for appointment as against the post of Lambardar.*

We have gone through that judgment. The above said judgment was passed in ignorance to the provisions of Rule 20 of the Rules. Rule 20 provides multifarious duties to be performed by a Lambardar. A person who is in permanent government service is supposed to remain out of village at least for 9 to 10 hours in a day. In case of his need, he will not be available.”

12. As a consequence of what has been said and discussed in the fore-going paragraphs, we have no hesitation in holding that appointment of

Paramjit Singh, respondent No.4, as Lambardar of the village was not justified and has been rightly set aside by the Financial Commissioner and appointment of the appellant as Lambardar of the village cannot be said to be bad or illegal by any stretch of imagination. Resultantly, the appeal succeeds and is accepted. Order dated January 05, 2015, passed by the learned Single Judge is set aside and order dated January 31, 2014 (Annexure P-4), passed by the Financial Commissioner appointing the appellant as Lambardar of village Chak Gujjaran, Tehsil and District Hoshiarpur is restored.

13. In the peculiar facts and circumstances of the case, parties are left to bear their own costs.

[SATISH KUMAR MITTAL]
JUDGE

[MAHAVIR S. CHAUHAN]
JUDGE

September 24, 2015
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