

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

**CWP No.8849 of 2001
Date of decision: 04.10.2016**

Karan Singh

... Petitioner

Vs.

Financial Commissioner, Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Ms. Puja Chopra, Advocate
for the petitioner.

Mr. S.S. Mann, Sr. DAG, Haryana.

Mr. Ravinder Malik, Advocate
for respondent No.4.

RAMESHWAR SINGH MALIK, J. (ORAL)

Instant writ petition is directed against the order dated 18.04.2001 (Annexure P-3) passed by the Financial Commissioner, Haryana, whereby revision petition filed by respondent No.4, was allowed and the orders passed by the Collector as well as Commissioner, appointing the petitioner as Lambardar, were set aside.

Notice of motion was issued by a Division Bench of this Court and in compliance thereof, written statement was filed by respondent No.4. Petitioner filed his replication. Thereafter, the writ petition was admitted for

regular hearing vide order dated 04.09.2002 passed by a Division Bench of this Court. That is how, this Court is seized of the matter.

Heard learned counsel for the parties.

The basic issue that falls for consideration of this Court is; whether a candidate belonging to a different village can be preferred and appointed as Lambardar, ignoring the claim of qualified candidate of that very village, for which the post of Lambardar was sought to be filled. The post in question fell vacant due to death of earlier Lambardar late Sh. Shiv Lal, who was resident of Thola Kodan as per jamabandi (Annexure P-6). It is also a matter of record that the post of Lambardar, which was sought to be filled in the present case, was for Jhajjar town, whereas petitioner was resident of Village Naya Gaon, Tehsil and District Jhajjar.

Learned counsel for the petitioner has unsuccessfully tried to raise this issue that the earlier Lambardar late Sh. Shiv Lal was not resident of Kodan Patti but he was resident of Kajiyan Patti of Jhajjar town. However, this argument raised by learned counsel for the petitioner has been found wholly misconceived being contrary to the official record, particularly the jamabandi (Annexure P-6). There is no doubt or confusion in this regard. Another similar plea, which was raised by learned counsel for the petitioner referring to Annexure P-7, was that the revenue estate of village Naya Gaon as well as Jhajjar town was the same, because of which the petitioner was rightly appointed as Lambardar by the Collector as well as Commissioner. This plea has also been found contrary to the record. Verification issued by Tehsildar, Jhajjar vide Annexure P-7 and particularly the vernacular copy thereof would

make it crystal clear that although for the purpose of revenue estate, it might be common yet village Naya Gaon was certainly a separate one and could not have been said to be part of Jhajjar town, as such.

The patent illegality committed by the Collector as well as Commissioner, in appointing the petitioner as Lambardar, was that they kept in view the alleged inconvenience, which might be faced by inhabitants of village Naya Gaon, because there was no other Lambardar for village Naya Gaon. Had it been correct, another post of Lambardar could have been recommended for creation for village Naya Gaon, instead of appointing the petitioner, who was resident of village Naya Gaon, as Lambardar for Jhajjar town. Since this material aspect of the matter was neither properly discussed nor appreciated either by the Collector or Commissioner, the Financial Commissioner was well within his jurisdiction to pass the impugned order, setting aside both the orders passed by the Collector as well as Commissioner.

Having said that, this Court feels no hesitation to conclude that respondent No.4, being resident of Jhajjar town, having his residential house in Kodan Patti itself, was having a clear edge on the petitioner. It has not been disputed before this Court that there was an independent Gram Panchayat in village Naya Gaon. It is also not in dispute that Tehsil Jhajjar was having numerous villages, who were having independent Gram Panchayats. Further, once an eligible candidate of same Patti i.e. Kodan Patti, for which the post of Lambardar was being filled, was available, there was no justification for the Collector and Commissioner to give preference to the petitioner, who was resident of another village namely Naya Gaon. In this view of the matter, it

can be safely concluded that since the orders passed by District Collector as well as Commissioner were suffering from patent illegality, same were rightly set aside by the Financial Commissioner vide his impugned order (Annexure P-3), which deserves to be upheld, for this reason also.

Another demerit of the petitioner was that he was defaulter of the Primary Land Development Bank (for short 'PLDB'). It is clear from his own statement (Annexure R-1), available at pages 28-29 of the paper book. In his statement, petitioner has admitted that he took loan from PLDB on 06.12.1996 for camel cart. He further stated that he did not pay even a single penny in that account, however, claimed himself not to be a defaulter. He again admitted that he did not pay any installment since 1994 till he got recorded his statement (Annexure R-1) in the month of December, 1996 i.e. for a period of two years.

He also admitted in his statement (Annexure R-1) that the money deposited in the small saving, about which the petitioner submitted the papers in his favour, was not his own money. This fact was sought to be explained by learned counsel for the petitioner, referring to a No Dues Certificate issued by the Bank, contending that the loan amount was being paid by father of the petitioner. However, this submission made by learned counsel for the petitioner has also been found contrary to the statement suffered by the petitioner himself, thus, the same is not worth acceptance.

In view of what has been discussed hereinabove, answer to the question posed at the outset is and has to be an emphatic no. It is held that once suitable candidates from the same Patti/Village, for which the post of

Lambardar is meant, are available, no preference can be given to the resident of another village. Appointing the resident of another village would be contrary to very object of filling up the post of Lambardar. In the present case, petitioner in his statement (Annexure R-1) has admitted that his village is at a distance of 2 kilometers from Jhajjar and no govt. bus service is available. He further stated that his village is situated on the approach road and not on the main road.

He also admitted that approach road goes from the Rewari main road and the distance of this approach road is about 4 kilometers from Jhajjar. Petitioner also stated that kutchra rasta, which goes from Silani Gate to his village, was about 2 kilometers. Under these circumstances, there was no compulsive necessity for the Collector as well as Commissioner to appoint the petitioner as Lambardar for Jhajjar town particularly when respondent No.4, being an eligible and suitable candidate, was available for appointment to the post of Lambardar.

No other argument was raised on behalf of either of the parties.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the Financial Commissioner committed no error of law, while passing the impugned order and the same deserves to be upheld. The writ petition has been found wholly misconceived, bereft of merit and without any substance, thus, it must fail. No ground for interference has been made out.

Consequently, petitioner is declared ineligible for appointment to

the post of Lambardar for Patti Kodan, Jhajjar town. Respondent No.4 is declared eligible and entitled for appointment to the post of Lambardar in place of the petitioner. District Collector, Jhajjar is directed to pass the appropriate order at an early date and in any case within a period of two months from the date of receipt of certified copy of this order.

Resultantly, with the abovesaid observations made and directions issued, present writ petition stands dismissed, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

04.10.2016
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No