

CWP- 1154-2006

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

CWP- 1154-2006

Judgment Reserved on: 28.04.2016

Date of Decision: 17.05.2016

Rattan Singh

... Petitioner(s)

Versus

Financial Commissioner, Appeals, Punjab and another

... Respondent(s)

**CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH
DHALIWAL**

- 1) Whether Reporters of the local papers may be allowed
to see the judgment ?. **YES**
- 2) To be referred to the Reporters or not ?. **YES**
- 3) Whether the judgment should be reported in the Digest ? **YES**

Argued by: Mr. R.S.Chauhan, Advocate,
for the petitioner.

Mr. B.S.Cheema, DAG, Punjab.

Mr. Amarjit Markan, Advocate,
for respondent No.2.

Paramjeet Singh Dhaliwal, J.

Instant writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari quashing the order dated 26.06.2001 (Annexure P-3) passed by the Commissioner, Patiala Division, Patiala and the order dated 03.10.2005 (Annexure P-7) passed by respondent No.1-Financial Commissioner, Appeals, Punjab. A prayer has also been made that the order dated

CWP- 1154-2006

28.02.2001 (Annexure P-1) passed by the Collector, Rupnagar, appointing petitioner as Lambardar, be upheld.

Brief facts of the case are that on account of death of Sewa Singh, Lambardar of village Badala, Tehsil Kharar, District Ropar, applications were invited from the interested persons by making proclamation in the village after obtaining necessary sanction from the Collector. In furtherance of proclamation, 5 candidates including petitioner and respondent No.2 submitted their applications. The antecedents of the candidates were got verified from the police and they were found to be of good moral character. Naksha Lambardari in respect of the candidates was called from the Halqa Patwari. A.C-IIInd Grade and A.C-Ist Grade recommended the name of petitioner-Rattan Singh for the post of Lambardar. The Collector after appreciating the comparative merit of the candidates found petitioner-Rattan Singh, to be fit and suitable candidate and vide order dated 28.02.2001 (Annexure P-1) appointed him as Lambardar of village Badala. Feeling aggrieved, respondent No.2 preferred appeal before the Commissioner, Patiala Division who accepted the appeal; set aside the order dated 28.02.2001 (Annexure P-1) and appointed respondent No.2-Sukhjot Singh as Lambardar vide order dated 26.06.2001 (Annexure P-3). Against that, the petitioner preferred appeal before respondent No.1-Financial Commissioner, Appeals-I, Punjab which has been dismissed vide impugned order dated 03.10.2005 (Annexure P-7). Hence, this writ

CWP- 1154-2006

petition.

I have heard learned counsel for the parties and perused the record.

Learned counsel for the petitioner vehemently contended that petitioner-Rattan Singh is an ex-serviceman. He has served in the Army for 37 years. The petitioner is more meritorious than respondent No.2. Respondent No.2 is a govt. servant and he cannot discharge the function of a Lambardar. The Collector after considering the comparative merits of the candidates appointed the petitioner as Lambardar and it is settled law that choice of the Collector cannot be lightly set aside.

Per contra, learned State counsel and learned counsel for respondent No.2 vehemently opposed the contentions of learned counsel for the petitioner and supported the impugned order. They contended that respondent No.2 is more meritorious than the petitioner. Respondent No.2 is younger in age than the petitioner and is a graduate/B.Pharma. Respondent No.2 was ignored by the Collector only on the ground that he is a govt. employee. He is posted nearby his village and gets free from work at 2.00 P.M. He is performing his duties as Lambardar since his appointment by the Commissioner and nobody has made any complaint/objection regarding availability of respondent No.2 in the village. A person who is a govt. servant cannot be deprived of appointment as Lambardar when he has property in the said village. He

CWP- 1154-2006

is having 21 bighas 15 biswas of land, whereas petitioner is having only 3 killas of land. Respondent No.2 is the son of deceased-Lambardar on account of whose death the said vacancy has been caused. The impugned orders are well-reasoned.

I have given my thoughtful consideration to the rival contentions of learned counsel for the parties.

A reference to the relevant Rules 15 and 17 of the Punjab Land Revenue Rules (as applicable to Punjab), for appointment of Village Headman, would be beneficial to decide the controversy. The said rules read 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) the property in the estate possessed by the candidate to secure the recovery of land revenue;*
- (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.*

“17. Matters to be considered in appointment of successors-

- (i) In an estate, or sub-division thereof, owned chiefly, or*

CWP- 1154-2006

altogether by Government successor to the office of headman shall be selected with due regard to all the considerations, other than hereditary claims, stated in Rule 15;

(ii) In other estates for the appointment of successor to headman, regard shall be had to the matters contained in Rule 15; and

(iii) xxx

(iv) Election shall not in any case be resorted to as an aid in making appointments under this rule and rule 14.”

The Lambardar is a village headman. His main job is the collection of revenue. He is paid fixed remuneration as well as some commission. The criterion for appointment to the post of Lambardar, *inter alia*, includes educational qualification, age, experience in working of Lambardari, land and property, character, ability and freedom from indebtedness.

The previous Lambardar died on 13.04.1998 and thereafter process for appointment of successor Lambardar commenced and reached the Collector on 30.08.2000, already more than 18 years have elapsed, therefore, I deem it appropriate to decide the same on merit.

Now I would deal with the comparative merits of the petitioner and respondent No.3 in view of Rules 15 and 17 of the Punjab Land Revenue Rules (as applicable to Punjab). Perusal of file reveals that respondent No.2 has hereditary claim. Otherwise also, the hereditary claim has been held to be *ultra vires* and, therefore, cannot be pressed

CWP- 1154-2006

into service in cases relating to appointment of a Lambardar except where other merit is equal. In this regard, reliance can be placed upon *Karnail Singh vs. State of Haryana etc.* 1974 PLR 67.

Perusal of record reveals that petitioner-Rattan Singh is having 3 killas of land whereas respondent No.2-Sukhjot Singh is having 21 bighas 15 biswas of land. The petitioner has studied upto 9th standard whereas respondent No.2 is a graudate. The name of petitioner was recommended by Tehsildar, Kharar and Sub Divisional Magistrate, Kharar for the post of Lambardar whereas the Gram Panchayat recommended the name of respondent No.2. So far as services rendered to the State by the candidates individually or by their family are concerned, the petitioner served the Army for 37 years, however, there is nothing to show that respondent No.2 has rendered any service to the State. So far as character of the candidates is concerned, the character of both the candidates is found to be unblemished. So far as services rendered by the candidates or by their families in the national movements to secure freedom of India is concerned, there is nothing favouring any of the candidates.

It is a settled law that there should be no interference with the 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, but this is not absolute. The order of Collector can

CWP- 1154-2006

only be set aside if the order suffers from illegality or perversity. Although, the Commissioner has not recorded a finding that the order of the Collector is perverse, but the fact remains that material evidence i.e. qualifications, age, etc. have not been considered by the Collector. The Commissioner has set aside the order passed by the Collector on the ground that respondent No.2 is a pharmacist in village Cholta Kalan which is 2 km away from village Badala. He is a graduate while the petitioner herein has passed 9th class. Respondent No.2 is also a permanent resident of village Badala and also a permanent voter. The Collector rejected the claim of respondent No.2 only on the ground that he is a govt. employee and can be transferred anywhere within the State of Punjab, therefore, he cannot efficiently serve the people of the village as Lambardar.

It is pertinent to mention here that there is no bar to appoint a government servant as Lambardar. It is settled law that if a Government servant is appointed as a Lambardar, his appointment as Lambardar will not in any way interfere in the discharge of his duties as a Government servant. A Division Bench of this Court in ***Sukhminder Singh vs. Financial Commissioner*** 1993 (1) R.R.R. 19 has held as under:

“3. *We do not find any merit in the contention of the learned counsel. To be in the service of the Government, cannot be a disqualification for appointment as Lambardar, especially when the post of a Lambardar is itself a civil post and dismissal or removal therefrom also attracts the provisions of*

CWP- 1154-2006

Article 311 of the Constitution of India as the same are attracted in the case of other Government servants. Moreover, the provision for appointment of a Sarbarah Lambardar itself indicates that the actual performance of duties of the office of Lambardar can be done by the person other than the Lambardar himself, meaning thereby that if a Government servant is appointed as a Lambardar, his appointment as Lambardar will not in any way interfere in the discharge of his duties as a Government servant, Therefore, we are in complete agreement with the view taken by the learned Financial Commissioner Appeals, that a Government servant is fully eligible for appointment as Lambardar and he cannot be ignored only on that account if he is otherwise eligible and suitable for that post.”

The said view has been followed by a Division Bench of this Court in ***Amarjeet Singh vs. Financial Commissioner Appeal II*** 2000(2) PLJ 456 wherein it has been held as under:

“3. It is undoubtedly correct that every eligible person has a right to aspire for the office of the village Lambardar. It is also true that under the terms of Rule 15 as observed by their Lordships in Sukhminder Singh's case the mere factum of employment with the State Government or any of its instrumentalities cannot per se be a disqualification for appointment. Yet the onus of determining the suitability of an individual for appointment as village Lambardar rests with the prescribed authority. In this case three senior officers of the Government in the hierarchy of the Revenue Department viz. the Collector, the Commissioner and the Financial Commissioner are unanimous in their view. They have considered the petitioner's claim. They have found the respondent suitable. The petitioner's claim has been duly considered. The orders passed

CWP- 1154-2006

by them do not violate any provision of law. There is no error of jurisdiction. Thus no ground for interference under Article 226 is made out.”

This Bench in ***Duli Chand vs. State of Haryana and another*** 2013 (1) R.C.R.(Civil) 1010 has held that a person who is working at some reasonable distance, cannot be ignored for appointment as Lambardar. There is a common tendency to move towards urban area as the better educational and employment opportunities are not available in the rural areas. A relevant extract from ***Duli Chand's case (supra)*** reads as under:

“7. *It is a settled principle of law that the order of the Collector can only be set aside if the order suffers from illegality or perversity. The Commissioner as well as Financial Commissioner have not recorded any finding with regard to perversity in the order passed by the District Collector. The order of the District Collector has been set aside by the Commissioner on the ground that petitioner is working at Faridabad which is at a distance of 25 kilometers from the village and this fact has not been considered by the District Collector. This cannot be a ground to hold the order of the district Collector illegal. Being non-resident of the village does not amount to perversity. As per the provisions contained in Rule 15 of the Lambardari Rules, the person is required to have estate/land in the same revenue estate/village. Only relevant condition is the property of the candidate possessed in the estate to secure the land revenues which he is to collect as Lambardar. There is no*

CWP- 1154-2006

specific provision that he must be having residence in the village. Otherwise also for sake of livelihood the tendency to move towards the urban area is commonly seen as the better educational and employment opportunities are not available in the rural areas at par with those available in the urban areas. In my view it will not make any difference if one works at some reasonable distance. Merely on the ground that he is working at some distance, he cannot be ignored on this score alone. Otherwise also there is a specific provision in rule 27 of the Lambardari Rules for appointment of substitute Lambardar. In cases where the Government servants, who were working at different places and appointed as Lambardar, appointment of substitute Lambardar/Sarbrah Lambardar to work on behalf of actual Lambardar, has been allowed.

8. *In view of peculiar facts and circumstances of the case, I deem it fit and appropriate to set aside the orders passed by the District Collector, Commissioner and Financial Commissioner. Matter is remanded to the District Collector for fresh decision who after taking into consideration the provisions of the Lambardari Rules specifically Rules 15 and 27, shall pass a speaking order.”*

The Collector also appointed the petitioner as Lambardar on the ground that he is an ex-servicemen and has served the nation. It is pertinent to mention that the factum of petitioner being ex-serviceman may be a valid consideration to keep in view but it alone would not be enough for the petitioner to seek preference over other parameters for

CWP- 1154-2006

taking march over the others. In this regard, reliance can be placed upon ***Sher Singh vs. Financial Commissioner and others***, 2012 (3) L.A.R. 88.

It is also pertinent to mention here that petitioner -Rattan Singh was 60/62 years old and respondent No.2 was 37 years old at the time of filing of application. On the date of arguments, petitioner has crossed 75 years and respondent No.2 has crossed 53 years. The petitioner is much older than respondent No.3 and, therefore, a young energetic person is to be preferred for the post of Lambardar. The Hon'ble Supreme Court in ***Mahavir Singh vs. Khialia Ram & Ors.*** 2009(1) R.C.R. (Civil) 757 has held that age of a candidate is relevant factor in the cases of appointment to the post of Lambardar. The Hon'ble Supreme Court further held in ***Mahavir Singh's case (supra)*** that other things being equal, a candidate aged 36 years was rightly appointed as Lambardar in preference to a candidate aged 62 years. The facts in ***Mahavir Singh's case (supra)*** are quite similar to the facts of the present case. The relevant findings rendered by the Hon'ble Supreme Court in ***Mahavir Singh's case (supra)*** are as under:

“14. It is now a well-settled principle of law, keeping in view the decisions in regard to the appointment of Lambardar in the State of Punjab, that age of a candidate is a relevant factor.

In Lt. Malik Abbas Khan v. Ghulam Haidar [1940 Lahore Law Times 25], it was stated :

CWP- 1154-2006

"...It is certainly not wise, save in very exceptional circumstances, to appoint for the first time, an inamkhor or zaildar whose age is 60 or more."

*In **Kalyan Singh v. Haidar** [1928 Lahore Law Times 33], the Financial Commissioner held that ordinarily the Collector's choice appointing a Zaildar or Sufedpost should not be interfered with even though the appellate authority believes that his choice was not the best choice.*

*Similar view was expressed in **Lila Ram v. Asa Ram** [1955 Lahore Law Times 29] in the following terms :*

- "...While it is now an established principle that there should be no interference with the choice made by the Collector, it does not follow that where the Collector's order is based on a misrepresentation of facts, there should still be no interference."*

xxxxxxx to xxxxxx

18. *There cannot be any doubt or dispute whatsoever that a writ court could interfere with a finding of fact when the same inter alia is found to be perverse. However, neither any such finding has been arrived at by the High Court nor do we find any and as such the decision of this Court relied upon by Mr. Mahajan in **Bhagat Ram v. State of Himachal Pradesh** [(1983)2 SCC 442] cannot be said to have any application whatsoever in this case. The High Court furthermore failed to take into consideration that while exercising its power of judicial review, it exercises a limited jurisdiction. The court, it is well-settled, is ordinarily*

CWP- 1154-2006

concerned with the decision making process and not the merit of the decision.”

There is no denying the fact that ordinarily choice of the Collector is not to be interfered with, in the cases of appointment of Lambardar. However, it is equally true that this rule is not an absolute one. When the order passed by the Collector is found to be suffering from patent illegality or perversity, the higher revenue authorities would be well within their jurisdiction to upset the order passed by the District Collector. The Collector had taken into consideration all the factors but appointed petitioner as Lambardar. No consideration of all the factors certainly amount to perversity. This is what has been done in the present case and rightly so by the Commissioner and Financial Commissioner while passing the impugned orders. As discussed in the foregoing paragraphs, this Court is of the view that respondent No.2 is more meritorious than the petitioner.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the view that the present writ petition deserves to be dismissed. Ordered accordingly.

No order as to costs.

17.05.2016

parveen kumar

(Paramjeet Singh Dhaliwal)
Judge