

CWP-10049-2016

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

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Date of Decision: 23.05.2016

Jaspal Ram

... Petitioner(s)

Versus

Financial Commissioner, Appeals-I, Punjab and others

... Respondent(s)

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

- 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. A.P.Kaushal, Advocate,
for the petitioner.

Mr. Sudhir Kumar, Advocate for
caveator-respondent No.4.

Paramjeet Singh Dhaliwal, J. (Oral)

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 27.11.2015 (Annexure P-7) passed by respondent No.1-Financial Commissioner whereby respondent No.1 set aside the order dated 13.08.2012 (Annexure P-5) passed by the Commissioner, Jalandhar Division, Jalandhar.

Brief facts of the case are that to fill up the vacancy caused on account of creation of new post of Lambardar (SC) for village Lalpur,

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Tehsil and District S.B.S.Nagar, applications were invited from the interested persons by making proclamation in the village. In furtherance of the proclamation, 8 candidates submitted their applications out of which 2 candidates withdrew their applications in favour of Jasvir Ram and ultimately 6 candidates including the petitioner and respondent No.4 were left in fray. The Collector after appreciating the comparative merit of the candidates found respondent No.4-Jaswant Ram to be fit and suitable candidate and vide order dated 27.05.2010 (Annexure P-4), appointed him Lambardar (S.C.) of the village. Feeling aggrieved, the petitioner preferred appeal before respondent No.2-Commissioner, Jalandhar Division, Jalandhar which has been allowed and order dated 27.05.2010 (Annexure P-4), appointing respondent No.4 as Lambardar, has been set aside and the petitioner has been appointed as Lambardar vide order dated 13.08.2012 (Annexure P-5) . Feeling aggrieved, respondent No.4 preferred revision before respondent No.1-Financial Commissioner, Appeals-I, Punjab which has been allowed and the order dated 13.08.2012 (Annexure P-5) has been set aside and the order dated 27.05.2010 (Annexure P-4) passed by respondent No.3-Collector has been upheld vide impugned order dated 27.11.2015 (Annexure P-7). Hence, this writ petition.

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

Learned counsel for the petitioner has vehemently

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contended that respondent No.1-Financial Commissioner has wrongly set aside the well reasoned order dated 13.08.2012 (Annexure P-5) passed by respondent No.2-Commissioner, Jalandhar Division, Jalandhar. The petitioner is more meritorious than respondent No.4. Respondent No.4 is running a flour mill (*atta chakki*) in a nearby village and thus mostly remains outside the village. The Collector ignored the factum of selling of eucalyptus trees from the *shamlat* pond of the village by respondent No.4 and wrongly appointed him Lambardar.

Per contra, learned counsel for caveator/respondent No.4 has vehemently opposed the contentions of learned counsel for the petitioner and supported the impugned order. He further contended that choice to appoint Lambardar only lies with the Collector and his choice cannot be lightly interfered with if there is no illegality or perversity. The order dated 27.05.2010 (Annexure P-4) passed by the Collector is well-reasoned.

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

It is 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. The order of Collector can only be set aside if the order suffers from illegality or perversity.

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Perusal of the file reveals that the order dated 27.05.2010 (Annexure P-5) passed by the Collector, has been set aside by respondent No.2-Commissioner, Jalandhar Division, Jalandhar only on the ground that respondent No.4 is a shopkeeper and, therefore, he cannot be preferred as Lambardar. However, there is no bar to deprive a person from the post of Lambardar only on the ground that he is working at some reasonable distance. The onus of determining the suitability of an individual for appointment as village Lambardar rests with the prescribed authority i.e. Collector. The Collector after considering the age, educational qualification and recommendations made by the Naib Tehsildar and Tehsildar, appointed respondent No.4 as Lambardar. The order passed by the Collector does not violate any provision of law.

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 the appointment of Lambardar. There is common tendency to move towards urban areas as better educational and employment opportunities are not available in rural areas. A relevant extract of ***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

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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 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.

B. *In view of peculiar facts and*

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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.”

It is also pertinent to mention here that petitioner -Jaspal Ram was 49 years old and respondent No.4 was 38 years old at the time of filing of application. The petitioner is much older than respondent No.4 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 :

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"....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 concerned with the decision making process and not the merit of the decision."*

In view of law laid down by Hon'ble the Supreme Court of

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India in the case of *Mahavir Singh's case (supra)*, *Lila Ram Vs. Asa Ram*, 1955 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.

In *Mahavir Singh's case (supra)* the Hon'ble Supreme Court of India has observed 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.

In view of above discussion, this Court is of the considered opinion that respondent No.1-Financial Commissioner has rightly set aside the order dated 13.08.2012 (Annexure P-5) and upheld the order dated 27.05.2010 (Annexure P-4) passed by respondent No.3, appointing respondent No.4 as Lambardar.

No ground for interference is made out.

Dismissed.

Costs made easy.

23.05.2016

parveen kumar

(Paramjeet Singh Dhaliwal)
Judge