

**CWP-16958-2014 and
CWP-24255-2014**

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

Date of Decision: 04.05.2016

1. CWP-16958-2014

Rajesh Kumar

... Petitioner(s)

Versus

State of Haryana and others

... Respondent(s)

AND

2. CWP-24255-2014

Dharam Singh

... Petitioner(s)

Versus

State of Haryana 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. Arvind Kumar Yadav, Advocate,
for the petitioner in CWP-16958-2014 and
for respondent No.5 in CWP-24255-2014.

Mr. Rajneesh Chadwal, DAG, Haryana.

Mr. Vikram Rao, Advocate,
for respondent No.4 in both the petitions.

Mr. Sandeep Malik, Advocate,
for respondent No.5 in CWP-16958-2014 and
for the petitioner in CWP-24255-2014.

**CWP-16958-2014 and
CWP-24255-2014**

Paramjeet Singh Dhaliwal, J.

This order shall dispose of CWP-16958-2014 and CWP-24255-2014 as both arise from common orders and common questions of fact and law are involved in both the petitions.

Both these petitions have 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 30.11.2010 (Annexure P-1 in both the petition) passed by respondent No.3-District Collector, Rewari, appointing respondent No.4 as Lambardar and the orders dated 28.11.2013 (Annexure P-3 in CWP-16958-2014 and Annexure P-2 in CWP-24255-2014) and 26.03.2014 (Annexure P-5 in CWP-16958-2014 and Annexure P-3 in CWP-24255-2014) whereby appeal filed by the petitioner and revisions filed by the petitioner and respondent No.5 (in CWP-16958-2014) have been dismissed, respectively.

Before proceeding further, a brief reference to the facts is necessary which are being extracted from CWP-16958-2014.

Brief facts of the case are to the effect that to fill up the vacancy caused on account of death of Partap Singh, Lambardar of village Balawas Ahir, applications were invited from the interested persons by making proclamation in the village after obtaining necessary sanction from the Collector. In furtherance of the proclamation, nine persons including the petitioner, respondent Nos.4 and 5 submitted their applications and ultimately the petitioner and respondent Nos.4 and 5

**CWP-16958-2014 and
CWP-24255-2014**

were left in the fray. The Assistant Collector-IIInd Grade and Assistant Collector Ist Grade recommended the name of respondent No.4 for the post of Lambardar. The Collector after appreciating the comparative merit of the candidates found respondent No.4-Netar Pal to be fit and suitable candidate and vide impugned order dated 26.03.2014 (Annexure P-5) appointed him as Lambardar of the village. Feeling aggrieved, the petitioner preferred appeal before the Commissioner, Gurgaon Division, Gurgaon which has been dismissed vide impugned order dated 28.11.2013 (Annexure P-3). Being dissatisfied, the petitioner and respondent No.5 preferred separate revisions which have also been dismissed vide impugned order dated 26.03.2014 (Annexure P-5) passed by respondent No.1-Financial Commissioner, Haryana. Hence, this writ petition.

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

Learned counsel for the petitioner in CWP-16958-2014 and for respondent No.5 in CWP-24255-2014 vehemently contended that the impugned orders are not sustainable in the eyes of law. The petitioner is more meritorious candidate than respondent No.4 (in both the petitions). The petitioner herein is 38 years old, educated upto B.A. and has 14 kanals of land whereas respondent No.4 (in both the petitions) is much older and less educated. Respondent No.4 has been a defaulter in a loan case and has also been an encroacher on the PWD land. The Collector has ignored the petitioner only on the ground that he is serving as JBT

**CWP-16958-2014 and
CWP-24255-2014**

Teacher and, therefore, will not be able to discharge his duties of Lambardar. It will not make any difference if one works at some reasonable distance and cannot be ignored on this score alone. If a Government servant is appointed as Lambardar, his appointment as Lambardar will not in any way interfere with the discharge of his duties as a govt. servant. In support of his contentions, learned counsel relied upon *Duli Chand vs. State of Haryana and another* 2013 (1) R.C.R. (Civil) 1010, *Manjit Kaur vs. Financial Commissioner (Appeals), Punjab and others* 2015 (1) PLJ 474, *Jarnail Singh vs. Financial Commissioner (Appeals), Punjab, Chandigarh and others* 2012 (1) L.A.R. 605, *Sukhminder Singh vs. Financial Commissioner Appeal (s), Civil Secretariat Punjab* 1992 PLJ 325, *Ujagar Singh vs. State of Punjab* 2008(3) R.C.R. (Civil) 28, *Kuldip Singh vs. State of Punjab and another* 2008(4) R.C.R. (Civil) 799 and *Om Parkash vs. State of Haryana and others* 2015 (1) R.C.R. (Civil) 486.

Learned counsel for the petitioner-Dharam Singh in CWP-24255-2014 and for respondent No.5 in CWP-16958-2014 vehemently contended that Dharam Singh is more meritorious than respondent No.4 and petitioner in CWP-16958-2014.

Learned State counsel and learned counsel for respondent No.4 vehemently opposed the contentions of learned counsel for the petitioner and supported the impugned orders. There is no encroachment made by respondent No.4 as is clear from the demarcation report. He has also not been defaulter of any loan at any time, rather wife of

**CWP-16958-2014 and
CWP-24255-2014**

respondent No.5-Dharam Singh has been a defaulter of loan and wife of petitioner-Rajesh has made a complaint against him.

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

There is no dispute with regard to the ratio of judgments cited by learned counsel for the petitioner in CWP-16958-2014 but the fact remains that in view of law laid down by Hon'ble the Supreme Court of India in the case of *Mahavir Singh Vs. Khiali Ram & others*, 2009(3) SCC 439, *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 the present case, the Collector appointed respondent No.4 (in CWP-16958-2014) as Lambardar keeping in view his age, availability in village, service rendered in the Army and recommendations made by A.C-IIInd and A.C-Ist Grade in his favour. The said findings of the Collector have been affirmed by the Commissioner, Gurgaon Division, Gurgaon and Financial

**CWP-16958-2014 and
CWP-24255-2014**

Commissioner, Haryana. Mere educational qualification may not be a sufficient ground for appointing a person as Lambardar, but other factors as mentioned in Rules 17 and 19 of the Lambardari Rules are also required to be taken into consideration. Respondent No.4 has been preferred on the ground that he is an ex-serviceman and would be available in the village throughout the day whereas petitioner-Rajesh Kumar is a govt. employee. Admittedly, there is no dispute that a person cannot be denied consideration for the post of Lambardar when he is in govt. job, but other factors such as availability and service rendered to the State/nation has to be taken into consideration.

In view of the above, I do not find any illegality or perversity in the impugned order.

Dismissed.

No order as to costs.

04.05.2016
parveen kumar

(Paramjeet Singh Dhaliwal)
Judge