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

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***CWP No.17687 of 2014***
***Date of Decision: 06.01.2016***

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Major Singh

. . . .Petitioner

Versus

Financial Commissioner Revenue, Punjab and others

. . . . Respondents

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**CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN**

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Present: Mr.K.S. Sidhu, Advocate, for the petitioner.

Mr.Yatinder Sharma, Addl. A.G. Punjab.

Mr.S.K. Arora, Advocate, for respondent No.4.

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***RAKESH KUMAR JAIN, J.***

The petitioner was appointed as Lambardar of village Khippanwali, Tehsil and District Fazilka on 31.5.2010. However, the appeal filed by respondent No.4 was allowed by the Commissioner on 31.3.2011, the order of the Collector dated 31.5.2010 was set aside and the case was remanded back to him to reconsider the merit of both the parties. The Collector, vide his order dated 6.6.2011 appointed respondent No.4 as Lambardar. The appeal filed by the petitioner was dismissed by the Commissioner on 8.1.2013. The revision filed by him before the Financial Commissioner was also dismissed on 4.3.2014. The petitioner challenged all the orders by way of the present writ petition, which was allowed on 12.11.2014. Respondent No.4 challenged the said order dated 12.11.2014 by way of an intra-Court appeal bearing LPA No.1975 of 2014. The appeal was allowed and the order of the Single Judge dated 12.11.2014 was set aside. The appointment of respondent No.4 as Lambardar was allowed to continue and the matter was remanded back to the Single Judge to decide it afresh. The relevant portion of the order passed by the Division Bench in LPA No.1975 of 2014 is as under: -

> *"We have heard learned counsel for the parties as 4th respondent is on caveat. We find from the order under appeal that two factors have really waived in the mind of the learned Single Judge. Firstly, respondent No.4 was initially the choice of the Collector and secondly, the appellant was defaulter of the Cooperative Agricultural Bank, Abohar. Both the reasons, in our considered view, require re-consideration on correct appreciation of the facts on record. We say so for the reasons that when the Collector selected respondent No.4, some of the material facts, namely (i) the appellant possesses the qualification of Giani; (ii) Diploma in Language Teacher and (iii) he has done Farmer Training Course from Punjab Agricultural University, Ludhiana, were not at all considered by the Collector. Similarly, the appellant was branded as a defaulter in the loan account, whereas the Commissioner found that he had been paying the due installments regularly and had paid the entire loan amount with interest before he came to be appointed as Lambardar. These material facts were explicitly noticed by the Collector while reversing his own decision which was duly affirmed by the Superior Authorities as well.*
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> *As regard to the second factor highlighted by the learned Single Judge, it appears that while respondent No.4 was the initial choice of the*

> *Collector, the appellant too was the choice of that very Collector after the case was remanded by the Commissioner.*
>
> *Whether respondent No.4, who is son of deceased-Lambardar should be given preference and/or the hereditary claim, should be discouraged, is also an issue which deserves proper adjudication.*
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> *In the totality of circumstances, we are of the considered view that the matter requires afresh adjudication at the hands of learned Single Judge. Consequently and without expressing any final views on merits, we allow this appeal; set-aside the order dated 12.11.2014 passed by learned Single Judge and restore the appointment of appellant as Lambardar till the matter is decided afresh by the learned Single Judge.*
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> *Parties are directed to appear before learned Single Judge on 19.01.2015."*

The appointment of Lambardar/Headman in the State of Punjab is governed by the Punjab Land Revenue Rules (as applicable to Punjab) in which Rule 15 deals with the following matters, which are to be considered at the time of appointment of Lambardar:-

> *"15. Matters to be considered in first appointment:- 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 the headman is to be made;*
>
> *(f) services rendered by himself or by his family in the national movements to secure freedom of India."*

Initially, the petitioner was appointed as Lambardar by the Collector vide his order dated 31.5.2010, who had opined that the petitioner is the owner of 124 kanal 11 marla of land as against respondent No.4, who owns 86 kanal 17 marla. The petitioner is a B.A. pass whereas respondent No.4 is 11th pass. Apart from that the petitioner remained 'Sarbarah' of his Lambardar father and was having experience of the work of Lambardar. He was recommended by the SDM, Fazilka. On the other hand, respondent No.4 was a defaulter of Co-operative Agricultural Development Bank Limited, Abohar to the tune of ₹1,90,000/- on 19.3.2009. In this regard, Desh Raj , Accountant of the Bank, had appeared before the SDM and stated that respondent No.4 had obtained loan from their bank for the aforesaid house but is not repaying the installments, which has now been repaid. The Bank has issued a clearance certificate on 3.12.2009 whereas, the proceedings of the Lambardari case were initiated on 11.7.2008. The Collector had opined that respondent No.4 was not having good reputation, thus, he was not found suitable for the post of Lambardar. The said order of the Collector dated 31.5.2010 was set aside by the Commissioner on 31.3.2011, observing that respondent No.4 had passed Higher Secondary (XI) examination from the Board. He had passed Giani examination from the Punjabi University, Patiala and had also obtained Diploma in Language Teacher. He was also a farmer-trainee under the correspondence courses scheme of the Punjab Agricultural University, Ludhiana, during the year 1986-87. The land owned by him measuring 86 kanal 17 marla is sufficient as security for the payment of land revenue. It was further observed that even otherwise, the ownership of land is not a major factor as now the land revenue has been abolished in the Punjab State. It is further observed that the name of respondent No.4 was recommended by Tehsildar, Fazilka and the Collector had wrongly held respondent No.4 to be a defaulter of the Bank as he had obtained the loan from the Bank in the year 2004 for 15 years which was to be paid in installments. Respondent No.4 had placed on record certificate of the Bank by which the Bank had certified that his loan account was regular and before passing the impugned order by the Collector, respondent No.4 had repaid the entire loan amount with interest and the bank had issued “No Due Certificate” in his favour. It was thus opined that the Collector while passing the order did not take into consideration the comparative merits of the candidates properly.

After the remand by the Commissioner, the same Collector, who had passed the order dated 31.5.2010, appointed respondent No.4 vide his order dated 6.6.2011, after taking into consideration the other educational qualifications of respondent No.4, considering him to be much more deserving candidate, appointed him as Lambardar. The said order dated 6.6.2011 has been maintained by the Divisional Commissioner and Financial Commissioner on the ground that there has been no perversity in the order of the Collector dated 6.6.2011 in choosing respondent No.4 as Lambardar of the Village. However, learned Single Judge, while passing the order dated 12.11.2014, set aside all the orders passed by the Collector, Commissioner and Financial Commissioner, only on the ground that no reason has been given by the Collector in forming its view on the basis of the same material.

However, the order of the learned Single Judge has been set aside by the Division Bench on the ground that two factors had weighed on the mind of learned Single Judge, firstly, the petitioner was the initial choice of the Collector and secondly, respondent No.4 was a defaulter of the Cooperative Agricultural Development Bank Limited, Abohar. It is also observed that both the reasons require reconsideration. It is observed that after the remand by the Divisional Commissioner, the same Collector selected respondent No.4 herein on the ground of acquiring more qualification and the Divisional Commissioner had found that respondent No.4 had been paying due installments regularly and paid the entire loan amount before his appointment as Lambardar. It is also observed by the Division Bench that this Court had to see as to whether the petitioner, who is the son of the deceased-Lambardar, should have been given preference or the hereditary claim should be discouraged, is also an issue which is required to be decided.

It may be pertinent to mention that Rule 15(a) of the Punjab Land Revenue Rules, 1908 (as applicable to Punjab) prescribes hereditary claim whereas it is altogether different in Rule 15 of the Punjab Land Revenue Rules, 1908 (as applicable to Haryana), which read as under: -

> *"15. Matters to be considered in first appointment:- In all first appointments of headman, regard shall be had among other matters to –*
>
> *(a) *his experience as substitute/ Sarbarah Lambardar;*
>
> *1 [*the words 'his hereditary claims' substituted vide notification dated 29.10.2010]*
>
> *(b) extent of property in the estate possessed by the candidate;*
>
> *(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."*

In the case of ***"Sharif** Vs. **Financial Commissioner, Haryana and others"*** *2014(3) RCR (Civil) 431*, while interpreting Rule 15 and 17 of the Punjab Land Revenue Rules, 1908 [as applicable to Haryana] it was held by this Court that even Rule 17(ii) of the said Rules is discriminatory on the ground of family connection and violative of Articles 14, 15 & 16 of the Constitution of India as such the hereditary claim could not be taken into consideration by the Financial Commissioner but the Single Judge in the case of ***"Pishora Singh** Vs. **State of Punjab and others"*** *2015(2) PLJ 78,* referring to the instructions dated 14.9.2011 of the Revenue Department, Government of Punjab has observed that when the comparative merits are equal then the preference can be given to the son of deceased Lambardar. Thus, in the light of the decision in the case of ***Pishora Singh (Supra)***, relying upon the instructions dated 14.9.2011, the issue as to whether preference has to be given to the hereditary claim, in case of merits of the parties are equal, is decided in affirmative. Insofar as the facts of the case are concerned, respondent No.4 has an edge over the petitioner in academic qualification because the petitioner is a simple B.A. whereas respondent No.4 is not only studied upto Higher Secondary but also passed Giani examination from the Punjabi University, Patiala, obtained diploma in Language Teacher and also did farmer-trainee under the correspondence courses scheme of the Punjab Agricultural University, Ludhiana and has been the choice of the Collector which deserves to be honoured, who has to ensure proper working of the post of Lambardar as held by this Court, in the case of ***"Darshan Singh*** *Vs.* ***Financial Commissioner (appeals 1), Punjab and others"*** *2010(1) PLR 138.*

Thus, in view of the aforesaid facts and circumstances, I do not find any merit in the present petition and the same is hereby dismissed.

**(RAKESH KUMAR JAIN)**
**JUDGE**

**06.01.2016**
*Vivek*