

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

**CWP No.22892 of 2016
Date of decision: 07.11.2016**

Lalit Kumar

... Petitioner

Vs.

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Johan Kumar, Advocate
for the petitioner.

RAMESHWAR SINGH MALIK, J. (ORAL)

Present writ petition is directed against the order dated 20.05.2016 (Annexure P-3) passed by Financial Commissioner, Haryana, whereby he dismissed the revision petition filed by the petitioner and upheld the orders dated 16.07.2013 (Annexure P-2) and dated 11.10.2012 (Annexure P-1) passed by Commissioner and District Collector respectively, appointing respondent No.5 as Lambardar of the village.

Heard learned counsel for the petitioner.

It is a matter of record and not in dispute that when the candidature of the candidates, including that of the petitioner, was being considered for appointment to the post of Lambardar in the village of the parties, petitioner was serving in a private company. This was one of the reasons, which rightly weighed with the District Collector to appoint respondent No.5 as Lambardar, because she will be available to the residents of the village throughout the day. Since the petitioner has been working in a private concern, he will not be

available in the village as and when his services were required by the villagers. Petitioner was not rightly appointed as Lambardar, because he would have been an absentee Lambardar. When confronted with this undisputed fact situation obtaining on the record, learned counsel for the petitioner had no answer and rightly so, it being a matter of record. Having said that, this Court feels no hesitation to conclude that learned District Collector committed no error of law, while passing the impugned order dated 11.10.2012 (Annexure P-1), appointing respondent No.5 as Lambardar of the village.

While deciding the appeal of the petitioner, learned Commissioner, Gurgaon Division, Gurgaon again considered the matter and held that since the petitioner was working in a private company, he will not be available in the village to perform the duties of Lambardar. No disqualification was pointed out in the candidature of respondent No.5. In fact, she belongs to scheduled caste and was also a social worker, besides being the daughter-in-law of the deceased Lambardar. She had deposited Rs.10,000/- in small saving. Accordingly, appeal of the petitioner was rightly dismissed by the Commissioner, vide his self-contained order dated 16.07.2013 (Annexure P-2) and this order also deserves to be upheld.

Again, the matter was reconsidered by the Financial Commissioner. He recorded his cogent findings, before passing the impugned order. Operative part of the impugned order dated 20.05.2016 (Annexure P-3) passed by Financial Commissioner, which deserves to be noticed here, reads as under: -

“I have heard the argument of the counsels for both the parties and perused the records of the lower court as well as the

impugned order dated 16.07.2013 passed by the Ld. Commissioner. The Ld. Commissioner while passing the impugned order dated 16.07.2013 has upheld the appointment of Smt. Baleshwari as Lambardar on comparing merit of both candidates, with regard to availability and accessibility in the village. The ld. Commissioner further observed that the Collector is the best judge for all the round suitability of a person and his discretion in the matter cannot be so lightly interfered with unless it is proved beyond doubt that the selected person has positive disqualification in him which would debar from appointment. I find no illegality or infirmity in the order dated 16.07.2013 passed by the ld. Commissioner. Therefore, the present revision petition is without any merit and deserves dismissal.

Hence, the revision petition is dismissed.”

Learned counsel for the petitioner places reliance on three judgments of this Court in **Dalel Singh Vs. Financial Commissioner-cum-Secretary, Revenue, Haryana and others, 2012 (2) PLR 119**, **Didar Singh Vs. Financial Commissioner (Appeal-II), Punjab and others, 2012 (5) RCR (Civil) 480** and **Baljeet Singh Vs. State of Punjab and others, 2012 (5) RCR (Civil) 715**, to contend that the factum of service of the petitioner in a private company cannot be a ground to deny him the appointment as Lambardar. However, a bare perusal of all these three judgments rendered by this Court will make it crystal clear that none of the judgments is applicable to the facts of the present case, all these three being distinguishable on facts. Further, it is the settled proposition of law that peculiar facts of each case are to be examined,

considered and appreciated first before applying any codified or judgemade law thereto. Sometimes, difference of even one additional fact or circumstance can make the world of difference, as held by the Hon'ble Supreme Court in **Padmausundra Rao and another Vs. State of Tamil Nadu and others, 2002 (3) SCC 533.**

It is the settled proposition of law that choice of District Collector, in the matters of appointment of Lambardar, is not to be upset lightly by the higher revenue authorities, unless the order passed by District Collector is found suffering from patent illegality or perversity. In the present case, no such perversity or illegality was found either by the Divisional Commissioner or by Financial Commissioner in the order passed by District Collector, because of which the appeal as well as revision petition filed by the petitioner were rightly dismissed. None of the respondent revenue authorities have committed any error of law, while passing their respective impugned orders and the same deserve to be upheld, for this reason also.

Once the material fact has gone undisputed on record that petitioner was serving in a private company and he would not be available during the day, as and when his services were required by the residents of the village as Lambardar, he would not be eligible to be considered for the post of Lambardar. It is so said because physical presence of the Lambardar would be necessary, as and when his services were required by the residents of the village. Petitioner would come to his village at the most in the evening, after his office hours and by that time, every government office would be closed. Petitioner would be of no avail to the residents of the village, because his presence would be required only during the working hours in government

offices. In such a situation, petitioner would not have been in a position to perform his duties as Lambardar and he would have remained an absentee Lambardar, which would serve no purpose. Under these circumstances, it can be safely concluded that all the three revenue authorities have rightly recorded their concurrent findings of facts, because of which the impugned orders deserve to be upheld, for this reason as well.

Further, no prejudice, of any kind whatsoever, has been pointed out, which might have been caused to the petitioner, by passing the impugned orders, warranting interference at the hands of this Court, while exercising its writ jurisdiction under Articles 226/227 of the Constitution of India.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that since the impugned orders passed by all the three revenue authorities have not been found suffering from any patent illegality or perversity, the same deserve to be upheld. The writ petition is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, instant writ petition stands dismissed, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

07.11.2016
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Whether speaking/reasoned Yes/No

Whether reportable Yes/No