

CWP-9852-2015

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

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Date of Decision: 18.03.2016

Parveen Kumar Sandhu

... Petitioner(s)

Versus

Financial Commissioner (Animal Husbandry), 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. Amit Jhanji, Advocate,
for the petitioner.

Mr. B.M.Vinayak, DAG, Punjab.

Mr. R.S.Malhotra, Advocate,
for respondent No.4.

Paramjeet Singh Dhaliwal, J. (Oral)

Instant writ petition has been filed under Articles 226/227 of the Constitution of India for setting aside the order dated 12.09.2014 (Annexure P-5) passed by respondent No.1-Financial Commissioner and order dated 19.05.2014 (Annexure P-4) passed by respondent No.2-Commissioner, Jalandhar Division, Jalandhar whereby order dated 04.03.2011 (Annexure P-2) passed by respondent No.3 appointing the petitioner Lambardar has been set aside and respondent No.4 has been

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appointed as Lambardar.

Brief facts of the case are to the effect that the petitioner had resigned from the post of Lambardar of village Jaijon Doaba, Tehsil Garshankar and in order to fill up the said vacancy, applications were invited from the interested persons by making proclamation in the village after obtaining necessary sanction from the Collector. In furtherance of proclamation, five persons including the petitioner and respondent No.4 submitted their applications. The Collector after appreciating the comparative merits of the candidates found the petitioner to be fit for the post of Lambardar and ultimately appointed him Lambardar vide order dated 04.03.2011 (Annexure P-2). Feeling aggrieved, respondent No.4 preferred appeal before respondent No.2-Commissioner, Jalandhar Division, Jalandhar who set aside the order dated 04.03.2011 (Annexure P-2) and appointed respondent No.4 as Lambardar vide impugned order dated 19.05.2014 (Annexure P-4) on the ground that petitioner, who has now again applied for the post of Lambardar, had earlier resigned from the post of Lambardar for contesting the elections for the post of Sarpanch and he was holding the post of Sarpanch at the time of passing the order dated 04.03.2011 (Annexure P-2) and such a move amounts to negation of law. Against that, the petitioner preferred revision before respondent No.1 who dismissed the same vide impugned order dated 12.09.2014 (Annexure P-5). Hence, this writ petition.

Upon notice, respondent No.4 filed reply with the averments

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that earlier the petitioner resigned from the post of Lambardar, therefore, he cannot hold the same post again. The resignation was for various reasons mentioned in the application and reference to the same has been made. The resignation was on the ground that he has to serve his parents.

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

Learned counsel for the petitioner has vehemently contended that in fact, the petitioner had to resign from the post of Lambardar on account of the fact that the State of Punjab issued circular dated 30.04.2008 debarring the Lambardars and Anganwari Workers from contesting the elections of Panchayat Samitis and Zila Parishads. However, in '**Anokh Singh vs. Punjab State Election Commission** AIR 2011 SC 230', the said circular has been set aside and it has been held as under:

“23. Bearing in mind these tests, we may now examine whether the office of Lambardar is an 'office of profit'. It would be apparent from the facts that though the Lambardar may not be holding a civil post, he would be holding an office under the Government. The Lambardar is not paid any salary but is entitled to receive an honorarium of Rs. 900/- per month. He receives no salary, emoluments, perquisites or facilities. Is that sufficient to conclude that he holds an 'office of profit' ? This seems to be the conclusion reached by the State Election Commissioner, whilst issuing the impugned circular

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dated 30.4.2008. The High Court affirmed the aforesaid conclusion.

24. The term 'office of profit' has not been defined in the Constitution, Representations of Peoples Act, Punjab State Election Commission Act or the Panchayati Raj Act. It is one of those rare terms which is not even defined in the General Clauses Act, 1897. It has, however, been judicially considered in numerous judgments of this Court. We may notice here some of the judgments.

xxxxx to xxxxx

33. In view of the aforesaid conclusion, we need not consider the effect of Section 2(a) of the Punjab State Legislative (Prevention of disqualifications) Act, 1952, on Section 11(g) of the State Election Commission Act. By virtue of the aforesaid Act a Lambardar would be qualified to contest the elections for legislative assembly. This could be a stepping stone for becoming the Chief Minister of the State. Therefore, it would seem a little incongruous that a Lambardar would not be permitted to seek election to the Panchayat. The village level democracy is the bedrock of the Indian National Democracy. Being a member of Panchayat can be the beginning of a long career in public life. Therefore, the disqualification introduced through the impugned circular could prove disastrous to democracy at the grassroots level in Punjab. But we need not go into controversy, as we have already held that the office of a Lambardar would not be an 'office of profit'."

Per contra, learned State counsel and learned counsel for

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respondent No.4 vehemently opposed the contentions of learned counsel for the petitioner and supported the impugned orders.

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

Admittedly, the petitioner was elected as Sarpanch and at that point of time, he was not in a position to hold the post of Lambardar in view of circular dated 30.04.2008. However, when the petitioner applied for the post of Lambardar afresh being eligible, the said circular was no more in existence in view of law laid down by the Hon'ble Supreme Court in *Anokh Singh's case (supra)*. There is no provision in the Punjab Land Revenue Act and Rules to debar a person from holding the post of Lambardar who earlier resigned from the post of Lambardar, but re-applied for the same. The question of negation of law, as observed by respondent No.2-Commissioner, Jalandhar Division, does not arise. A person can resign from the post of Lambardar for some reasons and can again apply for the same, if he is otherwise eligible. He can be debarred only when he is not eligible.

In view of above discussion, the impugned order dated 19.05.2014 (Annexure P-4) is not sustainable in the eyes of law. Since I have come to the conclusion that the order dated 19.05.2014 (Annexure P-4) is not sustainable, the impugned order dated 12.09.2014 (Annexure P-5) passed by respondent No.1 on the identical grounds, is also not sustainable.

Resultantly, the impugned orders dated 19.05.2014

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(Annexure P-4) and 12.09.2014 (Annexure P-5) are set aside and matter is remanded to respondent No.2-Commissioner, Jalandhar Division, Jalandhar to decide the matter afresh on merits, in accordance with law. Needful shall be done as early as possible preferably within three months from the date of receipt of copy of this orders. Parties through their counsel are directed to appear before respondent No.2 on 31.03.2016.

Disposed of.

18.03.2016

parveen kumar

(Paramjeet Singh Dhaliwal)
Judge