

CWP No.12257 of 2015

[1]

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

**CWP No.12257 of 2015
Date of decision:18.09.2017**

Bikram Singh @ Vikram Singh

...Petitioner

Versus

State of Haryana and others

...Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Vikram Singh, Advocate,
for the petitioner.

Mr. Ashok Muthreja, DAG, Haryana.

Mr. Ajit Sihag, Advocate,
for respondent no.4.

Rakesh Kumar Jain, J. (Oral)

The post of Lambardar of village Guhla fell vacant after the death of previous Lambardar Mangal Singh. Applications were invited to fill up the said post. The last date for receiving the applications was 12.01.2011. The Halqa Patwari produced the Naksha Lambardari on 06.06.2011. After completion of the formalities, the Sub Tehsildar recommended the name of the petitioner to the SDO(C), who recommended the name of respondent no.4 to the Collector. The Collector appointed the petitioner as Lambardar on 21.09.2012. Respondents no.4 and 5 challenged his appointment by way of two separate appeals before the Divisional Commissioner who, vide his order dated 10.01.2014, dismissed both the appeals. The private respondents

challenged orders of the Collector and the Divisional Commissioner by way of two separate revision petitions, which were allowed on 31.03.2015 and the matter was remanded back to the Collector for decision afresh. The Financial Commissioner has reversed the orders of the Collector and the Divisional Commissioner only on the ground that the petitioner was not having any land in his name at the time when he filed the application.

Counsel for the petitioner has submitted that the order of the Financial Commissioner is patently illegal and has relied upon a decision of the Supreme Court rendered in the case of **Inderaj vs. Financial Commissioner and others**, AIR 1994 SC 753 to contend that the qualification of a candidate possessing the land should have been seen at the time of appointment and not at the time of filing the application. It is submitted that the petitioner was not having the land till the last date of filing the application but when the Halqa Patwari produced the Naksha Lambardari, at that time, the petitioner was having land in his name. Thereafter, the matter was considered by the revenue authorities, who had recommended the name of the petitioner to the Collector.

On the other hand, counsel for the respondents have submitted that the Financial Commissioner has rightly allowed the revision petitions after considering the decision of the Supreme Court rendered in **Inderaj's case (supra)** and has also referred to various decisions of this Court in which it has been held that the land holding by the candidate at the time of filing the application is an essential qualification.

I have heard learned counsel for the parties and perused the available record with their able assistance.

The petitioner has prepared a chart of the respective

qualifications/merits of the petitioner and respondents no.4 and 5, which is reproduced as under for the ready reference:-

	Petitioner	Respondent No.4	Respondent No.5
Age	35	34	31
Education	10+2	10 th	10 th
Participation in Social Activities	He is participating in all the social welfare works being organized by Govt. institutions	With private institute	With private institute
Small Savings	Yes	Yes	Yes
Family Planning Cases	Yes	Yes	No
Recommendation	A.C.2 nd Grade	A.C.1 st Grade	None
Availability in village	24 Hours	Running a shop in another village	Working as Steno Typist outside the village
Land	17 Kanal 14 Marla	21 Kanal 6 Marla	4 Kanal

There is no dispute that the choice of the Collector has to be maintained until and unless there is a perversity in his approach. However, the Financial Commissioner has reversed the orders of the Collector and the Divisional Commissioner, by framing the following three issues:-

- “a) Whether holding of land is a pre-requisite at the time of applying for the post of lambardar?
- b) Whether holding of land can be equated with liability of a loan and its discharge as provided in Rule 15(b), 16(i)(c) and 16(ii)(b) of Punjab Land Revenue Rules, 1909 respectively?
- c) Whether there is any perversity or illegality or patent error in the order dated 21.09.2012 passed by District Collector and if so, whether the same can be interfered with?

While deciding the first issue, it has been observed that when the petitioner applied for the post of Lambardar, he was not having any land in his name, which was otherwise transferred to him by his father before his appointment. It has been held that the holding of land is a pre-requisite at the

time of applying for the post of Lambardar. The Financial Commissioner has dealt with the decision of the Supreme Court rendered in **Inderaj's case (supra)** by observing that the said case has different facts and cannot be applied to this case and it has been held that the holding of land is an essentiality while applying for the post of Lambardar. The Financial Commissioner has referred to the following decision to hold that the holding of land is an essential qualification and has to be possessed by the candidate at the time of submission of application:-

1. **Mahender Singh vs. Financial Commissioner, Haryana and others**, 2007(1) L.A.R. 542;
2. **Rajesh vs. Financial Commissioner, Haryana, Department of Revenue, Chandigarh and others**, 2013 (1) L.A.R. 308; and
3. **Sarabjit Singh vs. State of Punjab and others**, 2013(1) L.A.R. 579.

Since in this case the appointment of Headman/Lambardar is of General category, therefore, Rule 15 of the Punjab Land Revenue Rules, 1908, as applicable to Haryana, (hereinafter referred to as the “Rules”), governing the appointment of Lambardar of General category, is reproduced as under:-

“15. Matters to be considered in first appointments.-- In all first appointments of headman, regard shall be had among other matters to--

- (a) his experience as substitute/Sarbarah Lambardar;
- (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 done;
- (f) services rendered by himself or by his family in the national movements to secure freedom of India.

In case of an ex-headman of an estate or Sub-division thereof in the territory now comprising the State of Haryana who had resigned or was dismissed on account of his participation in a national movement before partition and another headman was appointed in his place, the present incumbent of the post shall be removed irrespective of the provisions of rule 16 and the ex-headman would be appointed in his place if he has not rendered himself unfit for appointment for any of the reasons given in rule 16 except imprisonment for a political offence before 15th August, 1947. In case the ex-headman is no longer alive, a person of his family who would under the rules have been entitled to be headmen if the resignation or dismissal had not intervened, would be appointed as headman. But when no such person exist there would be no need to remove the existing Lambardar.

- (g) services rendered by himself to the community and development programmes;
- (h) he shall be not less than 21 years of age at the time of inviting the application for the appointment of Lambardar;
- (i) he should be literate, preferably middle pass.”

Rule 15(h) of the Rules provides that a candidate should not be less than 21 years of age at the time of inviting the application for the appointment of Lambardar. This is an essential requirement which has to be seen at the time of filing the application and cannot be improved, meaning thereby if a person is little less than 21 years of age at the time of filing of application and completes 21 years before his appointment, then he would not be considered because the words used by the Legislature are very specific that the candidate should not be less than 21 years of age at the time of inviting the application. Rest of the ingredients of Rule 15 are to be considered by the Collector at the time of appointment because the language of Rule 15 itself suggest that the appointing authority had to have regard to the various factors in order to adjudge the suitability of a candidate for the purpose of his

appointment. Rule 15(b) of the Rules provides that the extent of property in the estate possessed by the candidate has to be looked into, which means that the candidate who possess more land/property in the estate would have an edge over the other candidates but it does not mean that a candidate who does not have any property cannot apply for the purpose of consideration of his application for appointment to the post of Lambardar.

In the present case, the petitioner was not having any land when he had applied for the post of Lambardar but before the Naksha Lambardari was prepared by the Halqa Patwari, his father transferred the land in his name and he became the land owner. Now, it is for the Collector to examine the extent of the property owned by the parties concerned in the estate for the purpose of giving them the benefit of this aspect.

Rule 15(d) of the Rules provides that a person who is applying for the post of Lambardar should be free from indebtedness. In **Inderaj's case (supra)**, the candidate was in debt on the last date of submission of application i.e. 28.12.1987 but he cleared the debt on 28.06.1988, before the date of his appointment, therefore, the Supreme Court has held that the question of serious financial embarrassment due to indebtedness does not arise because when he was appointed as Lambardar, there was no debt against him.

In **Mahender Singh's case (supra)**, relied upon by the respondents, it is not clear as to whether the petitioner therein got the land transferred in his name through the decree of Civil Court before the date of his appointment by the Collector or thereafter. The finding of this Court in this regard is that *“however, it has come on record that when process to appoint Lambardar had started, the petitioner was not having any land in his name.*

During pendency of the proceedings, he got the land transferred in his own name through a decree of the civil Court. Qualifications of the candidates are supposed to be taken note of at the time when vacancy was notified and not thereafter. Holding of land is an essential qualification to become a Lambardar”.

To my mind, with deference to the judgment of the Division Bench of this Court, holding of land is not an essential qualification but rather it is one of the qualifications which if a candidate possess, he would get more marks/preference than the other candidate who do not possess it.

Insofar as the decision of this Court in **Rajesh's case (supra)** is concerned, it does not talk of anything regarding possession of land at the time of application being an essential qualification. However, in **Sarabjit Singh's case (supra)**, this Court had only mentioned that the petitioner in that case has no land at the time of filing his application and nothing has been said thereafter.

On the other hand, in **Inderaj's case (supra)**, the Supreme Court has specifically held that the qualification has to be seen at the time of appointment, meaning thereby the appointing authority has to give a consideration to the qualifications possessed by the respective parties at the time of appointment, otherwise, hypothetically if a candidate do not possess the qualifications as provided in Rule 15(c) and 15(f) of the Rules, i.e. services rendered to the State by himself or by his family and the services rendered by himself or by his family in the national movements to secure freedom of India, then should his application be rejected in its absence? There are so many cases where certain candidates do not possess these qualifications provided in Rule

15(c) and (f) but because of their other qualifications provided in Rule 15, are found suitable. The only essential qualification is that a candidate should not be less than 21 years of age at the time of filing the application for the post of Lambardar as Rule 15 of the Rules itself suggest that the words ““at the time of inviting application” are not mentioned anywhere in any other sub-rule of Rule 15.

Thus, in my considered opinion, the decision of the Supreme Court rendered in **Inderaj's case (supra)** is applicable in this case, which has been wrongly rejected by the Financial Commissioner and it is held that except for the qualification provided in Rule 15(h), all are preferable/desirable qualifications and are not essential qualifications and the Collector has to appoint the candidate who is found to be more suitable, possessing more qualifications than the other candidate(s).

In view of the above, the present petition is hereby allowed and the impugned order passed by the Financial Commissioner is set aside.

September 18, 2017
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(Rakesh Kumar Jain)
Judge

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No