

CWP No.22809 of 2014

[1]

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

**CWP No.22809 of 2014
Date of decision:18.09.2017**

Udai Bhan

...Petitioner

Versus

The State of Haryana and others

...Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Ajay Jain, Advocate,
the the petitioner.

Mr. Saurav Mohunta, DAG, Haryana.

Mr. Umesh Narang, Advocate,
for respondentno.4.

Rakesh Kumar Jain, J.

The post of Lambardar of village Berli Kalan, District Rewari, became available on the death Ram Chander Lambardar. After the completion of formalities, the Assistant Collector 2nd Grade, Rewari, recommended the name of the petitioner to the Assistant Collector 1st Grade, Rewari, who also further recommended his name to the Collector. The Collector, vide his order dated 30.11.2007, appointed the petitioner as Lambardar. The private respondents filed separate appeals against the order of the Collector before the Divisional Commissioner. The appeal filed by respondent no.6 Mool Chand @ Phool Chand was accepted on 10.03.2011 and he was appointed as Lambardar in place of the petitioner. The petitioner challenged the order of appointment

of Mool Chand @ Phool Chand as Lambardar passed by the Divisional Commissioner in revision before the Financial Commissioner, which was dismissed on 18.02.2014.

Counsel for the petitioner has submitted that once the petitioner was appointed as Lambardar by the Collector, the Divisional Commissioner could not have appointed respondent no.6 as Lambardar in his place by setting aside his appointment. It is sought to be argued that the power of appointment of Lambardar does not vest in the Divisional Commissioner or the Financial Commissioner as it is the prerogative of the Collector. In support of his submission, he has relied upon a Division Bench judgment of this Court rendered in the case of **Harbans Singh vs. The Financial Commissioner, Appeals-I, Punjab and others**, 2007(5) RCR (Civil) 838.

On the other hand, counsel for respondent no.6 has submitted that though the Collector is the appointing authority but if the appointment made by him is found to be perverse, then his order of appointment can be set aside by the appellate/revisional authority and other candidate, who is found to be more suitable, can be appointed. In this regard, he has relied upon two Division Bench judgments of this Court rendered in the cases of **Kuldip Singh vs. State of Punjab and another**, 2008(4) PLR 304 and **Tak Ram vs. Financial Commissioner (Revenue), Haryana**, 1999(1) PLR 668.

Before I opine on the decision relied upon by both the parties, it would be relevant to refer to the part of the order of the Collector wherein he has referred to the argument of the counsel for the petitioner Udai Bhan, who was appointed as Lambardar by the Collector, which is reproduced as under:-

“On receipt of the file in this Court, all the applicants were heard. Counsel for applicant Udai Bhan in his arguments

submitted that the applicant is about 35 years of age, is a matriculate and has done diploma in ITI and PTI. The Lambardari in question is of Rajputana Patti and the applicant is having 3 acres of land in this Patti. He is a life member of Red Cross and takes active part in social activities. The applicant enjoys very good reputation in the village and prominent persons of the village deposed in his favour. Even the Gram Panchayat has passed a resolution in his favour. He got conducted 5 cases of family planning and got deposited 1 lakh in a Government Bank. He donated land for purposes of sweet water. Naib Tehsildar, Rewari and Sub Divisional Officer (Civil), Rewari have recommended the name of the applicant. Applicant Udai Bhan is most eligible to fill up the post of Lambardar. Thus, he be appointed as Lambardar of village Berli Kalan.”

Further, the finding recorded by the Collector in favour of petitioner Udai Bhan is also reproduced as under:-

“After hearing all the applicants and on careful persual of the file, I have reached at the conclusion that the educational qualification of all the candidates is similar. Name of applicant Udai Bhan was recommended by Naib Tehsildar, Rewari and Sub Divisional Officer (Civil), Rewari. This applicant enjoys good reputation in the village and even prominent persons of the village have deposed in his favour. He is life member of Red Cross Society and is of young age. He helped in conducting family planning programmes. Thus, keeping in view all the said factors Shri Udai Bhan son of Bhondu Ram, resident of Berli Kalan is appointed as Lambardar of village Berli Kalan in place of deceased Lambardar Ram Chander. A copy of this Order be sent to Tehsildar, Rewari for necessary compliance.”

On the other hand, counsel for the respondents has submitted that at the time of considering the candidature of Udai Bhan and respondent no.6, the Divisional Commissioner made the following observations:-

“A perusal of order of Ld. Collector shows that Ld. Collector has not discussed about the demerits pointed out by the

Ld. Counsels of rival candidates. Ld. Collector has also not given any ground to ignore the rival candidates. Perusal of impugned order also shows that the Ld. Collector has relied upon the recommendations of Naib Tehsildar, Rewari and S.D.O. (Civil), Rewari.

It is well settled law that the choice of the Collector in appointing Lambardar is final until and unless there is any illegality or perversity in the order of appointment. The Ld. Counsels on behalf of the appellants have pointed out that the order of Ld. Collector is illegal and perverse as a person of bad reputation has been selected by the Ld. Collector. Pointing out the demerits Ld. Counsels of the appellants contended that Udai Bhan who has been appointed as Lambardar was earlier a depot holder in village and his licence was cancelled by the District Food and Supplies Controller on the ground that Udai Bhan misappropriated the ration meant for the card holders. This action was taken by the District Food & Supplies Controller, Rewari on the enquiry report submitted by the S.D.O. (Civil), Rewari. Ld. Counsel on behalf of the respondent Udai Bhan has also admitted the fact that the licence was cancelled and the security was also forfeited. Ld. Counsels of the appellants have also pointed out that SDO, DHBVN, Rewari has forwarded a complaint against Bhondu Ram, the father of Udai Bhan to the SHO, Jatusana for lodging an FIR as he was found indulging in theft of electricity. The Ld. Counsels on behalf of the appellants have contended that the reputation of the respondent and his father is not good and Ld. Collector has wrongly mentioned that the respondent Udai Bhan enjoys a good reputation.

Ld. Counsel for the appellant Mool Chand has submitted that Ld. Collector has wrongly ignored the appellant Mool Chand despite the fact that he had worked as Sarbrah Lambardar for six years. The work and experience of the appellant has not been taken into account. Even the observation that Udai Bhan is younger to other candidate is wrong. Another appellant Vijay Kumar is 30 years of age whereas Udai Bhan is aged 35 years.

Rule 15 of the Punjab Land Revenue Rules provides for the matters to be considered in the first appointment of headman. The matters to be taken into account are experience as Sarbrah

Lambardar, extent of property in the estate possessed by the candidate, service rendered to the State by himself or by his family, his personal influence, character, ability and freedom from indebtedness etc.

After evaluating the choice of the Ld. Collector on the basis of Rule 15, I have come to the conclusion that the impugned order is not based on merits and there is illegality and perversity in the impugned order. The Ld. Collector has selected Udai Bhan who had misappropriated the ration meant for the ration card holders. This fact shows that his reputation is not upto the mark. Such a person can not be considered a fit person to be appointed as Lambardar of the village. His father Bhondu Ram was also involved in theft of electricity and SDO, DHBVN, Rewari had written for lodging a FIR against the father of the respondent Udai Bhan. This shows that the reputation of his family is not good. No demerit of appellant Mool Chand has been pointed out by any of the candidates.

The Ld. Collector has relied upon the recommendations of Naib Tehildar and SDO (Civil) Rewari whereas he should have made his own judgment about the suitability of the candidate.

The appeal of the appellant Anil Kumar has become infructuous as the appellant has died. After considering the merits of appellants Neki Ram, Vijay Kumar, Mool Chand and the respondent Udai Bhan, I have come to the conclusion that Mool Chand who is the son of the deceased Lambardar and who has experience of the work of Lambardar for 6 years has a comparative edge over other candidates. Where candidates have equal merit in education, land holding etc., then a person who has experience has to be preferred. No other candidate has the experience of the work of Lambardar. He also belongs to Rajputan Patti in which the vacancy exists.

In view of the above discussion, I set aside the impugned order being illegal and perverse and direct the Ld. Counsel, Rewari to appoint the appellant Mool Chand @ Phool Chand son of Ram Chander as Lambardar of village Berli Kalan. Accordingly, the appeals of appellants Anil Kumar, Neki Ram and Vijay Kumar are rejected and the appeal of Mool Chand appellant is hereby accepted.

Announced in the open court.”

The Financial Commissioner has upheld the order of the Divisional Commissioner and made the following observations:-

“I have heard the arguments of Learned Counsel for the parties and have also gone through the record. A reading of the order passed by Collector, Bhiwani shows that he had appointed Petitioner Udai Bhan, Lambardar, considering his merit. He was found more meritorious among the candidates on the grounds that he has wider support in the village and Assistant Collector 2nd Grade and Assistant Collector 1st Grade have given recommendations in his favour. However, Learned Commissioner has set aside this order finding that Collector failed to take cognizance of demerits of the Petitioner Udai Bhan, who has misappropriated ration of the card holders and also the fact that his father had been involved in the theft of electricity. Learned Commissioner found that Mool Chand, who being son of deceased Lambardar, had experience of Sarbrah, was more deserving candidate and, therefore, appointed him in place of Udai Bhan. Perusal of the record show that both Petitioner Udai Bhan and Respondent Mool Chand have almost equal merit on most criterion. However, Petitioner was recommended by Assistant Collector 2nd Grade and Assistant Collector 1st Grade for appointment of this post and appointed Lambardar by Collector despite the allegation of misappropriation of ration by him. On the contrary, Respondent Mool Chand has the advantage of valuable experience of work of Lambardari as he had worked as Sarbrah being son of the deceased Lambardar, and he had no demerit. Keeping in view the above stated facts and circumstances, the interference caused by Learned Commissioner, appears in order. Finding no merit, the Revision Petition, is Dismissed.

To be communicated.”

The Collector did not look into the allegations levelled against the petitioner Udai Bhan that he had misappropriated the ration meant for the ration card holders and his father Bhondu Ram was also involved in the case of

theft of electricity. The Divisional Commissioner observed that the reputation of the petitioner and his family members was not good but this aspect has not been seen by the Collector.

Now the question arises as to whether the Divisional Commissioner, after setting aside the order of the Collector, could not have appointed respondent no.6 as Lambardar if he was of the view that he is more suitable than the person chosen by the Collector, without looking into his merits/de-merits?

The argument of the petitioner that the appellate or revisional authorities cannot re-evaluate merits of the respective candidates and then seek to impose their perception of the merits of a candidate is based upon the decision rendered by this Court in **Harbans Singh's case (supra)**.

In **Harbans Singh's case (supra)**, the facts were that he was appointed by the Collector but the Divisional Commissioner set aside the order of the Collector, directing him to consider the selection afresh. The petitioner Harbans Singh challenged the order of the Divisional Commissioner of remand before the Financial Commissioner as his selection was set aside by the Divisional Commissioner and the matter was remanded back to the Collector and also arrayed respondent no.4 as a respondent. Respondent no.4 did not file any revision, challenging the order of the Divisional Commissioner, meaning thereby that he was satisfied with the order of remand. However, the Financial Commissioner appointed respondent no.4 as Lambardar. The Division Bench set aside the order of the Financial Commissioner, *inter alia*, on the ground that he should not have been appointed respondent no.4 as Lambardar as he did not challenge the order of the Divisional Commissioner in revision. They also

observed that “*appellate and revisional authorities exercising jurisdiction under the Act, must not re-evaluate the merits of respective candidates and then seek to impose their perception of the merits of a candidate. Any interpretation of the jurisdiction of appellate and revisional authorities other than the one assigned above would lead to judicial anarchy and never ending litigation*”.

In **Kuldip Singh's case (supra)**, the Division Bench observed that “*in our considered view, in case of relatively equal merits of the rival candidates the subjective satisfaction of the Collector should not be interfered with despite the fact that the adjudicating authority arrived at the conclusion that a candidate other than the candidate chosen by the Collector is more meritorious. But in a case where a comparative merit of the rival candidates, one of the candidates is found to be far more meritorious than the one chosen by the Collector, interference at the hands of the appellate/revisional authority, as also during the course of judicial review, is eminent, failing which a discretion arbitrarily exercised would defeat the cause of justice*”.

In **Tak Ram's case (supra)**, the Division Bench of this Court has held that “*the appellate or the revisional authority has a right to pass the same order that can be passed by the Collector*”.

I have given my thoughtful consideration to the submissions made by learned counsel for the parties and found that the reasoning given by the two Division Benches of this Court in **Kuldip Singh's case (supra)** and **Tak Ram's case (supra)** are more practical than the reasoning given by the Division Bench in **Harbans Singh's case (supra)**. Thus, I would follow the reasoning given by the two Division Benches of this Court in **Kuldip Singh's**

case (supra) and Tak Ram's case (supra).

Consequently, the present writ petition is found to be without any merit and hence, the same is hereby dismissed, though without any order as to costs.

September 18, 2017
vinod*

(Rakesh Kumar Jain)
Judge

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No