

CWP No.19588 of 2017

[1]

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

**CWP No.19588 of 2017
Date of decision:07.11.2017**

Kuldeep Singh

...Petitioner

Versus

Financial Commissioner and others

...Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Jagdev Singh Sidhu, Advocate,
for the petitioners.

Rakesh Kumar Jain, J.

The post of Lambardar of village Sohian, Tehsil and District Sangrur became available after the death of earlier Lambardar Sarwan Singh S/o Sampuran Singh on 15.06.1991. The process to fill up the vacant post started with the proclamation in the village on 21.04.2010 for inviting applications of the desiring candidates. In response, only two candidates, i.e. the petitioner and respondent no.4 applied for the post and after taking into consideration their respective credentials, the Assistant Collector 2nd Grade recommended the name of respondent no.4 vide his report dated 23.06.2010, followed by the recommendations of Sub Divisional Officer (Civil), Sangrur. The Collector, vide his order dated 09.03.2011, appointed respondent no.4 as Lambardar. The petitioner challenged his appointment in appeal before the Divisional Commissioner, which was dismissed on 17.07.2012 and, thereafter, his revision was also dismissed by the Financial Commissioner on 13.02.2017.

The only argument raised by the counsel for the petitioner is that the Assistant Collector 2nd Grade, in his report dated 23.06.2010, has observed that respondent no.4 was not having any land but his father, vide vasika no.1088 dated 17.06.2010, transferred one acre of land in his favour. Therefore, at the time when he filed the application, he was not owning any land and could not have been appointed as Lambardar of the village. In this regard, he has relied upon a Division Bench judgment of this Court rendered in the case of **Mahender Singh vs. Financial Commissioner, Haryana and others**, 2007(1) LAR 542 to contend that the qualification of a candidate has to be considered which is acquired on or before the date of application and not thereafter.

I have heard learned counsel for the petitioner and examined the available record with his able assistance.

The Financial Commissioner has noticed a decision of this Court rendered in the case of **Shri Karam Singh vs. F.C. and others**, CWP No.2542 of 2006, in which it has been held that the qualification has to be seen at the time of appointment.

Even otherwise, in this case, the land was transferred to respondent no.4 by his father on 17.06.2010 and the Assistant Collector 2nd Grade sent his report on 23.06.2010, meaning thereby before he could send his report, respondent no.4 had acquired the land from his father, therefore, at the time when the recommendation was made by the Assistant Collector 2nd Grade, respondent no.4 was already having the land in his name.

This aspect of the matter, as has been raised in this case, has already been thoroughly dealt with by this Court in the case of **Bikram Singh**

@ Vikram Singh vs. State of Haryana and others, CWP No.12257 of 2015, decided on 18.09.2017, in which this Court has observed and held as under:-

“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.”

Thus, in view of the above, I do not find any reason to interfere in the concurrent finding recorded by all the revenue authorities and hence, the present petition is hereby dismissed though without any order as to costs.

November 07, 2017
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(Rakesh Kumar Jain)
Judge

Whether speaking / reasoned:	Yes/No
Whether Reportable:	Yes/No