

CWP No.25369 of 2014

[1]

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

**CWP No.25369 of 2014
Date of decision:18.09.2017**

Jaibir Singh

...Petitioner

Versus

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. Mohit Garg, Advocate,
for respondentno.4.

Rakesh Kumar Jain, J.

An interesting question involved in this case is as to whether the Divisional Commissioner, in appeal, can appoint a Lambardar for the first time if the Collector had not appointed any candidate as Lambardar and remanded the case back to the recommendatory authorities for calling the applications afresh?

In brief, the office of Lambardar of Scheduled Caste category of village Ghanghala, Tehsil Siwani, District Bhiwani fell vacant on account of the death of Jethu Ram Lambardar. The process to fill up the vacancy was initiated by way of Munadi/proclamation, after receiving permission from the Collector, Bhiwani. Three applications were received, within the prescribed period, of Jaibir Singh, Rajesh Kumar and Munshi Ram. After the verification

of their antecedents from the local police station, Naksha Lambardari was called from the Halqa Patwari. During the proceedings, one of the candidates, namely, Munshi Ram withdrew his candidature in favour of Rajesh Kumar and hence, only two candidates remained in the contest. The Tehsildar recommended the name of Rajesh Kumar and forwarded the file to the Sub Divisional Officer (Civil), who also recommended the name of Rajesh Kumar to the Collector for consideration. The Collector was not satisfied about the suitability of both the candidates for appointment to the post of Lambardar and, thus, did not appoint anyone and remanded the case back to the Tehsildar, Siwani with a direction to get the *munadi* done in the village for seeking fresh applications and to recommend the names of eligible candidates through Sub Divisional Officer (Civil), Siwani. This order of the Collector dated 05.09.2011 was challenged before the Divisional Commissioner by way of Executive Revision No.9121 of 2011 by Rajesh Kumar and by way of Executive Revision No.9192 of 2011 by Jaibir Singh. The Divisional Commissioner, vide his order dated 18.11.2011, set aside the remand order of the Collector dated 05.09.2011 and appointed Rajesh Kumar as Lambardar. The order dated 18.11.2011 passed by the Divisional Commissioner was further challenged by Jaibir Singh but without success as his revision was dismissed on 28.10.2013. Hence, the present petition.

Counsel for the petitioner has submitted that the Divisional Commissioner had no jurisdiction to appoint respondent no.4 as Lambardar, as the Divisional Commissioner is not the appointing authority. It is submitted that at the most, if the Divisional Commissioner was not satisfied with the remand order, he should have set aside the order of remand passed by the

Collector and could have directed him to re-consider the applicants for the purpose of appointment as Lambardar, if he was not satisfied with the reasons assigned by the Collector in his remand order.

On the other hand, counsel for the respondents has submitted that in a Division Bench judgment of this Court rendered in the case of **Kuldip Singh vs. State of Punjab and another**, 2008(4) PLR 304, it has been held that the Appellate and the Revisional Authorities can interfere for the purpose of appointment of Lambardar during the course of judicial review.

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

The consistent view of this Court is that the Collector is the appointing authority of Lambardar and since the choice of Lambardar is an administrative act of the Collector, therefore, his preference should not be interfered with until and unless there is perversity in his order or arbitrariness and unreasonableness in the exercise of his discretion.

In **Kuldeep Singh's case (supra)**, the following observations have been made:-

“7. We have considered the submissions advanced by the learned counsel for the rival parties. The only question that confronts is whether it would be proper in the facts and circumstances of the present case to interfere with the discretion exercised by the Collector on the basis of the recommendations made by subordinate revenue authorities in appointing Kuldip Singh as Lambardar. 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/revisioinal authority, as also during the course of judicial review, is eminent, failing which a discretion arbitrarily exercised would defeat the cause of justice.”

As per the above observations, in case the parties have relatively equal merits, then the subjective satisfaction of the Collector should not be interfered with despite the fact that the Appellate or Revisional authorities have arrived at the conclusion that a candidate other than the candidate chosen by the Collector is more meritorious but if it is found that the other candidate is far more meritorious than the one chosen by the Collector, then there could be interference at the hands of the appellate/revisional authority.

However, in any case, while exercising its power of judicial review in revision, the Divisional Commissioner cannot appoint the Lambardar for the first time as it is the prerogative and administrative act on the part of the Collector. In the present case, the Collector did not appoint anyone as he does not find anyone suitable and asked for fresh recommendations but his order has been set aside by the Collector and instead of remanding the case back to him to re-consider the applicants in the light of the observations made by him in his order, he took upon himself to appoint the Lambardar. Thus, the procedure adopted by the Divisional Commissioner is not correct.

In view of the above, the present writ petition is hereby allowed, the order passed by the Divisional Commissioner is set aside only to the extent

of appointment of Lambardar and as a result thereof, the order passed by the Financial Commissioner, upholding the order of the Divisional Commissioner, is also set aside and the matter is remanded back to the Collector to re-consider the matter again in the light of the observations made by the Divisional Commissioner.

The parties are directed to appear before the Collector on 06.11.2017.

September 18, 2017
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(Rakesh Kumar Jain)
Judge

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No