

CWP No.22302 of 2017

[1]

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

**CWP No.22302 of 2017
Date of decision:07.11.2017**

Ram Niwas

...Petitioner

Versus

Additional Chief Secretary-cum-
Financial Commissioner, Revenue, Haryana and others

...Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Ramesh Hooda, Advocate,
for the petitioner.

Rakesh Kumar Jain, J.

The petitioner has challenged the advertisement dated 28.06.2016 issued by the Assistant Collector 2nd Grade, Charkhi Dadri, inviting applications to fill up the vacant post of Lambardar (General Category) of village Mandoli, Tehsil and District Charkhi Dadri and the order dated 03.07.2017 passed by the same authority recommending the name of Ranbir Singh S/o Jai Chand (respondent no.6 herein) for appointment to the post of Lambardar to the Sub Divisional Officer (Civil), Charkhi Dadri.

In brief, Jasram S/o Gabdu was the Lambardar of village Mandoli, Tehsil and District Charkhi Dadri. After his death, the petitioner made an application to the Assistant Collector 2nd Grade, Charkhi Dadri for appointment of Sher Singh, son of his uncle, as he was serving in the Veterinary Department at that time and stayed away from the village and was unable to perform the job of Lambardar. Accordingly, Assistant Collector 2nd Grade and SDO (Civil)

recommended the name of Sher Singh to the Collector for appointment as Sarbrah Lambardar. Even before the Collector, the petitioner Ram Niwas appeared in person and made a statement that though he had retired on 31.01.2003 from the Veterinary Department but he is too weak and, therefore, he wanted the appointment of Sher Singh, son of his uncle, as Sarbrah Lambardar. Consequently, the Collector appointed Sher Singh as Sarbrah Lambardar on 26.02.2003.

It is pertinent to mention here that after the death of Jasram, the petitioner Ram Niwas never approached the Revenue Authorities to appoint him as Lambardar in place of his father on the basis of his hereditary claim, neither there is any order of his appointment as Lambardar of the village at any time by the Revenue Authorities nor his name is recorded as Lambardar in the record/register of Lambardari, as per the reports made by the Patwari and the Office Kanungo, meaning thereby he was never appointed as Lambardar of the village.

Since Sher Singh was only a Sarbrah Lambardar, therefore, considering the post of Lambardar of the village vacant after the death of Jasram, process was initiated by the Assistant Collector 2nd Grade on 28.06.2016 by issuing proclamation for seeking applications of the interested persons to fill up the vacant post. However, on 05.06.2017, pursuant to the advertisement dated 28.06.2016 issued for the post of Lambardar, the petitioner had allegedly moved an application to the Assistant Collector 2nd Grade that he wanted to withdraw his statement submitted in favour of Sher Singh for appointing him as Sarbrah Lambardar in his place after the demise of his father and for reinstating him as Larbardar. The said application dated

05.06.2017 was followed by another application dated 27.06.2017, in which he had alleged that he is entitled to be appointed as Lambardar of the village on the basis of his hereditary claim and, thus, he may be reinstated on the said post.

The Assistant Collector 2nd Grade, in his impugned order dated 03.07.2017, observed that on 14.06.2017, the petitioner Ram Niwas had given an application to cancel the appointment of Sher Singh as Sarbrah Lambardar and to reinstate him as Lambardar. The said application was considered and the reports were taken from the Patwari and the Office Kanungo, who both have reported that the petitioner was never appointed as Lambardar of the village, whereas his father Jasram was registered as Lambardar in the 'Register Lambardari' and hence, his application was rejected by the impugned order.

Learned counsel for the petitioner has based his claim on the basis of the order dated 26.02.2003 (Annexure P-2) that Sher Singh was appointed as Sarbrah Lambardar of the petitioner Ram Niwas, who was the real Lambardar but was not able to perform the duties of Lambardar due to his non-availability in the village as he was working in the Veterinary Department at that time. He has submitted that the petitioner has a right to be reinstated as Lambardar after the death of his father Jasram in terms of Rule 17 of the Rules.

It is further argued that the post of Lambardar would become vacant if either the Lambardar dies or is dismissed in terms of the provisions of Rule 16 of the Rules, otherwise the Lambardar continues to work on the said post till his life ends. It is further submitted that being the son of the deceased Lambardar, as his heir, he is duly entitled to be appointed as Lambardar.

I have heard learned counsel for the petitioner and examined the

available record with his able assistance.

Before I form any opinion in respect of the arguments raised by learned counsel for the petitioner, it would be worthwhile to reproduce relevant rules, as up to date, for the ready reference. Accordingly, Rule 15, and 17 of the Rules are 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.”

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“17. Matters to be considered in appointment of successors.--

- (i) In an estate, or sub-division thereof, owned chiefly, or altogether by Government a successor to the office of headman shall be selected with due regard to all the considerations, stated in Rule 15.

Provided that in such an estate, or sub-division thereof notified for the purpose by the Financial Commissioner, the selection shall, as far as possible, be made in the manner prescribed by sub-rule (ii) if a suitable heir is forthcoming.

- (ii) In other estates, while appointing successor, preference shall be given to a person having an experience of the functioning of Lambardar:-

- (a)

- (b) Where a headman has been dismissed in accordance with the provisions of rule 16 the Collector may refuse to appoint any of his heirs:

- (1) if the circumstances of the offence, dereliction of duty, or disqualification, for which the headman was dismissed make it probable that he would be unsuitable as a headman;
- (2) if there is reason to believe that he has connived at the offence or dereliction of duty for which the headman has been dismissed.
- (3) if any disqualification for which the headman has been dismissed attaches to him;
- (4) if he may reasonably be supposed to be under the influence of the dismissed headman or his family to an undesirable extent.

Note: If a dismissed headman's heir is considered fit to succeed, regard shall be had to the property which he will inherit in like manner as if he had already inherited it.

- (c) The Collector may also refuse to appoint a person

claiming as an heir on any ground which would necessitate or justify the dismissal of that person from the office of headman.

- (d) A female is not ordinarily eligible for the office, but may be appointed when she is the sole owner of the estate for which the appointment has to be made, or, for special reasons, in other cases.
- (iii) Failing the appointment of an heir, a successor to the office shall be appointed in the manner, and with regard to the consideration described in rule 15.
- (iv) Election shall not in any case be resorted to as an aid in making appointments under this rule and rule 14.”

Rule 17 is primarily aimed at appointment of successor of a deceased Lambardar. After the death of Jasram, the petitioner, instead of making an application to the Revenue Authorities to appoint him as successor of the deceased Lambardar, made an application before the Assistant Collector 2nd Grade to appoint Sher Singh, son of his uncle, as Sarbrah Lambardar, as the petitioner himself was serving in the Veterinary Department but even after his retirement on 31.01.2003, he himself put in appearance before the Assistant Collector 2nd Grade and stated that though he had retired but he was too weak to perform the duties of Lambardar. Consequently, Sher Singh was appointed as Sarbrah Lambardar by the Assistant Collector 2nd Grade 26.06.2003.

However, the petitioner has misconstrued the order dated 26.02.2003 passed by the Assistant Collector 2nd Grade, Charkhi Dadri that Sher Singh was appointed as Sarbrah Lambardar of the petitioner Ram Niwas, whereas the petitioner himself was never appointed as real Lambardar of the village and he neither ever approached the Revenue Authorities to appoint him as Lambardar in place of his father on the basis of his hereditary claim, nor his

name is recorded in the 'Register Lambardari' as Lambardar, as per the reports made by the Patwari and the Office Kanungo.

Now the question arises that once a person himself is not appointed as Lambardar, then question of appointing any person as his Sarbrah Lambardar does not arise at all.

The facts and circumstances narrated above leads to an irresistible conclusion that the post of Lambardar of village Mandoli remained vacant after the death of Jasram as the petitioner Ram Niwas was never appointed as Lambardar of the said village. Resultantly, the respondents have rightly issued the advertisement for inviting applications to fill up the said post of Lambardar and the Assistant Collector 2nd Grade has committed no error in rejecting the claim of the petitioner and recommending the name of respondent no.6 to the SDO (Civil). The petitioner, who has claimed that Lambardari is continuing in his family from his forefathers, apparently could not digest the recommendation of respondent no.6 and filed the application to re-instate him as Lambardar, which was not maintainable as he was never appointed as Lambardar and, thus, the question of his re-instatement as Lambardar does not arise.

Moreover, learned counsel for the petitioner has failed to show any order of the Revenue Authorities or any entry in the Register Lambardari, appointing the petitioner as Lambardar of village at any point of time.

Further more, Rule 17 of the Rule also provides that the successor of a Lambardar shall be selected with due regard to all the considerations, as stated in Rule 15 and the official respondents have duly complied with the provisions of Rules 15 and 17 in its letter and spirit and no fault can be found

in the impugned order.

In view of the above, the present petition is found to be without any merit and hence, the same is hereby dismissed in limine, 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