

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

CWP No.14306 of 2018
Date of decision: 31.05.2018

Ramesh Kumar

.... Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr.S.S.Sahu, Advocate
for the petitioner.

Avneesh Jhingan, J.

The writ petition has been filed for quashing of order dated 10.10.2017 (Annexure P-4) passed by respondent No.2, remitting the case to the Collector for decision regarding the allegations against the present petitioner.

The petitioner was one of the candidates who applied for appointment to the post of Lambardar, General Category of village Hizra-va-Khurd. The vacancy accrued because of the demise of the earlier Lambardar. The petitioner's name was recommended by the authorities as per the procedure, he was appointed as Lambardar of the village, vide order dated 28.02.2017 (Annexure P-3).

In the writ petition, respondent No.1 is State of Haryana. Respondents No.2 to 5 are the officers of the State. Respondent No.6 is the private person who had also applied for the said post.

Respondent No.6 filed an appeal before the Commissioner, Hisar, challenging the appointment of the petitioner as Lambardar, it was

alleged that the petitioner had encroached upon the public street. The Appellate Authority allowed the appeal and remanded the matter back to the Collector, Fatehabad for taking a decision on the allegations levelled against the petitioner. The operative portion of the said order is quoted below:-

“After hearing both sides and perusing the record, it is found that there is an allegation against encroachment of the public street as common land by the respondent, which was concealed. But nobody can be appointed as Lambardar, when he has already encroached upon any common land. It is the duty of Lambardar to protect the interest of the Government and report about loss injury to government properties. In particular rule 20(vi) of Punjab Land Revenue Rule prescribed duties of Lambardar to report to Tehsildar and Collector about all encroachments and also injury regarding roads, public streets, government nazool and Panchayat land. Anybody himself encroaching upon the public street cannot be expected to perform the duty satisfactory regarding reporting his own encroachment or encroachment of other persons on public street. So, such allegation needs to be examined in detail.

Therefore, the case is remitted to Collector for giving opportunity to both appellant and

respondent regarding such allegation and thereafter appointing the most suitable candidate on its merits. Parties are directed to appear before Collector on 26.02.2018. The file may be consigned to record room. Lower court's record is returned.”

There is no dispute raised by the petitioner that an encroacher cannot be appointed as Lambardar. His grievance is against the remand by the Appellate Authority that remand would mean de novo decision. The contention raised is not well founded.

From perusal of para Nos. 4 and 5 of the impugned order, it is evident that the matter has been remanded back to give opportunity to the parties with regard to allegations of encroachment.

In such circumstances, no interference in the impugned order is called for.

The writ petition stands disposed of accordingly.

31.05.2018
anju

(AVNEESH JHINGAN)
JUDGE

1. Whether the order is speaking/reasoned: Yes/No
2. Whether the order is reportable : Yes/No