

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

LPA No.1364 of 2018
Date of decision: 25.09.2018

Narinder Kaur

... Appellant

Versus

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE KRISHNA MURARI, CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI, JUDGE

Present: Mr. M.S. Kang, Advocate for the appellant.

ARUN PALLI, J. (Oral)

This is an intra-court appeal under clause X of the Letters Patent against an order and judgment dated 19.07.2018, rendered by the learned Single Judge, vide which the writ petition preferred by appellant assailing the order dated 16.08.2016 passed by the Deputy Commissioner-cum-District Controller, Jalandhar appointing respondent No.4 as Lambardar, as also the orders passed by the appellate and the revisional authorities affirming the said order, has since been dismissed.

A vacancy of Nambardar (General Category), in Village Balkohna, Tehsil Nakodar, District Jalandhar, occurred owing to death of its incumbent, namely, Gurdev Singh Sidhu. Accordingly, the applications were invited by Naib Tehsildar, Jalandhar from the persons desirous of being appointed to the said post. To begin with, ten candidates were in the fray.

But as against a few criminal cases were pending and the rest withdrew their

applications, only the claim of appellant - Narinder Kaur and respondent No.4 – Dalbir Singh survived for consideration. However, the Naib Tehsildar, vide his report, submitted to the SDM, Nakodar recommended the name of Dalbir Singh (respondent No.4) for appointment as Nambardar. Whereas, SDM, Nakodar recommended the name of the appellant (Narinder Kaur) to the District Collector, Jalandhar. On a consideration of the credentials of both the candidates, the District Collector vide his order dated 16.08.2016 reached a conclusion that Dalbir Singh – respondent No.4 was more educated than the appellant. He also appeared to be more intelligent than Narinder Kaur. He very well knew the duties and responsibilities of Lambardar. Further, his name was also recommended by the Naib Tehsildar, Nakodar. Thus, he was more suitable to be appointed as Lambardar. The appeal preferred by the appellant against the said decision, under Section 13 of the Punjab Land Revenue Act, 1887 (for short, ‘the Act’), was dismissed by the Commissioner, Jalandhar Division, Jalandhar. Likewise, even the revision petition filed by the appellant under Section 16 of the Act was dismissed by the Financial Commissioner, Punjab, Chandigarh. And as indicated above, since the writ petition too, preferred by the appellant, was dismissed, thus this appeal.

Learned counsel for the appellant submits that the authorities under the Act as also the learned Single Judge apparently erred, for the fact that the appellant- Narinder Kaur was barely 54 years of age, whereas respondent No.4 was 63 years’ old, and thus she was more suitable for the post was not factored in. Further, she owned a land measuring 43 kanals and 16 marlas situated in Village Balkohna itself, and was a permanent resident of the said village. And on the contrary, Dalbir Singh – respondent No.4

barely owned a land measuring 04 kanals and 14 marlas only. Besides this, the appellant – Narinder Kaur happened to be the wife of deceased Nambardar, and as she had been assisting her late husband in discharging his duties, she had gathered a valuable experience and knowledge as regards the functions and responsibilities of the office. Thus, she was a better candidate than respondent No.4. Further, she was also a President of Village Cooperative Society and her claim was even recommended by SDM, Nakodar for appointment. And to substantiate this submission, learned counsel had also placed reliance upon a decision of the Hon'ble Supreme Court in **Mahavir Singh v. Khiali Ram & Ors.**, 2009(3) SCC 439.

We have heard learned counsel for the appellant and perused the record.

Needless to assert that to adjudge the relative merit of the candidates or their suitability for appointment to the office of Nambardar, the District Collector is best equipped. Besides, being the competent authority. And unless the discretion exercised by the competent authority suffers from any jurisdictional error, perversity, actuated by any malafides or is in breach of regulations, it cannot be interfered with. Similarly, what lies within the domain of this Court, while exercising the power of judicial review under Article 226 of the Constitution, is to determine if the decision making process suffered from any serious irregularity, arbitrariness or was unfair, and not the merits of the decision itself.

What is the position in the matter at hands?

Undoubtedly, the appellant happened to be the widow of deceased Nambardar and was 54 years of age at the time of consideration of her claim, whereas respondent No.4 was 63 years' old. It is not disputed

either that she owned a larger land holding. However, what weighed with the District Collector while judging the merit of the two candidates was that respondent No.4 was an Ex-serviceman and had worked as Telecom Mechanic in the Army for 25 years. He had even participated in the 1971 War and was also an income tax payee. Further, the appellant was a matriculate, whereas respondent No.4 was better educated, having studied upto B.A. Part I. And most importantly, during his personal interaction with both the candidates the District Collector found respondent No.4 to be more intelligent than the appellant, for, he was fully conversant with the duties and responsibilities of the office of Lambardar: ***“Candidate Dalbir Singh is more educated than candidate Narinder Kaur. He appears to be more intelligent than the other candidate Narinder Kaur from his conversation and very well knows the duties and responsibilities of Lambardar.”***

Undoubtedly, at the time of consideration of the claims, the appellant was 54 years’ old and respondent No.4 was 63 years of age. But the age alone, notwithstanding the other relevant features that are equally crucial, cannot be the decisive factor upon which a final decision to appoint a Lambdardar can be predicted. Suffice it to say that in a given case and situation, a candidate who is older can be preferred if he or she is found to be more suitable. No doubt being younger in age, for appointment as a Lambardar, is a significant factor, but at times the maturity the job requires takes a precedence.

The decision of the Hon’ble Supreme Court, cited by the learned counsel, in **Mahavir Singh’s case** (supra), would also not advance the case of the appellant. For, in the said case, the District Collector, Hisar had appointed the appellant therein as Lambardar of Village Thurana. However, the Division Bench of this Court, vide order and judgment dated

09.11.2006, reversed the said decision, for, respondent before the Supreme Court, namely, Khiali Ram was found to be the best and more meritorious candidate. But the Supreme Court was of the view that this Court did not enter into a question as to whether the findings recorded by the Collector were right or wrong and similarly the nature of jurisdiction the High Court exercised, under Article 226 of the Constitution, in such matters was also lost sight of. Further, it had not been found by the High Court that Collector while expressing his opinion as regards comparative merit of the appellant vis-à-vis respondent No.1, committed any error in his decision making process. And most significantly the appellant – Mahavir Singh happened to be the son of the deceased Nambardar, and it was found as a fact that he used to help his late father in the work of Lambardari during his lifetime, and thus he was more experienced:

“13. The District Collector is the appointing authority. He considered the respective merits of the candidates in great details. As indicated hereinbefore, the factor that the appellant is son of a deceased Lambardar and he used to help him in the work of ‘Lambdari’ during his life time was taken into consideration.

... As regards experience of the work of Lambardari, he found that the appellant was more experienced in the work of Lambardari.”

Ex facie, in the matter at hands none of the authorities recorded or even observed that since appellant had been assisting her late husband in the discharge of his duties as Lambardar she indeed gained a valuable experience in this regard. On the contrary, in the matter at hands, as

demonstrated above, the District Collector upon a personal interaction with both the candidates rather found respondent No.4 to be more intelligent and well-versed with the duties and responsibilities of the office. Thus, on a consideration of the matter and material on record, the only and the inevitable conclusion that could be reached: the decisions rendered by the authorities do not suffer from any jurisdictional error, material illegality/irregularity or perversity in its decisions.

In conspectus of the above, we are dissuaded to interfere with the orders passed by the learned Single Judge. The appeal being devoid of merit is accordingly dismissed.

(Krishna Murari)
Chief Justice

(Arun Palli)
Judge

25.09.2018
Rajan

Whether speaking / reasoned:
Whether Reportable:

YES
NO