

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

212

Civil Writ Petition No.12899 of 2015

Date of Decision: January 18th, 2019

Charan Singh

...Petitioner

Versus

Gulab Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Amarjit Markan, Advocate
for the petitioner.

Mr. Charanpreet Singh, Assistant Advocate General, Punjab.

Mr. K.S. Chahal, Advocate
for respondent No.1.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Petitioner has approached this Court challenging the order dated 29.01.2013 (Annexure P-3) passed by the District Collector, Patiala, order dated 16.05.2013 (Annexure P-5) passed by the Commissioner, Patiala Division, Patiala and order dated 04.03.2015 (Annexure P-7) passed by the Financial Commissioner, Punjab, whereby the Collector has appointed Gulab Singh-respondent No.1 as the Lambardar of Village Gajewas, Tehsil Samana, District Patiala, which order has been upheld by the Appellate Authority i.e. the Commissioner, Patiala Division, Patiala, as also by the Financial Commissioner, Punjab, in the revision petition.

2. It is the contention of learned counsel for the petitioner that the father of the petitioner was the Lambardar of the village. While he was so continuing on 02.09.2003, the petitioner was appointed as Sarbarah Lambardar to help his father in performing the duties of the Lambardar. He continued to perform the said duties till the death of his

father on 04.02.2012 i.e. more than eight years. He contends that at the time

of death of his father, applications were called for, in pursuance whereof petitioner had applied along with two other candidates. Respondent No.1 failed to appear before the Tehsildar-cum-Assistant Collector, Patiala, and only the petitioner appeared and produced his evidence. The Assistant Collector Ist Grade-cum-Sub Divisional Magistrate, Samana, himself perused the file and realising that there was a mistake on the part of the Tehsildar, called respondent No.1 and thereafter considered the claims of the petitioner as well as Gulab Singh-respondent No.1 and proceeded to make recommendation to the District Collector, Patiala, vide order dated 03.12.2012 (Annexure R-1/4). The District Collector, on the basis of the recommendations received from various authorities, proceeded to appoint Gulab Singh-respondent No.1 as the Lambardar of the village vide order dated 29.01.2013 (Annexure P-3). He contends that while passing the said order, the Collector has not taken into consideration the fact that the petitioner has performed responsibilities of Sarbarah Lambardar for more than eight years along with his father and, therefore, due weightage should have been given to the said claim of the petitioner, which aspect has not been properly considered, rather the emphasis has been laid upon the hereditary claim of the petitioner. He, therefore, has committed a grave error denying the consideration of the petitioner, which he would have been entitled to because of the experience he had gained working as a Sarbarah Lambardar. In support of his contention, he places reliance upon the judgment of the Hon'ble Supreme Court in the case of *Mahavir Singh Versus Khiali Ram and others 2009 (1) R.C.R. (Civil) 757*, where the Hon'ble Supreme Court has taken into consideration the said factum of having gained experience along with the father, who was a Lambardar of

the village. He, on this basis, contends that the petitioner would be better qualified for performing the duties of a Lambardar as compared to respondent No.1, who is only 6th Class pass and that has been made the basis for coming to a conclusion that he is much more qualified for appointment apart from the age, where it has been held that he is younger in age as compared to the petitioner.

3. On the other hand, learned counsel for respondent No.1 asserts that the hereditary right, as has been claimed by the petitioner, has been struck down by this Court and, therefore, it cannot be taken into consideration by the authorities. In any case, he contends that the comparative merit of both the candidates has been duly assessed and has been taken into consideration by the Collector, District Patiala, while appointing respondent No.1 as a Lambardar. He contends that the claim of the petitioner having been duly considered, there can be no grouse with regard to the claim, which is sought to be projected in the present writ petition. He, thus, contends that there is no merit in the writ petition and, therefore, the same deserves to be dismissed.

4. I have considered the submissions made by learned counsel for the parties and with their assistance, have gone through the records of the case.

5. No doubt the petitioner had worked as a Sarbarah Lambardar while assisting his father from 02.09.2003 till the death of his father i.e. 04.02.2012. That aspect has been duly considered by the Collector in his order dated 29.01.2013 when he was referred to he having helped his father in performing the job of Lambardar and, therefore, was conversant with the working of Lambardar. When taking into consideration the comparative

merit of the candidates, both of them have reasonable land holding, the moral character of both the candidates is good but the only distinction between both of them is that the petitioner is illiterate, whereas respondent No.1 is 6th Class pass. What has been pressed into service is the experience, which the petitioner has gained while helping his father to perform the duties of a Lambardar. The said aspect has been taken into consideration by the District Collector, Patiala, while appointing respondent No.1. It is on consideration of these aspects and the other factor of the age of the candidates that the Collector has exercised his choice. This Court does not find any justification for interfering with the choice of the Collector, which by now is a settled proposition, should not be interfered in normal course and no exceptional situation is found herein, which would require interference in the order and the choice exercised by the Collector.

6. The judgment passed by the Hon'ble Supreme Court in *Mahavir Singh's case supra*, where the experience gained while assisting the Lambardar, would not be of much help in the case of the petitioner for the reason that this aspect has been taken into consideration by the Collector and thereafter given due weightage thereto but the petitioner has been found to be not as suitable as compared to respondent No.1.

7. In view of the above, the present writ petition stands dismissed being devoid of merit.

January 18th, 2019
Puneet

AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No