

CWP-13673-2015 (O&M)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-13673-2015 (O&M)

Date of Decision: 05th February, 2019

Ajay Singh @ Satbir Singh

...Petitioner

Versus

State of Haryana & others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Vikram Singh, Advocate,
for the petitioner.

Mr. Manish Dadwal, AAG, Haryana.

Mr. Pradeep Prakash Chahar, DAG, Haryana
for respondents No.1 to 3.

Respondent No.4 already *ex parte* vide order dated 13.10.2015.

Mr. R.K. Malik, Advocate
for respondent No.5.

AUGUSTINE GEORGE MASIH, J. (ORAL)

CM-1371-CWP-2019

Affidavit of the petitioner and death certificate of Meena Devi
is taken on record, subject to all just exceptions.

Application stands disposed of.

CWP-13673-2015

Petitioner has approached this Court impugning the order dated
19.05.2015 (Anenxure P-6) passed by the Financial Commissioner,
Haryana – respondent No.1, whereby, revision petitions preferred by Prithvi

Singh and Santa Ram have been allowed resulting in setting aside the appointment of the petitioner as Lambardar of village Sajuma, Tehsil and District Kaithal and ordering *de novo* process of appointment of the Lambardar on the ground that one of the candidates died during the process of selection for the post of Lambardar and prior to the appointment.

2. It is the contention of the learned counsel for the petitioner that in pursuance to the proclamation issued in the village, eight candidates had applied for the post of Lambardar of village Sajuma, Tehsil and District Kaithal. Out of the eight candidates, five candidates withdrew their candidature at the time of consideration of the claim of the candidates. In the fray, therefore, left were petitioner – Ajay Singh @ Satbir Singh, Prithvi Singh – respondent No.4 and Meena Devi. Prior to finalization of the appointment on the post of Lambardar, Meena Devi unfortunately died on 19.08.2009. However, the process continued and two candidates, namely, Prithvi Singh and Ajay Singh @ Satbir Singh, were considered for appointment to the post of Lambardar. The Collector proceeded to appoint petitioner – Ajay Singh @ Satbir Singh as Lambardar of the village.

3. This order was challenged by Prithvi Singh by filing an appeal. One Santa Ram son of Bakshi Ram also filed an appeal challenging the appointment of the petitioner on the assertion that he did not apply for the post of Lambardar as his sister-in-law Meena Devi was a candidate. It was also asserted that Meena Devi being his sister-in-law and widow of Mehar Singh, deceased Lambardar, which led to the issuance of proclamation for appointment to the post of Lambardar, Santa Ram had not applied in her support. The said appeal was dismissed by the Commissioner, Ambala

Division, Ambala, leading to the filing of revision petitions before the Financial Commissioner, Haryana, by both these persons, namely, Prithvi Singh and Santa Ram. These revision petitions were allowed vide order dated 19.02.2013 (Annexure P-4) and appointment of the petitioner as Lambardar was set aside with a direction that the *de novo* process of appointment of Lambardar be initiated.

4. This order dated 19.02.2013 (Annexure P-4) was challenged by the petitioner by filing CWP No.5393 of 2013, titled as 'Ajay Singh @ Satbir VS. State of Haryana & others'. This Court proceeded to allow the said writ petition vide order dated 23.04.2014 (Annexure P-5) by remanding the case back to the Financial Commissioner, Haryana, on the ground that the said order was completely a non-speaking order. Thereafter, fresh decision has been taken by the Financial Commissioner, Haryana, on 19.05.2015 (Anenxure P-6), which order is now challenged by the petitioner, wherein, his appointment as Lambardar has been set aside and the process for appointment of Lambardar, *de novo*, has been ordered.

5. Counsel for the petitioner contends that it is not a case, where petitioner was the lone candidate available for consideration, rather, there was eight candidates initially, out of which, five withdrew their candidature and three were in the fray. It is true that Meena Devi died prior to the appointment of the petitioner as Lambardar but that does not vitiate the whole process of appointment and selection when there was another candidate in contention whose merits were duly considered by the Collector and it is, after that process, the petitioner was appointed on comparison of the merits of the candidates available at the time of consideration. He, thus,

contends that the order dated 19.05.2015 (Anenxure P-6) passed by the Financial Commissioner, Haryana, ordering *de novo* process for appointment of Lambardar, cannot sustain.

6. Learned counsel for respondent No.5 has asserted otherwise by contending that once a candidate, who had applied for a post, dies during the process of selection of a Lambardar, fresh process has to be initiated and in support thereof, reliance has been placed upon the judgment of this Court in **Shamer Singh Vs. State of Haryana & others** 1998 (2) RCR (Civil) 474. Reliance has also been placed upon the judgment of the Supreme Court in **Khazan Singh Vs. Shamsher Singh** 1998 (3) RCR (Civil) 634, where the judgment of this Court in *Shamsher Singh's* case (supra) was challenged. He, on the basis of these judgments, asserts that once a candidate dies during the process of selection for the post of Lambardar, process of selection has to be initiated *de novo* and thus, supports the impugned order dated 19.05.2015 (Anenxure P-6) passed by the Financial Commissioner, Haryana.

7. Learned counsel for the petitioner made an effort to distinguish the judgment passed by this Court in *Shamsher Singh's* case (supra) by asserting that it was a case where, only two candidates were in the contention and out of them, one candidate had died and therefore, in those circumstances, this Court had ordered *de novo* process of selection of the Lambardar by setting aside the appointment of the Lambardar as he was the sole candidate left in contention and there was no other candidate. Under those circumstances, this Court had proceeded to hold that there would be better candidates also available, who could have applied for appointment.

On this basis, he contends that the judgment, on which reliance has been placed by learned counsel for respondent No.5, would not be applicable to the case in hand as in this case, there were two candidates available for consideration. He further states that the Punjab Land Revenue Act, 1887, (hereinafter referred to as 'Act') is also silent in this regard and does not deal with a situation where a candidate dies during the process of selection.

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

9. The facts as narrated by the learned counsel for the petitioner are not in dispute. The only question which requires to be considered and determined is:

“Whether on the death of any of the candidates available for consideration before the Collector for the post of Lambardar, *de novo* process for appointment on the said post has to be initiated or not?”

10. The ground realities in the village are that after the proclamation is issued, candidates come forth to apply for the post of Lambardar. Taking into consideration the comparative assessment of the candidates, other villagers, who may be otherwise eligible for appointment, do not apply as they do not find themselves in a position to compete with a particular candidate. Present is a case where the wife of deceased Lambardar has applied for the post of Lambardar and therefore, Santa Ram son of Bakshi Ram, the brother of the deceased Lambardar, chose not to apply for the post of Lambardar. There can be other situations as well

where keeping in view the stature and qualifications of a particular candidate, persons who are eligible for appointment to the post of Lambardar, may not apply for the post. Further, its a common practice that after applications are invited for the post of Lambardar and the candidates have applied, many candidates withdraw their candidature in favour of a particular candidate during the process of consideration. These contingencies lead to a situation where a candidate would have withdrawn his candidature in favour of a particular candidate but due to unfortunate death of a particular candidate, the person supporting the said candidate would loose a chance of consideration for appointment. These circumstances are merely referred to for the sake of illustration and not exhaustive, which are to be taken care of especially in the light of the peculiar facts, situations, and the customs prevalent in the villages.

11. The reasoning and logic as given in *Shamsher Singh's* case (supra) would be fully applicable to the case in hand where it has been held as follows:-

“After hearing learned counsel for the parties, we are of the view that the proceedings for the appointment of a Lambardar of the village should be started *de novo* in the present case. Admittedly, the claim of Tek Chand could not be examined on merits in view of his death. May be there are better candidates available in the village. It does happen that villagers do not come forward by seeing one candidate or the other in field for appointment for the post of Lambardar. Once one or the other candidate out of the two in field dies, the other candidates may choose to apply for the post. In any case, no Lambardar can be allowed to remain on the post only because the other

contesting candidate dies during the pendency of the case.”

12. The contention of the learned counsel for the petitioner that on facts, the situation was different, will not make much of difference so far as the reasoning is concerned as it was not solely dependent upon the number of the candidates in the fray.

13. It is not in dispute that the Act does not cater to such contingency as the one in issue in this case i.e. death of a candidate during the process of selection, therefore, the equity also demands equal opportunity to be given to all eligible persons to contest for appointment to the post of Lambardar, so that the best candidate takes up the responsibility.

14. The answer to the question as culled out in para 9 above is answered by holding that irrespective of the number of candidates available for consideration for appointment to the post of Lambardar before the Collector, on the death of any of the candidates during the process of selection but prior to appointment, would require *de novo* initiation of process of appointment by calling fresh applications.

15. In view of the above, the order dated 19.05.2015 (Anenxure P-6) passed by the Financial Commissioner, Haryana, is hereby upheld and the writ petition filed by the petitioner stands dismissed being devoid of merit.

05th February, 2019
Harish

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned:	Yes
Whether Reportable:	Yes