

**LPA No. 156 of 2019 (O&M)**

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

**LPA No. 156 of 2019 (O&M)  
Date of decision: 18.03.2019**

**Jasvir Singh**

**... 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. Harpal Singh Baidwan, Advocate  
for the appellant.

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**ARUN PALLI, J. (ORAL)**

This is an intra-court appeal, under Clause X of the Letters Patent, against an order and judgment dated 17.10.2018, rendered by the learned Single Judge, vide which the writ petition preferred by Baljinder Singh (respondent No.4) has since been allowed and the order, dated 20.12.2017, passed by the Financial Commissioner (Revenue), Punjab, remitting the matter to the District Collector to re-evaluate the merits of the candidates for appointment of Lambardar, has been set aside.

The facts that are required to be noticed are limited.

A vacancy of Lambardar in Scheduled Caste Category in village Mankheri, Tehsil Shri Chamkaur Saib, District Roopnagar, occurred owing to the dismissal of Lambardar, Ujagar Singh, on 25.3.2003. Pursuant to the process initiated by the authorities to fill up the said post, two candidates submitted their claims for consideration, i.e. appellant-Jasvir

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Singh and Baljinder Singh-respondent No.4. For the appellant was found in regular employment in an industrial establishment at Mohali, and his duty hours were from 8:00 AM to 4:00 PM, it was concluded that he would not be available to the residents of the village, and to carry out various works, for which his presence would be necessary. Whereas, respondent No.4, who was a permanent resident of the village and was running a milk dairy, was found to be more suitable and was appointed as new Lambardar, vide order dated 4.1.2016, by the District Collector. The appeal preferred against the said order was dismissed by the Commissioner, vide order dated 30.5.2017. However, vide order dated 20.12.2017, the revision petition filed by the appellant assailing those orders, was allowed by the Financial Commissioner, and in reference to a decision of this Court in **Duli Chand Vs. State of Haryana and another, 2012 (3) PLR 324**, the matter was remitted to the District Collector to re-examine the overall merits of the candidates. That is how, respondent No.4 assailed the said order vide a writ petition, referred to above, which was allowed and the order passed by the Financial Commissioner, dated 20.12.2017, has since been set aside.

We have heard learned counsel for the appellant and with his able assistance perused the records.

Before we proceed further, it, indeed, would be expedient to refer to the conclusion arrived at by the learned Single Judge, which reads thus:-

***“The Financial Commissioner, thus, while accepting the revision petition of the private respondent, has remanded the issue for reexamination of the overall merit of the candidates. The Financial Commissioner has, thus, lost***

*sight of the fact that there were only two persons in the race.*

*The private respondent himself as such would not be easily available on account of the fact that he was employed on regular basis in the industrial area at Mohali which admittedly is at a distance of 25 kilometers from the village in question.*

*Counsel for the private respondent has vehemently tried to defend the said order on the strength of the judgment in Dhuli Chand's case (supra). A perusal of the said judgment, however, would go on to show that the order of the Collector had been set aside on account of the person working at Faridabad which was also at a distance of 25 kilometers from the village and the matter had been remanded on account of the fact that there was a tendency to move towards the urban area and there would be no difference if a person works at a reasonable distance.*

*In the present case, an objection was raised at the outset as such regarding the non-availability of the private respondent. The report had also come in favour of the petitioner that the private respondent would not be available on account of his work schedule as such which was from 8.00 a.m to 4.00 p.m. It would, thus, be apparent that the services of the private respondent would be not available as such for the benefit of the residents of the village as his duty hours are such which consumes the working hours of the day wherein the people would require his services in various offices for the*

*purposes of attestation and identification and, therefore, the purpose of appointing him would be defeated.*

*The judgment which has been relied upon does not show that the said candidate was unavailable and, therefore, in the considered opinion of this Court, the appointment of the petitioner has been wrongly interfered with by the Financial Commissioner. Reliance can be placed upon the judgment of the Division Bench in Neeraj Kumar vs. State of Haryana and others, 2013 (4) RCR (Civil) 207 and the precedential value of the Division Bench would be one which this Court is bound to follow which was a subsequent judgment passed by this Court which was not brought to the notice of the Financial Commissioner. In the said case, the Division Bench allowed the appeal and set aside the order passed by the Single Judge while restoring the orders of the Commissioner and the Financial Commissioner. The issue in question was the availability of respondent no. 6 who was a government servant and posted at a distance of 5-6 kilometers from the village. It was accordingly held that the Lambardar was to assist in various matters regarding the possession of land, demarcation of land, identification of accused persons, attending to revenue and police officers when they visited the village and was a significant factor. The non-availability as such on account of the fact that the Lambardar was a Teacher would always be in doubt and, therefore, the findings which had been recorded by the Revenue Authorities which were*

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*neither perverse nor arbitrary should not have been interfered with under the powers under Articles 226 and 227 of the Constitution of India. Resultantly, the judgment relied upon in Amarjit Kaur vs. Financial Commissioner (Corporation), Punjab and others, 2011 (3) LAR 89 was distinguished on the ground that there the petitioner was running a school and was not required to be present in school for all times.*

*The law laid down by the Division Bench, thus, would squarely apply to the facts of the present case and resultantly, the present writ petition is allowed and the order dated 20.12.2017 (Annexure P-1) of the Financial Commissioner as such being not sustainable is quashed.”*

Ex facie, pursuant to the objection raised by respondent No.4, the District Collector required Naib Tehsildar, Morinda, to enquire into the issue as regards availability of both the candidates to the residents of the village and submit a report. The matter was enquired into and it was reported that appellant-Jasvir Singh was employed in an industrial establishment, i.e. Boyce Mfgco Ltd. Plot No. A 40, phase 8-A Industrial Area, Mohali, as helper. And, as per his service conditions, he was required to be on duty from 8:00 AM to 4:00 PM, because of which, most of the times, he would put stay in Mohali. Thus, as observed even by the learned Single Judge, since services of the Lambardar are required by the village community for the purposes of attestation, identification of accused persons, demarcation of the land holdings etc., the appellant was not suitable to be appointed as such.

Further, the reliance placed by the learned counsel for the appellant upon a decision of this Court in the case of **Duli Chand (supra)**,

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as observed even by the learned Single Judge, was wholly misplaced, as the said decision was rendered in view of the peculiar facts and circumstances of that case. Further, the candidature of the petitioner therein was rejected by the Commissioner, since he was working at Faridabad, i.e. at a distance of 25 Kms from his village, and in this background, what the learned Single Judge of this Court had observed was that being a non-resident of the village would not be a disqualification, as in terms of Rule 15 Lambardari Rules, a candidate was only required to have an estate/land holding in the same revenue/village, and there was no specific provision that he must have a residence in the village too.

What needs to be noticed here is that, in the matter at hands, candidature of the appellant was never rejected on the ground that he was employed with a commercial establishment at Mohali, at a distance of 25 Kms from his village, but upon evaluating his merits and other relevant factors, he was not found suitable for appointment in comparison to respondent No.4, who was a matriculate and was running a milk dairy in the village and was younger to the appellant. Even otherwise, as demonstrated by the learned Single Judge, the subsequent decision rendered by the Division Bench of this Court in **Neeraj Kumar Vs. State of Haryana and others, 2013 (4) RCR (civil) 207**, wherein respondent No.6 happened to be a teacher in a Government school, it was observed that even though his service was not a disqualification but it required his presence in the school during school hours or for at least a major part of the day. Therefore, if he would perform the duties of the Lambardar, he will have to remain absent from the school and on the other hand, while performing his duties as a teacher, he may not be available to the residents for a major part of the day,

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thereby depriving residents of the village of his services as Lambardar. Thus, it was concluded that the Commissioner rightly held that as availability of respondent No. 6 therein would always be in doubt, his appointment was not warranted.

In the wake of the above, we are dissuaded to interfere with the impugned order and judgment rendered by the learned Single Judge. The appeal being devoid of merit is accordingly dismissed.

**(KRISHNA MURARI)**  
**CHIEF JUSTICE**

**(ARUN PALLI)**  
**JUDGE**

**March 18, 2019**  
AK Sharma

Whether speaking / reasoned: YES  
Whether Reportable: