

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

**CWP No.17018 of 2020
Reserved on : 05.11.2020
Pronounced on : 11.11.2020**

Prithipal Singh

... Petitioner

Versus

Financial Commissioner (Appeals), Punjab and others

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present: Mr. Vishal Nehra, Advocate for the petitioner.

G.S. Sandhawalia, J.

In the present writ petition filed under Articles 226/227 of the Constitution of India, the petitioner challenges the order dated 20.01.2020 (Annexure P-5) passed by the respondent No.1-Financial Commissioner (Appeals), wherein his appointment as Lambardar for village Mangarh, Tehsil Dasuya, District Hoshiarpur has been set aside.

2. The reasoning which weighed with the Financial Commissioner to allow the appeal of the private respondent No.4, Jarnail Singh was primarily on the ground that the petitioner is working as a Cane Development Supervisor in AB Sugar Mill, Dasuya. Reference had been made to the judgment passed in '**Behru Vs. Lal Singh and others', 1974 PLJ 219**, passed by the Financial Commissioner by the Collector to appoint the petitioner, who had come to the conclusion that the petitioner had never fixed working hours and there was no hindrance in his working, if he was appointed as Lambardar of the village, as he was not required to remain present in the mill premises at all times.

3. Resultantly, counsel for the petitioner has challenged the said

order on the ground that the jurisdiction of the Collector had been wrongly encroached upon and the Collector was the appointing authority and the order had been appropriately upheld by the Commissioner, Jalandhar Division.

4. After hearing counsel for the petitioner, this Court is of the opinion that it was rather the Collector who had committed a jurisdictional error which has been corrected, as he failed to recognize the services, which the private respondent had rendered to the nation being an Ex-serviceman having served 30 years with the CRPF. The factum that the petitioner had himself on an earlier occasion been ignored twice by the District Collector, due to his employment in the Sugar Mill and for the same post had been conveniently overlooked.

5. A perusal of the facts would go on to show that on an earlier occasion when a vacancy had occurred on the death of one Karnail Singh Lambardar of village Mangarh on 15.05.2006, proclamation had been done by inviting application for filling up the post. The petitioner had been one of the applicants alongwith six others. The then Collector had noticed that service of the petitioner would not be readily available as he was working on regular basis in Dasuya Sugar Mill as a Supervisor. He had earlier also been considered for the post of Lambardar, but had not been recommended. In such circumstances, one Sohan Singh had been appointed vide order dated 30.05.2008 (Annexure P-6). Apparently the said order was not challenged by the present petitioner, before the Commissioner or Financial Commissioner, as no such order has been

placed on record.

6. The present vacancy arose on 08.10.2009 when Faqir Singh Lambardar died and resultantly the petitioner and respondent No.4 and one Avtar Singh had applied. In spite of the fact that respondent No.4 was an Ex-serviceman, he was ignored on the ground that two FIRs had been registered against him and acquittal was on the basis of compromise between the parties. The present petitioner was appointed on account of being 45 years of age and B.A. pass in comparison and owning 4 acres 3 kanals 15 marlas of land, whereas private respondent No.4 was a Matriculate only and owned only 2 acres 5 kanals and 12 marlas of land. The factum that the petitioner had earlier been ignored by the Collector for the same post (Annexure P-5) was not taken into consideration.

7. The appeal filed by respondent No.4 before the Commissioner, met with an order of sketchy dismissal on 11.03.2016 (Annexure P-4) on the ground that the Collector had passed a detailed order and there was no illegality or perversity. No reason that the petitioner had earlier been ignored by the Collector twice, on account of not being available was given. Thereafter, the revision was filed by respondent No.4, which has been decided in favour of the said respondent, as noticed above.

8. Rule 15 (c) of the Punjab Land Revenue Act, 1887 (for short 'the Act') gives importance to the service rendered by an applicant to the State by himself or his family, apart from the property in the State, which is to be possessed by the candidate and the personal influence, character,

ability and freedom from indebtedness. The same reads as under:-

“15. Matters to be considered in first appointments.-- In all first appointments of headman, regard shall be had among other matters to--

- (a) his hereditary claims;
- (b) the property in the estate possessed by the candidate to secure the recovery of the land revenue;
- (c) service rendered to the State by himself or by his family;
- (d) his personal influence, character, ability and freedom from indebtedness;
- (e) the strength and importance of the community from which selection of a headman is to be made;
- (f) services rendered by himself or by his family in the national movements to secure freedom of India.”

9. Regarding the aspect which is to be noticed is the service to the nation. In this regard, reliance can be placed upon the judgment passed in '**Jagjit Singh Vs. State of Punjab**', 2011 (53) RCR (Civil) 895, wherein it was held that the Financial Commissioner had rightly set aside the order of the Commissioner while observing that a Ex-serviceman had been appointed and therefore, he should be given preference in the matter of appointment of Lambardar.

10. In similar circumstances in '**Tarsem Singh Vs. Financial Commissioner and others**', 2011 (53) RCR (Civil) 571, the order passed by the Single Judge who had upheld the order of the Collector and Financial Commissioner was upheld, as it was noticed that respondent No.5 had served the Indian Army for more than 15 years. His family had also worked as a Lambardar and, therefore, on account of service to the nation, since other family members had also served the nation, the

appointment was held to be justified.

11. The issue of easy availability for the convenience of the general public is another aspect, which has been considered by the Division Bench of this Court in the case of '**Neeraj Kumar Vs. State of Haryana and others**', 2013 (4) RCR (Civil) 207, while considering the duties of the headman under Rule 20 of the Act. In the said case, challenge had been raised to the order of the Collector who had appointed a Government Teacher as a Lambardar. The Commissioner had set aside the order of the Collector in the facts and circumstances, on the ground that the availability of the candidate was a significant factor. The same had been reversed by the Financial Commissioner and, therefore, matter came before this Court. Resultantly, it was held that the factors which are to be considered while appointing Lambardar as per Rule, had to be was easy availability amongst others and the order of the Commissioner was upheld while setting aside the judgment of the Single Judge, on account of the fact that the residents of the village would be deprived of his services for the major part of the day. The relevant part of the said judgment reads as under:-

“11. A lambardar, also called a village headman, or a village officer, is appointed under Section 28 of the Punjab Land Revenue Act, 1887 (as applicable to the State of Haryana) read along with rule 15 of the Rules framed thereunder (hereinafter referred to as the “1909 Rules”). Rule 15 of the 1909 Rules enumerates the factors to be considered while appointing a lambardar and opens with the expression “.....regard shall be had amongst other matters.....” thereby clearly indicating that factors enumerated in Rule 15 of the 1909 Rules are merely

illustrative and not exhaustive of relevant factors that may be taken into consideration, while appointing a lambardar.

12. The duties of a lambardar, as suggested and held in the impugned order, are not limited in nature. A lambardar is called upon, by the revenue, police and administrative officers, to assist in various matters like disputes regarding possession of land, demarcation of land, identification of accused persons and attending to revenue and police officers when they visit the village for inspection of crops or for other official matters. A lambardar is called upon by inhabitants of his village to attest documents, identify them when they register document etc. To hold that duties of a lambardar are limited in nature or to suggest that his office is merely ornamental, in our considered opinion, is an incorrect enunciation of the office of a lambardar and his duties. The availability of a lambardar, in the village, is, therefore a significant factor to be considered, while appointing a lambardar and if a question mark is raised upon a candidate's availability in the village, the Collector would, necessarily, be required to consider and decide such an objection. It must follow that, where a person is in service whether government or private, his service may not by itself be a disqualification, but his availability in the village, would be a relevant factor to be considered by the Collector. The failure of a Collector to consider an objection as to availability of a candidate, particularly when such an objection is raised, in our considered opinion, would be an error of jurisdiction, liable to be corrected by the appellate and/or the revisional authority. The principle that the choice of the Collector is final is a rule of prudence and must, therefore, be invoked only where the order does not suffer from a failure to decide an objection as to the merits of a candidate.

13. A perusal of the order passed by the Collector reveals that the appellant raised a plea that respondent no.6 would not be available in the village on account of his government service. The Collector, as referred to hereinbefore, did not consider,

much less, decide this objection and instead proceeded to appoint respondent no.6, thereby rendering his order illegal, and sufficient to invite interference by the Commissioner, who duly considered this aspect, and, after holding that respondent no.6 would not be available in the village, rectified this error by setting aside the order passed by the Collector, and ordered the appointment of the appellant. The failure of the Commissioner to record the words “perverse”, arbitrary or illegal etc.” would not render his order illegal. An order is “perverse”, “arbitrary” or illegal” for failure to consider relevant factors, or law and not for want of the words “perverse”, “illegal” and “arbitrary”.

14. The orders passed by the Commissioner and the Financial Commissioner do not reveal a perverse or arbitrary exercise of discretion or jurisdiction that could invite interference in the exercise of power under Article 226 of the Constitution of India. The Commissioner, in our considered opinion, was well within the bounds of his jurisdiction, as an appellate authority to appraise the order passed by the Collector and upon finding that the Collector had not dealt with the objection regarding non-availability of respondent no.6, in the village, set aside the order passed by the Collector and appointed the appellant as lambardar, after holding that respondent no.6 would not be available in the village, in view of his service as a teacher in a government school. The order passed by the learned Commissioner, duly affirmed by the learned Financial Commissioner, in our considered opinion, should not have invited interference in exercise of jurisdiction under Article 226 of the Constitution of India as the power of judicial review is directed against the decision making process and not against the decision. The reasons assigned by the learned Commissioner were neither perverse nor arbitrary and, therefore, did not call for interference.

15. Admittedly, respondent no. 6 is a teacher in a government school and though his service is not a

disqualification, his service requires his presence in the school during school hours or, for at least, a major part of the day. If he performs the duties of a lambardar, he will have to remain absent from the school thereby affecting the studies of his wards. If, on the other hand, he performs his duties as a teacher, he may not be available to residents of the village, for a major part of the day, thereby depriving residents of the village of his services as a lambardar. The Commissioner, in our considered opinion, rightly held that as availability of respondent no.6 would always be in doubt, his appointment is not warranted. The finding so recorded, was neither perverse nor arbitrary and, therefore, should not have been interfered in exercise of powers under Article 226 of the Constitution of India.”

12. In such circumstances, once in view of the above law which has been settled by the Division Bench of this Court, reliance on the judgment passed in **Behru's case (supra)** was unwarranted for.

13. These aspects were totally ignored by the Collector and, therefore, the Financial Commissioner has rectified the illegality of law by setting aside the appointment of the petitioner. Resultantly, it cannot be said that the order passed by the Financial Commissioner suffers from any infirmity or irregularity, which would warrant interference under Article 226/227 of the Constitution of India.

14. Accordingly, there is no merit in the present petition and the same is dismissed in limine.

NOVEMBER 11, 2020
Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:	Yes
Whether Reportable:	Yes