



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-5296-2018 (O&M)
Date of decision :25.07.2024

JASVIR SINGH

...Petitioner

Versus

FINANCIAL COMMISSIONER REVENUE PUNJAB,
CIVIL SECRETARIAT, PUNJAB, SECTOR 1,
CHANDIGARH AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Ishmeet Singh, Advocate
for Mr. Sherry K. Singla, Advocate
for the petitioner.

Mr. Nirmaljit Singh Diwana, Sr. D.A.G., Punjab.

Mr. Arun Jindal, Advocate
for respondent No.4.

HARSH BUNGER, J. [ORAL]

1. Prayer in the present petition filed under Articles 226/227 of the Constitution of India, is for issuance of a writ in the nature of *certiorari* for setting aside the impugned order dated 30.05.2017 (Annexure P-3) passed by the learned Commissioner, Roopnagar Division, Roopnagar; whereby, the order dated 21.01.2014 (Annexure P-1) passed by learned District Collector, S.A.S. Nagar (Mohali), appointing petitioner (Jasvir Singh) as the *Lambardar* of Village Fatwan, Tehsil Kharar, District S.A.S. Nagar (Mohali), was set aside and respondent No.4 (Gurmohan Singh) was appointed as the *Lambardar* of Village Fatwan.

A further prayer has been made in the writ petition for setting aside the order dated 24.01.2018 (Annexure P-6) passed by the learned Financial Commissioner (Revenue) Punjab; whereby, an appeal filed by the petitioner, challenging the order dated 30.05.2017 (Annexure P-3) passed by the learned Commissioner, Roopnagar; was dismissed.

2. Briefly, Sh. Gurmukh Singh, the previous *Lambardar* of Village Fatwan, Tehsil Kharar, District S.A.S. Nagar (Mohali), expired on 07.02.1995; however, the proceedings for filling up the vacancy were initiated in the year 2013. In pursuance to the *munadi* (proclamation) for filling up the vacant post of *Lambardar* of Village Fatwan, four applications (including the one submitted by the petitioner and another by respondent No.4) were received. Ultimately, only two candidates remained in the fray i.e. the petitioner and respondent No.4, herein.

2.1 The learned Naib Tehsildar, Majri, recommended the name of the petitioner for appointment to the post of *Lambardar*; similarly, the learned Tehsildar, Kharar, also recommended the name of the petitioner for appointment to the above-said vacant post of *Lambardar*. Likewise, the learned Sub Divisional Magistrate-cum-Assistant Collector Ist Grade, Kharar, also found the petitioner suitable for the post of *Lambardar* and accordingly, recommended his name and forwarded the case to the learned Collector, S.A.S. Nagar (Mohali).

3. Upon considering the merits and de-merits of the candidates, the learned Collector, S.A.S. Nagar (Mohali), vide his order dated 21.01.2014 (Annexure P-1) appointed the petitioner (Jasvir Singh) as the *Lambardar* of Village Fatwan, Tehsil Kharar, District S.A.S. Nagar (Mohali).

4. Feeling aggrieved against the afore-said order (Annexure P-1), respondent No.4 (Gurmohan Singh) preferred an appeal before the learned Commissioner, Roopnagar, which came to be allowed vide order dated 30.05.2017 (Annexure P-3) and respondent No.4 was appointed as the *Lambardar*.

5. Thereafter, the present petitioner challenged the afore-said order dated 30.05.2017 (Annexure P-3) by filing an appeal (ROA No.47 of 2017) before the learned Financial Commissioner (Revenue), Punjab; which was dismissed.

6. In the afore-mentioned circumstances, the petitioner has filed the instant writ petition before this Court, for the relief as noticed above.

7. Learned counsel for the petitioner submits that the learned Commissioner as well as the learned Financial Commissioner, have erred in law and fact in appointing respondent No.4 as *Lambardar* of Village Fatwan, Tehsil Kharar, District S.A.S. Nagar (Mohali). It is submitted that the petitioner was appointed by the learned Collector and the same has been wrongly set aside by the learned Commissioner, while ignoring the well-settled position in law that the choice of Collector, is not to be lightly interfered with, even if, two views are possible. It is further submitted that the name of the petitioner was recommended by all the lower Revenue Officers, which is a very material factor. It is next submitted that the petitioner is younger in age than respondent No.4, inasmuch as that he is presently about 58 years of age and respondent No.4 is more than 70 years of age. It is stated that in the matter of appointment of *Lambardar*, age is a relevant factor and a younger candidate is to be preferred. It is still further submitted that the petitioner has more land holdings (26 kanals) in comparison to respondent No.4, who is having about (05 kanal–07 marlas

of land). It is yet further submitted that the petitioner is ex-sarpanch of the village; which reflects upon his popularity and influence in the village. It is also submitted that learned Commissioner has wrongly appointed respondent No.4 as the *Lambardar*, without indicating as regards the illegality or perversity in the order passed by the learned Collector. It is contended that the learned Commissioner, has erred in appointing respondent No.4 as the *Lambardar*, on the ground that the respondent No.4 is more educated and he has a hereditary claim. It is stated that the preference on account of hereditary claim offends Article 14 of the Constitution of India, as has been held by a Division Bench of this Court in '*Karnail Singh v. The State of Haryana etc.*', 1973 PLJ 676.

7.1. With the afore-said submissions, learned counsel for the petitioner has submitted that the impugned order/s be set aside and the order dated 21.01.2014 (Annexure P-1) passed by learned Collector, S.A.S. Nagar (Mohali), appointing the petitioner as *Lambardar* of Village Fatwan, be upheld.

8. Per contra, learned counsel appearing for respondent No.4 has opposed the submissions made by learned counsel for the petitioner. It is submitted that the learned Collector had wrongly appointed the petitioner by ignoring the relative better merits of respondent No.4; however, the learned Commissioner, has rightly appointed respondent No.4 as *Lambardar* as respondent No.4 is more meritorious than the petitioner as he is more educated and is the son of the deceased *Lambardar* and has also retired from Government service. Accordingly, it is submitted that the writ petition is bereft of any merit and prayer for dismissal of the same has been made.

9. I have heard learned counsel for the parties and perused the paper-book with their able assistance.

10. In the instant case, it is not disputed by learned counsel for the parties that the candidature of petitioner was recommended by all the lower Revenue Officers and the petitioner was appointed as *Lambardar* of Village Fatwan by the learned Collector, vide its order dated 21.01.2014 (Annexure P-1) by observing as under :-

“After the careful perusal of the record available on the file, after hearing the arguments of the Ld. Counsel and candidates on personal basis, I have come to this conclusion that Jasvir Singh s/o Bhag Singh is one suitable candidate for this post of Lambardar. The age of this candidate is about 48 years, whereas candidate Gurmohan Singh is aged 60 years. Candidate Sh. Gurmohan Singh is having 5 kanal 7 marla of land as his ownership, whereas candidate Sh. Jasvir Singh is having 26 kanal land in his name. Candidate Gurmohan Singh is son of deceased Lambardar Gurmukh Singh and has retired from the police department. He has remained outside from the village being an employee of police department, due to which he could not make an application for this post of Lambardar for period of about 17/18 years since the death of deceased Lambardar Gurmukh Singh. From this fact, it appears that he has remained outside village till his retirement, and therefore, he does not seem to have any connection with the residents of the village and neither he is having any knowledge about the works of Lambardar. Whereas, the other candidate Jasvir Singh is former Sarpanch, 37 persons have got recorded their statement for appointing candidate Gurmohan Singh as new Lambardar of village, whereas, 70 persons have come present before the lower Court and have got their

statement recorded in favour of Jasvir Singh. It is proved that Jasvir Singh is residing in the village since beginning and he is having good relation with the residents of the village and this candidates have also been remained former Sarpanch, from which it is proved that this candidate is having good influence/reputation in the village. Naib Tehsildar/Tehsildar-cum-A.C. IInd Grade, Kharar and Sub Divisional Magistrate-cum-A.C. Ist Grad Kharar have also recommended the name of candidate Jasvir Singh for appointing him as new Lambardar of village Fatwan. Therefore, considering the above-mentioned facts and while agreeing with the reports made by Naib Tehsildar/Tehsildar-cum-A.C. IInd Grade, Kharar and Sub Divisional Magistrate-cum-A.C. Ist Grade, Kharar, Jasvir Singh s/o Bhag Singh is appointed as new Lambardar of village Fatwan, Tehsil Kharar, District SAS Nagar against the vacant post of Lambardar which has occurred due to the death of Sh. Gurmohan Singh Lambardar of village Fatwan. The Sanad Lambardari be issued to the candidate Jasvir Singh s/o Bhag Singh after the expiry of the period of limitation for filing the appeal. The file be consigned to record room.”

11. The learned Commissioner, Roopnagar set aside the Collector's order by observing as under :-

“On the perusal of the record available on the file and after hearing the arguments of both the parties, it was found that the appellant is B.A. pass whereas the respondent is 6th class pass and there is no certificate available on the file. The appellant has retired from the police department on good designation and is also receiving the pension after the retirement. He is residing in the village after his retirement and is therefore, can easily spare time for doing the works of general people

and he is having experience for the same. Whereas, the respondent is an agriculturist in the village and earlier also the grandfather of the appellant and then his father has remained Lambardar and therefore, he is also having hereditary claim and since, he belongs to the family of Lambardar, therefore, he is having knowledge of Lambardari works. The lower Court has appointed the respondent as Lambardar only for the reason that he is having more land, but if the other side is considered then the appellant is also having land and he is also receiving the pension and therefore, he is having good financial position than the respondent.

Consider the above-mentioned facts, the appellant Gurmohan Singh is having better merit for the post of this Lambardar in comparison to the respondent and therefore, I do not aggrieved with the order dated 21.1.2014 passed by District Collector, SAS Nagar and therefore, the present appeal is hereby accepted and Gurmohan Singh s/o Gurmukh Singh is hereby ordered to be appointed as new Lambardar of village Fatwan, Tehsil Kharar, Distt. SAS Nagar in place of deceased Lambardar Gurmukh Singh.”

11.1 The afore-said order dated 30.05.2017 passed by learned Commissioner, has been upheld by the learned Financial Commissioner (Revenue), Punjab.

12. A perusal of the order passed by the learned Commissioner, would show that respondent No.4 has been appointed as the *Lambardar*, on the basis that he is more educated (B.A. pass); had retired from Government service and being son of deceased Lambardar i.e. hereditary claim.

13. Here, it would be apposite to state the relative merits and

de-merits of the candidates, which can be summed up as under :-

<i>S. No.</i>	<i>Particulars</i>	<i>Petitioner</i>	<i>Resp. No.4</i>
1.	<i>Age</i>	<i>48 years</i>	<i>63 years</i>
2.	<i>Educational qualification</i>	<i>6th</i>	<i>B.A.</i>
3.	<i>Land holding/s</i>	<i>26 Kanal</i>	<i>5 Kanal – 7 Marla</i>
4.	<i>Criminal Case</i>	<i>Nil</i>	<i>FIR No.136 dated 26.09.2017, u/s 406, 420 IPC, P.S. Kurali, SAS Nagar. Status - Acquitted</i>
5.	<i>Recommended by</i>	<i>Naib Tehsildar, Majri, Tehsildar – Kharar SDM – Kharar</i>	

A bare perusal of the above chart would show that petitioner is younger in age than respondent No.4 and he also holds more land than respondent No.4. In *Mahavir Singh v. Khiali Ram and Others, 2009(1) RCR (Civil) 757*, Hon'ble Supreme Court held that with regard to the appointment of a Lambardar in the State of Punjab, age of a candidate is a relevant factor.

13.1 Moreover, the candidature of the petitioner was recommended by all the lower Revenue Officers. Although, the Collector is not bound by the recommendation made by the Revenue Authorities in favour of a candidate; however, due consideration is to be accorded to such recommendations as they are in a position to assess the suitability of a candidate and such recommendation would have some persuasive value. The learned Collector had considered the candidature of the petitioner as well as respondent No.4 and thereafter, while concurring with the recommendations made by the lower Revenue Officers, learned Collector appointed the petitioner as *Lambardar*.

14. That apart, it is not disputed that the petitioner had remained Sarpanch of the village and it is well settled that being a Sarpanch or Member Panchayat reflects upon the popularity of a particular candidate in

the village and is considered as a merit and not as a de-merit. In this regard, reference can be made to a judgment rendered by the Hon'ble Punjab & Haryana High Court in the case titled “*Lakhwinder Singh v. State of Haryana*”, reported as *2016(2) R.C.R.(Civil) 4*; wherein this Court has made following observations:

“...Rather in view of Rule 15(d)(e) of the Punjab Land Revenue Rules personal influence, character, ability, freedom from indebtedness and strength and importance of the community from which selection of a Lambardar is to be made is also required to be considered for appointment. Once a person is appointed as a Sarpanch, it means that majority of the residents of the village are in his favour and that he has personal influence over the residents of the village. It cannot be taken as a negative ground...”

15. As regards the hereditary claim of respondent No.4 is concerned, a Division Bench of this Court in '*Karnail Singh v. The State of Haryana etc.*', *1973 PLJ 676*, has observed that the provision in respect of hereditary claim offends Article 14 of the Constitution of India, and the same was declared as *ultra-vires*. The observations made in the case of *Karnail Singh* (supra), reads as under :-

4. It may appear obvious that Rule 15 (supra) applies only at the time of all first appointments of village Headman or Lambardars. Clauses (e) and (f) laying down two further criteria for consideration in the matter of selection of an incumbent to this office were added afterwards in the years 1945 and 1954, respectively. The paragraph under the clauses was added by the Government of Punjab (India) on 14th July, 1954. The last two sentences in this paragraph may seem to lay further emphasis on heredity or family connections. The criteria mentioned in the various clauses of Rule 15 can

be taken into consideration under sub-rule (i) of Rule 17 where a successor to the office of village Headman has to be selected in an estate, or sub-division thereof, owned chiefly or in its entirety by the Government. In all other estates or villages or their sub-divisions, the successor has to be appointed under sub-rule (ii) of Rule 17 and the criteria mentioned in Rule 15 do not seem to come in. The sub-rule on the other hand says that the successor shall be appointed by the rule of primogeniture unless some social custom of succession is proved. In such exceptional circumstances also the appointment is to be confined to a collateral of the fourth or nearer degree. In making the appointment of respondent No. 4 in Civil Writ No. 1048 of 1967 and the other private respondents in Civil Writ Nos. 666 and 696 of 1970, Rule 17(ii) has been invoked and the person appointed is either the son or the grandson of the deceased Lambardar. The claim of heredity may appear to have prevailed as against all other considerations. It is true that some additional qualifications of the heir appointed have also been mentioned at places but there has been no judging of the claims of the rival candidates by making a comparison of their respective qualifications. The main consideration that may appear to have prevailed is that the person selected was connected by ties of blood or heredity with the last incumbent. Shri Naubat Singh, the learned District Attorney for the State of Haryana, has argued that in actual practice other qualifications are also taken into consideration and the appointments are not made in all cases on the grounds only of heredity. Practice apart, Rule 17(ii) may seem to attach too much importance to the claim of heredity and the selection of the successor is sought to be confined to a male lineal descendant or the nearest collateral. Rule 17(ii) may seem to make discrimination or distinction on the ground of heredity

*or family connections. This rule may, therefore, appear to be violative of the fundamental rights guaranteed by Articles 14, 15 and 16 of the Constitution of India. Reference could in this connection be made to the Supreme Court rulings in **Gazula Dasaratha Rama Rao v. State of Andhra Pradesh and others**, AIR 1961 Supreme Court 564, and **The State of Assam and others v. Kanak Chandra Dutta**, AIR 1967 Supreme Court 884. Shri Naubat Singh has cited before us a Divisional Bench ruling of the Madras High Court in **Rishikesavan Naidu v. S. Srinivasa Reddiar**, AIR 1965 Madras 178, but the facts in that case were altogether different. The person who had been selected to the hereditary office in that case had no other rival in the field. He would have been selected un-opposed independently of his family connections that heredity was no disqualification for being selected to a particular post or appointment.*

5. For reasons given above, we declare sub-rule (ii) of Land Revenue Rule 17 to be ultra vires and unconstitutional. The appointments under this sub-rule of respondent No. 4 in Civil Writ No. 1048 of 1967, respondent No. 3 in Civil Writ No. 696 of 1970 and respondent No. 4 in Civil Writ No. 666 of 1970 is quashed and the State Government is directed to make fresh appointments after considering the claims of all the contesting candidates....”

16. It is not disputed by learned counsel for the parties that after the petitioner was appointed as *Lambardar* by learned Collector vide order dated 21.01.2014 (Annexure P-1), since then, he has been performing the duties of *Lambardar* of Village Fatwan, Tehsil Kharar, District S.A.S. Nagar (Mohali).

17. In the case of **Kuldip Singh vs Financial Commissioner, Appeals-II, Punjab, 2016(1) RCR (Civil) 273**; it was held by the Division

Bench of this Court that choice of the District Collector cannot be lightly set aside unless there is any illegality or perversity therein.

18. Evidently, the learned Commissioner as well as the learned Financial Commissioner, Punjab have failed to point out any illegality or perversity in the order passed by the learned Collector.

19. Considering the totality of circumstances, I am of the considered view that petitioner is more meritorious than the respondent No.4 and he was rightly appointed by learned Collector, S.A.S. Nagar (Mohali), as *Lambardar* of Village Fatwan, Tehsil Kharar, District S.A.S. Nagar (Mohali); however, his appointment was wrongly set aside by the learned Commissioner, Roopnagar vide its order dated 30.05.2017 (Annexure P-3), without pointing out any illegality or perversity in the Collector's order. The said order dated 30.05.2017 (Annexure P-3) has been further wrongly upheld by the learned Financial Commissioner, vide its order dated 24.01.2018 (Annexure P-6). Therefore, the impugned orders dated 30.05.2017 (Annexure P-3) and order dated 24.01.2018 (Annexure P-6), are unsustainable; consequently, the same are set aside.

20. In view of the above, the instant writ petition is allowed, resultantly, the order dated 21.01.2014 (Annexure P-1) passed by learned Collector, S.A.S. Nagar (Mohali), appointing the petitioner as *Lambardar* of Village Fatwan, Tehsil Kharar, District S.A.S. Nagar (Mohali), is upheld.

21. All pending applications (if any) shall also stand closed.

July 25, 2024
gurpreet

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No