2025:PHHC:080250

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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CWP-9203-2025
Date of Decision: 07.07.2025

Gurpreet Singh Batth

..... Petitioner

Versus

State of Punjab and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Gourav Goel, Advocate
for the petitioner.

Mr. Nirmaljit Singh Diwana, Senior DAG, Punjab.

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HARSH BUNGER J. (ORAL)

Petitioner (Gurpreet Singh Batth) has filed the instant writ petition under Articles 226/227 of the Constitution of India, *inter alia*, seeking a writ in the nature of Certiorari to set aside order dated 07.03.2022 (Annexure P-3) passed by the learned Collector, Rupnagar; order dated 22.11.2022 (Annexure P-2) passed by the learned Commissioner, Rupnagar; and order dated 22.11.2024 (Annexure P-1) passed by the learned Financial Commissioner (Appeals), Punjab.

2. Briefly, upon demise of Sh. Mohan Singh, previous Lambardar of Village Dhangrali, Tehsil Morinda, District Rupnagar; proceedings for filling up the said vacancy were initiated, whereupon petitioner (Gurpreet Singh Batth) and respondent No.2 (Randeep Singh) also applied for the said vacancy.

2.1 The learned Tehsildar, Morinda as well as the learned Sub Divisional Magistrate, Morinda recommended the candidature of respondent No.2 (Randeep Singh) for appointment to the post of Lambardar, and the matter was forwarded to the learned Collector, Rupnagar.

2.2 The learned Collector, Rupnagar, after considering the relative merits and demerits of the candidates, appointed respondent No.2 (Randeep Singh) as Lambardar of Village Dhangrali, vide order dated 07.03.2022 (Annexure P-3).

2.3 Feeling aggrieved against the aforesaid order dated 07.03.2022 (Annexure P-3), petitioner (Gupreet Singh Batth) and another candidate, namely Sarabjit Singh, preferred two separate appeals before the learned Commissioner, Rupnagar, which were dismissed vide common order dated 22.11.2022 (Annexure P-2).

2.4 Still dissatisfied, petitioner (Gurpreet Singh) filed a revision petition (ROR No.80 of 2023) before the learned Financial Commissioner (Appeals), Punjab, which came to be dismissed vide order dated 22.11.2024 (Annexure P-1).

3. In the aforementioned circumstances, petitioner has filed the present writ petition before this Court, seeking relief(s) as noticed hereinabove.

4. Heard.

5. In the present case, the learned Collector, Rupnagar rejected the candidature of the petitioner for the post of Lambardar on the ground that, at the relevant time, he was serving as the Sarpanch of the Village and, therefore, should not be assigned an additional responsibility. Furthermore, the learned Collector observed that respondent No.2 was a young candidate of about 33 years of age at the relevant time and had also been

recommended by the lower revenue officials. Respondent No.2 was also found to be familiar with the *lambardari* work. Accordingly, respondent No.2 (Randeep Singh) was appointed as Lambardar by the learned Collector, Rupnagar, vide order dated 07.03.2022 (Annexure P-3). The said appointment was subsequently upheld by the learned Commissioner, Rupnagar and the learned Financial Commissioner (Appeals), Punjab, vide orders dated 22.11.2022 (Annexure P-2) and 22.11.2024 (Annexure P-1), respectively.

6. Before this Court, learned counsel for the petitioner has confined his submissions to one argument that the petitioner was non-suited by the learned Collector on the ground that he was serving as the Sarpanch of the Village at the relevant time. He submits that, as of now, respondent No.2 has also been elected as the Sarpanch of the same Village and, therefore, stands equally disqualified from holding the office of Lambardar.

7. I have considered the aforesaid submission made by learned counsel for the petitioner. However, I find no merit in the same, particularly in view of the judgment rendered by the Hon'ble Supreme Court in "***Anokh Singh v. Punjab State Election Commission", 2010(4) R.C.R. (Civil) 907***, wherein it was categorically held that Office of lambardar is not an office of profit and that he is not disqualified to contest election as member of gram Panchayat. The relevant extract thereof reads as under:-

> *"23. Bearing in mind these tests, we may now examine whether the office of Lambardar is an office of profit.*
> *It would be apparent from the facts that though the Lambardar may not be holding a civil post, he would be holding an office under the Government. The Lambardar is not paid any salary but is entitled to receive an honorarium of Rs. 900/- per month. He receives no salary, emoluments, perquisites or facilities. Is that sufficient to conclude that he holds an office of profit ?*

This seems to be the conclusion reached by the State Election Commissioner, whilst issuing the impugned circular dated 30.4.2008. The High Court affirmed the aforesaid conclusion.

24. The term office of profit has not been defined in the Constitution, Representations of Peoples Act, Punjab State Election Commission Act or the Panchayati Raj Act. It is one of those rare terms which is not even defined in the General Clauses Act, 1897. It has, however, been judicially considered in numerous judgments of this Court. We may notice here some of the judgments.

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29. The expression office or profit was reconsidered in detail by this Court in the case of ***Shibu Soren v. Dayanand Sahay*****,** ***2001(4) RCR (Civil) 493 : (2001) 7 SCC 425****. This Court, apart from reiterating the ratio of law in the aforesaid two cases i.e.* ***K.B. Rohamare v. Shanker Rao Genuji Kolhe*** *(Supra) and* ***Shivamurthy Swami*** *(Supra) observed as follows :-*

> *"27. With a view to determine whether the office concerned is an office of profit, the court must, however, take a realistic view. Taking a broad or general view, ignoring essential details is not desirable nor is it permissible to take a narrow view by which technicality may overtake reality. It is a rule of interpretation of statutes that the statutory provisions are so construed as to avoid absurdity and to further rather than defeat or frustrate the object of the enactment.*
>
> *28. While interpreting statutory provisions, courts have to be mindful of the consequences of disqualifying a candidate for being chosen as, and for being, a Member of the legislature on the ground of his holding an office of profit under the State or the Central Government, at the relevant time. The court has to bear in mind that what is at stake is the right to contest an election and to be a Member of the legislature, indeed a very important right in any democratic set-up. A practical view, not pedantic basket of tests must, therefore, guide the courts to arrive at an appropriate conclusion. A*

ban on candidature must have a substantial and reasonable nexus with the object sought to be achieved, namely, elimination of or in any event reduction of possibility of misuse of the position which the legislator concerned holds or had held at the relevant time. The principle for debarring a holder of office of profit under the Government from being a Member of Parliament is that such person cannot exercise his functions independently of the executive of which he becomes a part by receiving pecuniary gain. Under Article 102(1)(a), of course, Parliament has the jurisdiction to declare an office as not to disqualify its holder to be a Member of Parliament and likewise under Article 191(1)(a) the State Legislature has the jurisdiction to declare an office as not to disqualify its holder to be a Member of the State Legislatures. Moreover, apart from the office being an office of profit it must also be an office under the State or Central Government.

30. It was further observed that for determining of the core question each case has to be judged in the light of the relevant provisions of the statute and its own peculiar facts. This is to ensure that there should not be any conflict between the duties and interest of an elected member.

31. In view of the above, the conclusion reached by the High Court that receipt of Rs. 900/- is not compensatory can not be accepted. It would be preposterous to accept, in this day and age, that a sum of Rs. 900/- per month would be sufficient to cover the out of pocket expenses of a Lambardar.

32. In this case the High Court erred in recording a conclusion without insisting on the evidence on the basis of which such conclusion could have been recorded. The circular dated 30.4.2008 merely states:-

To

All the Deputy Commissioners-cum-District Electoral Officers in the State.

Memo No. SEC-2008/4365 Chandigarh, dated the 30.4.2008

Subject : General Elections to Panchayat Samitis and Zila Parishads - 2008 Clarification regarding contesting of election by Lambardars and Anganwari Workers.

Some of the Deputy Commissioners-cum-District Electoral Officers have raised the question whether the Lambardars and Anganwari workers are eligible to contest Panchayati Raj Institution elections. The answer to this question depends upon whether the aforesaid functionaries are holding office of profit under the State Government. The Hon'ble Supreme Court of India has laid down certain tests for determining the question whether a particular office is an office under the State Government or not : particularly in ***Shivamurthy Swami Inamdar v. Agadi Sanganna Andanaappa*** *as follows :-*

i) Whether the Government makes the appointment;

ii) Whether the Government has the right to remove or dismiss the holder;

iii) Whether the Government pays remuneration;

iv) What the functions of the holder are and does he perform them for Government; and

v) Does the Government exercise any control over the performance of these functions.

Therefore, the question whether a person is holding an office of profit under the Government of India or a State has to be decided by applying these tests to the facts and circumstances of each case. Applying these questions to the instant case, it is well established that both the above mentioned functionaries are appointed by the Government and the Government has the right to remove them. They are also paid remuneration. However, it has been said that the remuneration is of the nature of honorarium. Here, on office of profit the Hon'ble Supreme Court of India held in ***Ravanna Subanna v. Kaggeerappa*** *that the word profit; connotes the idea of pecuniary gain. If there is really a gain, its quantum or amount would not be material but the amount of money receivable by a person in connection with* *the office he holds may be material in deciding whether the office really carried any profit. Further, it is also well established that functions performed by both Lambardar and Anganwari workers are for the Government and the Government also exercises control over the performance of these functions. A similar point has been decided by the Hon'ble Supreme Court in **Ramappa v. Sangappa** where the Hon'ble Supreme court observed that the appointment of Patels and Shanbhogs was made by the Government under the Mysore Village Offices Acts 1908 and though it may be under the statute it had no option but to appoint the heir to the office, if he fulfills the statutory requirements, but the office was held by them by reason of the appointment by the Government and not simply because of hereditary right to it. They worked under the control and supervision of the Government, could be removed by the Government and were paid by it. Accordingly, the Commission is of the view that the Lambardar and Anganwari workers held office of profit; and thus are ineligible to contest.*

Sd/-
(A.K. Dubey)
State Election Commissioner, Pb.

*A perusal of the circular would clearly show that State Election Commission has failed to take note of the factual situation. The circular is based on a misinterpretation of the law laid down by this Court in the cases of **Shivamurthy and Ravanna Subanna** (supra). There is no material on the record to show that the receipt of Rs.900/- per month by the Lambardar would invariably lead to a saving. Even though the office of Lambardar is regarded as a mere relic in this day and age, it still carries with it certain important duties which are to be performed by the incumbent. Although purely honourary being a Lambardar gives the incumbent a certain status in the village. In some cases, the office of Lambardar has been in the same families for generations. For them, it becomes a matter of honour and prestige that the office remains in the family.*

Learned counsel for the appellant has rightly submitted that the office of Lambardar is a heritage office. Therefore, some families would cherish the office of Lambardar, even though the incumbent does not get any salary, emoluments or perquisites. In our opinion, the very basis of issuing the circular was non-existent and misconceived. On this very basis, the High Court has quashed the circular in relation to Anganwari workers. In our opinion, for the same reasons the circular could not be sustained qua the Lambardars also.

33. In view of the aforesaid conclusion, we need not consider the effect of Section 2(a) of the Punjab State Legislative (Prevention of disqualifications) Act, 1952, on Section 11(g) of the State Election Commission Act. By virtue of the aforesaid Act a Lambardar would be qualified to contest the elections for legislative assembly. This could be a stepping stone for becoming the Chief Minister of the State. Therefore, it would seem a little incongruous that a Lambardar would not be permitted to seek election to the Panchayat. The village level democracy is the bedrock of the Indian National Democracy. Being a member of Panchayat can be the beginning of a long career in public life. Therefore, the disqualification introduced though the impugned circular could prove disastrous to democracy at the grassroots level in Punjab. But we need not go into controversy, as we have already held that the office of a Lambardar would not be an office of profit

34. In view of the above, the appeal is allowed. The impugned judgment of the High Court is set aside, in so far as it relates to Lambardars. The impugned circular dated 30.4.2008 is quashed and set aside qua the Lambardars also…"

8. In a process of selection, perceptions as to the comparative merits and suitability of a candidate, would vary from person to person and, therefore, from Court to Court. It is an established principle that judicial review of such an order is confined to an appraisal of the impugned order so as to discern whether it is perverse, arbitrary or violates the provisions of

any statutory enactment.

9. In the case in hand, the authorities below have consistently held in favour of respondent No.2 (Randeep Singh) and having gone through the paper book as well as order dated 22.11.2022 (Annexure P-2) passed by the learned Commissioner, Rupnagar and order dated 22.11.2024 (Annexure P-1) passed by the learned Financial Commissioner (Appeals), Punjab, I find no compelling reason to interfere with the appointment of respondent No.2 (Randeep Singh) as Lambardar of Village Dhangrali. Resultantly, the instant writ petition fails and the same is accordingly dismissed.

10. All pending application(s), if any, shall also stand closed.

07.07.2025 **(HARSH BUNGER)**
Apurva **JUDGE**

1. Whether speaking/reasoned : Yes/No

2. Whether reportable : Yes/No