
(2015) 02 P&H CK 0397
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 3819 of 2014

Pargat Singh

APPELLANT

Vs

Financial Commissioner (Revenue), Punjab and Others

RESPONDENT

Date of Decision : 10-02-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2015) 3 RCR(Civil) 341

Hon'ble Judges : Paramjeet Singh, J

Bench : Single Bench

Advocate : Gurbinder Singh, for the Appellant; B.S. Cheema, D.A.G., Advocates for the Respondent

Final Decision : Dismissed

Judgement

Paramjeet Singh, J.—Instant writ petition has been filed under Articles 226/227 of the Constitution of India for setting aside the order 26.10.2009 (Annexure P-1) passed by respondent No. 3-Collector, Jalandhar whereby respondent No. 4-Amrit Pal Singh has been appointed as Lambardar of village Kharal Kalan, Tehsil and District Jalandhar and orders dated 13.09.2010 (Annexure P-3) passed by respondent No. 2-Commissioner, Jalandhar Division, Jalandhar and dated 27.08.2013 (Annexure P-5) passed by respondent No. 1-Financial Commissioner (Revenue), Punjab whereby appeal and revision, respectively, filed by the petitioner have been dismissed. Brief facts of the case are that to fill up the vacancy caused on account of death of Iqbal Singh (Lambardar) of village Kharal Kalan, Tehsil Jalandhar-II, District Jalandhar, applications were invited from the interested persons by making proclamation in the village after obtaining necessary sanction from the Collector. In furtherance of proclamation, eight candidates submitted their applications out of which three withdrew their candidature. Thereafter, five candidates including petitioner and respondent No. 4 were left in the fray. The Naib Tehsildar Bhogpur and S.D.M. Jalandhar-II recommended the name of respondent No. 4. The Collector after appreciating the

comparative merit of the candidates found respondent No. 4-Amrit Pal Singh to be fit and suitable candidate and vide impugned order dated 26.10.2009 (Annexure P-1) appointed him as Lambardar of village. Petitioner-Pargat Singh and Harvinder Singh filed separate appeals before the Commissioner, Jalandhar Division, Jalandhar, which were dismissed vide impugned order dated 13.09.2010 (Annexure P-3). Being dissatisfied, the petitioner and Harvinder Singh also filed separate revisions which were dismissed vide impugned order dated 27.08.2013 (Annexure P-5). Hence, instant writ petition.

2. I have heard learned counsel for the parties and perused the record.

3. Learned counsel for the petitioner has contended that petitioner is more meritorious than respondent No. 4. The petitioner is matured person of 60 years and has retired from the post of Panchayat Officer. The petitioner owns 20 kanals 4 marlas of land whereas respondent No. 4 owns 4 kanals 4 marlas land. Learned counsel further contends that father of the petitioner was Lambardar, therefore, the petitioner has a hereditary claim also. Respondent No. 4 is running a shop at Bhogpur, therefore, he cannot be easily available for the villagers for performing the duties of Lambardar. Learned counsel has further contended that impugned orders are not sustainable in the eyes of law and are liable to be set aside.

4. Per contra, learned State counsel and learned counsel for respondent No. 4 vehemently oppose the contentions of learned counsel for the petitioner and contend that impugned orders are legal and justified. Respondent No. 4 is more meritorious and qualified than the petitioner. The petitioner is of very advanced age whereas respondent No. 4 is 28 years old. FIR No. 93 dated 31.03.2006 had been registered against the petitioner. Learned counsel further contend that respondent No. 4 owns 4 kanals 4 marlas of land which is adequate for security of govt. dues. The shop is being mainly looked after by father of respondent No. 4. Learned counsel further contend that respondent No. 4 has opted for eye donation after death. The petitioner has illegally occupied the land of panchayat.

5. I have considered the rival contentions of learned counsel for the parties.

6. A perusal of the record shows that District Collector after appreciating the comparative merit found respondent No. 4 - Amrit Pal Singh to be fit and suitable candidate and appointed him as such. In view of law laid down by Hon'ble the Supreme Court of India in the case of Mahavir Singh Vs. Khiali Ram and Others, AIR 2009 SC 1761 : (2009) 120 FLR 602 : (2009) 1 JT 351 : (2009) 1 SCALE 417 : (2009) 3 SCC 439 : (2009) 1 SCC(L&S) 737 : (2009) AIRSCW 1331, Lila Ram v. Asa Ram, 1995 Lahore Law Times 29 followed by Division Bench of this Court in the case of Phool Kumar v. State of Haryana and others, 2010 (2) RCR (Civil) 819, the choice of the District Collector cannot be lightly set aside. It can only be set aside if there is perversity or illegality in the impugned order of the Collector. Learned counsel for the petitioner has not been able to point out any perversity or illegality in the order passed by the District Collector. The finding of

the District Collector has been affirmed by the Commissioner and Financial Commissioner.

7. In Mahavir Singh's case (supra), the Hon'ble Supreme Court of India has observed that there should be no interference with the choice made by the Collector in the matter of appointment of Lambardar even if two views are possible. It is only the prerogative of the Collector to compare the merits of the candidates for appointment to the post of Lambardar. All the authorities have concurrently found respondent No. 4 as fit and suitable candidate.

8. So far as the contention of the learned counsel for the petitioner that respondent No. 4 is running a shop is concerned, the same is insignificant in view of the fact that the said shop is situated in Bhogpur which is at reasonable distance from the village. Respondent No. 4 is not running the shop alone. His father is mainly running the shop. Therefore, respondent No. 4 can be easily available to the villagers as and when required. The working at some reasonable distance is not a bar to the appointment of Lambardar. This Bench in Duli Chand Vs. State of Haryana and Another, (2013) 1 RCR(Civil) 1010 has held that a person who is working at some reasonable distance, cannot be ignored for the appointment of Lambardar. A relevant extract of Duli Chand's case (supra) reads as under:

"7. It is a settled principle of law that the order of the Collector can only be set aside if the order suffers from illegality or perversity. The Commissioner as well as Financial Commissioner have not recorded any finding with regard to perversity in the order passed by the District Collector. The order of the District Collector has been set aside by the Commissioner on the ground that petitioner is working at Faridabad which is at a distance of 25 kilometers from the village and this fact has not been considered by the District Collector. This cannot be a ground to hold the order of the district Collector illegal. Being non-resident of the village does not amount to perversity. As per the provisions contained in Rule 15 of the Lambardari Rules, the person is required to have estate/land in the same revenue estate/village. Only relevant condition is the property of the candidate possessed in the estate to secure the land revenues which he is to collect as Lambardar. There is no specific provision that he must be having residence in the village. Otherwise also for sake of livelihood the tendency to move towards the urban area is commonly seen as the better educational and employment opportunities are not available in the rural areas at par with those available in the urban areas. In my view it will not make any difference if one works at some reasonable distance. Merely on the ground that he is working at some distance, he cannot be ignored on this score alone. Otherwise also there is a specific provision in rule 27 of the Lambardari Rules for appointment of substitute Lambardar. In cases where the Government servants, who were working at different places and appointed as Lambardar, appointment of substitute Lambardar/Sarbrah Lambardar to work on behalf of actual Lambardar, has been allowed. In view of peculiar facts and circumstances of the case, I deem it fit and

appropriate to set aside the orders passed by the District Collector, Commissioner and Financial Commissioner. Matter is remanded to the District Collector for fresh decision who after taking into consideration the provisions of the Lambardari Rules specifically Rules 15 and 27, shall pass a speaking order."

In view of above discussion and concurrent findings recorded by revenue authorities with regard to suitability of respondent No. 4, present writ petition fails.

Dismissed.

No costs.