
(2014) 11 P&H CK 0120
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 6997 of 2014

Ramandeep Singh

APPELLANT

Vs

Financial Commissioner, Revenue Punjab and Others

RESPONDENT

Date of Decision : 21-11-2014

Acts Referred:

Constitution of India, 1950 — Article 226, 311

Citation : (2015) 1 RCR(Civil) 696

Hon'ble Judges : Paramjeet Singh, J

Bench : Single Bench

Advocate : C.M. Munjal, Advocates for the Appellant; Deepa Singh, Addl. A.G, Advocates for the Respondent

Judgement

Paramjeet Singh, J.—Instant writ petition has been filed under Article 226 of the Constitution of India for setting aside order dated 11.02.2014 (Annexure P-5) passed by respondent No. 1-Financial Commissioner, Revenue, Punjab whereby respondent No. 2-Satwant Singh has been appointed as Lambardar and orders dated 09.06.2011 passed by Collector, Sri Muktsar Sahib and 29.03.2012 passed by the Commissioner, Ferozepur have been set aside. Brief facts of the case are that to fill up the vacancy caused on account of death of Gurjant Singh of village Khaneka Dhab, Tehsil Malout, District Sri Muktsar Sahib, applications were invited from the interested persons by making proclamation in the village after obtaining necessary sanction from the Collector. In furtherance of proclamation, 9 candidates submitted their applications out of which petitioner, respondent No. 2 and one Gurinder Pal Singh were left in the fray as remaining were proceeded against ex parte. The Collector after appreciating the comparative merit of the candidates found petitioner-Ramandeep Singh to be fit and suitable candidate and vide order dated 09.06.2011 (Annexure P-3) appointed him as Lambardar of the village. Feeling aggrieved, respondent No. 2 preferred an appeal before the Commissioner, Ferozepur Division, Ferozepur which has been dismissed vide order dated 29.03.2012 (Annexure P-4). Against that, respondent No. 2 filed revision before respondent No. 1-Financial Commissioner, Revenue, Punjab which

has been allowed vide impugned order dated 11.02.2014 (Annexure P-5) and respondent No. 2 has been appointed as Lambardar. Hence, instant writ petition.

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

3. Learned counsel for the petitioner vehemently contends that the Tehsildar and Sub Divisional Magistrate, Malout recommended the name of petitioner for appointment as Lambardar. There is also recommendation of Gram Panchayat in favour of the petitioner. The petitioner is permanent resident of the village whereas respondent No. 2 is serving in Electricity Department at Bathinda and is not residing in the village. Respondent No. 2 is also having a vote in Bathinda Urban Assembly Constituency. The petitioner is not a defaulter of any bank or society. Learned counsel further contends that Collector has rightly appointed the petitioner as Lambardar of the village. The findings recorded by the Collector have also been affirmed by the Commissioner. However, vide impugned order dated 11.02.2014 (Annexure P-5), the Financial Commissioner has wrongly allowed the revision filed by respondent No. 2 by recording a finding that respondent No. 2 has hereditary claim being son of deceased-Lambardar whereas the hereditary claim has been held to be unconstitutional.

Per contra, learned State counsel and learned counsel for respondent No. 2 vehemently oppose the contentions of learned counsel for the petitioner and contend that impugned order is legal and justified. Respondent No. 2 is son of deceased-Lambardar, having 202 kanals of land and has studied upto B.A. (L.L.B). Respondent No. 2 is more meritorious than the petitioner.

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

5. It is settled law 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. The order of Collector can only be set aside if the order suffers from illegality or perversity. The Financial Commissioner has set aside the orders passed by the Collector and Commissioner on the ground that respondent No. 2 is having more land than petitioner, more qualified and is son of the deceased-Lambardar. The Collector has rejected the claim of respondent No. 2 only on the ground that his name has been included in the electoral roll at Bathinda, however, the Financial Commissioner has recorded that respondent No. 2 has retired from the service and vote of respondent No. 2 has been deleted from the electoral roll of Bathinda as on 01.01.2011. The Financial Commissioner has also held that ration-card and identity card issued by the Election Commission show respondent No. 2 to be a resident of village Khane Ki Dhad.

6. Be that as it may, there is no bar to appoint a government servant as Lambardar. It is settled law that if a Government servant is appointed as a Lambardar, his appointment as Lambardar will not in any way interfere in the discharge of his duties as a Government servant. A Division Bench of this Court

in *Sukhminder Singh v. Financial Commissioner*, 1993 (1) R.R.R. 19 has held as under:

"3. We do not find any merit in the contention of the learned counsel. To be in the service of the Government, cannot be a disqualification for appointment as Lambardar, especially when the post of a Lambardar is itself a civil post and dismissal or removal therefrom also attracts the provisions of Article 311 of the Constitution of India as the same are attracted in the case of other Government servants. Moreover, the provision for appointment of a Sarbarah Lambardar itself indicates that the actual performance of duties of the office of Lambardar can be done by the person other than the Lambardar himself, meaning thereby that if a Government servant is appointed as a Lambardar, his appointment as Lambardar will not in any way interfere in the discharge of his duties as a Government servant, Therefore, we are in complete agreement with the view taken by the learned Financial Commissioner Appeals, that a Government servant is fully eligible for appointment as Lambardar and he cannot be ignored only on that account if he is otherwise eligible and suitable for that post."

7. The said view has been upheld by a Division Bench of this Court in *Amarjeet Singh v. Financial Commissioner Appeal II*, 2000 (4) R.C.R. (Civil) 18 : 2000 (2) PLJ 456 wherein it has been held as under:

"3. It is undoubtedly correct that every eligible person has a right to aspire for the office of the village Lambardar. It is also true that under the terms of Rule 15 as observed by their Lordships in *Sukhminder Singh*'s case the mere factum of employment with the State Government or any of its instrumentalities cannot per se be a disqualification for appointment. Yet the onus of determining the suitability of an individual for appointment as village Lambardar rests with the prescribed authority. In this case three senior officers of the Government in the hierarchy of the Revenue Department viz. the Collector, the Commissioner and the Financial Commissioner are unanimous in their view. They have considered the petitioner's claim. They have found the respondent suitable. The petitioner's claim has been duly considered. The orders passed by them do not violate any provision of law. There is no error of jurisdiction. Thus no ground for interference under Article 226 is made out."

This Bench in *Duli Chand v. State of Haryana and another*, 2013 (1) R.C.R. (Civil) 1010 has held that a person who is working at some reasonable distance, cannot be ignored for the appointment of Lambardar. There is common tendency to move towards urban area as the better educational and employment opportunities are not available in the rural areas. 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/Sarbarah Lambardar to work on behalf of actual Lambardar, has been allowed.

8. 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."

8. In view of law laid down in Duli Chand's case (supra), the orders passed by the District Collector, Commissioner and Financial Commissioner are set aside. The 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 and comparative merits of the petitioner and respondent No. 2, shall pass a speaking order within two months from the date of appearance of the parties. Parties through their counsel are directed to appear before the District Collector on 03.12.2014.

In the meantime, respondent No. 2, being appointed candidate, shall continue to work for the post of Lambardar.

Disposed of.

No order as to costs.