(2019) 11 P&H CK 0100

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 25231 Of 2014

Rattan Singh APPELLANT

Vs

Financial Commissioner Haryana And Others RESPONDENT

Date of Decision : 21-11-2019

Acts Referred:

Punjab Land Revenue Rules, — Rule 15, 15(c), 15(d), 16, 19B, 19C, 19C(15), 27, 28, 29, 30
Constitution Of India, 1950 — Article 14

Citation : (2019) 11 P&H CK 0100

Hon'ble Judges : Augustine George Masih, J

Bench : Single Bench

Advocate : Mani Ram Verma, Ravi Partap, L.N. Verma

Judgement

Augustine George Masih, J

1. This case has a chequered history, which started with inviting the applications in the year 2003 for appointment of a Backward Class Lambardar of Village Gohana upon the death of Risal Singh, a Backward Class Lambardar, who expired in the year 2001. Lambardari belongs to five villages i.e. Gohana, Wazirpura, Nanah Nagar, Sainipura and Dariyapur. Four candidates applied for the said post. The lower revenue officials recommended the name of Mahavir Singh for appointment to the said post. Collector, on consideration of the respective claims, passed an order dated 27.04.2006 (Annexure P-1) appointing Mahavir Singh-respondent No.4 after referring to the respective merits of the candidates.

2. Petitioner-Rattan Singh and Laxman, who was another candidate, filed executive appeals before the Commissioner, Rohtak Division, Rohtak. Commissioner, Rohtak Division, Rohtak, on considering the submissions made by the parties, remanded the case back to the Collector for fresh decision as the said authority was of the view that there is no provision for appointing a Sarbrah Lambardar under Rules 15 and 19-C of The Punjab Land Revenue Rules (hereinafter referred to as 'Revenue Rules'), and the experience of Sarbrah

Lambardar under Backward Class Lambardari cannot be given much weightage. Similarly, the principle of hereditary is also of no relevance in the light of the settled law on this aspect, which it was concluded has been taken into consideration and weighed in favour of Mahavir Singh-respondent No.4 herein. Further it was observed that the other contribution of the candidates should also be taken into consideration apart from the other factors.

3. This order was challenged by respondent No.4-Mahavir Singh by filing an appeal before the Financial Commissioner and the same was allowed vide order dated 20.08.2007, whereby the order passed by the Commissioner was set aside and that of the Collector upheld. Review Application was preferred by the petitioner, which was dismissed by the Financial Commissioner on 24.10.2007 (Annexure R4/1).

4. CWP No.511 of 2008 was filed by the petitioner, which was disposed of by this Court vide order dated 12.01.2010 with the consent of the counsel for the parties by setting aside the order of the Financial Commissioner dated 20.08.2007 and 24.10.2007 and remitting the case to the Financial Commissioner for consideration afresh by taking into consideration the provisions of Rule 19-C of the Revenue Rules as applicable to the State of Haryana. It was also agreed that during the pendency of the revision petition, respondent No.4 would continue to work as Lambardar. Financial Commissioner after rehearing the parties, again accepted the appeal of respondent No.4 vide order dated 25.10.2010 (Annexure P-3) giving weightage to said respondent No.4 of the work which he had performed as Sarbrah Lambardar, which was taken as an additional qualification. As regards Rule 19-C, it was observed that the said Rule was not to be taken in isolation and Rule 19-B, which lays down factors to be taken into consideration for appointment as Lambardar, could not be overlooked and applying the said parameters, the benefit was given to respondent No.4.

5. This order dated 25.10.2010 (Annexure P-3) was challenged by the petitioner by filing CWP No.21055 of 2010, which was dismissed by the learned Single Judge vide order dated 24.01.2012 (Annexure R4/2), which was challenged by filing LPA No.554 of 2012 by petitioner-Rattan Singh, which appeal was allowed vide order dated 20.03.2013 (Annexure P-4), wherein it was observed that the hereditary claim, benefit of which has been given to respondent No.4 being the grandson of deceased Lambardar which was taken as a relevant factor while appointing him as Lambardar, would be repugnant to the principle of equality and thus, unsustainable. The Division Bench further observed that an appointment based upon hereditary claim violates Article 14 of the Constitution of India and renders such a consideration/selection illegal and void. While considering the contribution of the appellant (petitioner herein) in the social sphere, it was observed that the Collector or the Financial Commissioner had not even chosen to make a comparative assessment of the merits of the petitioner and respondent No.4 and prima facie opined that the petitioner appeared to be a better candidate. However, in the following para of the judgment, it was

observed that the Court was conscious of the limits of the jurisdiction that final opinion on merit should not be expressed of the candidates. The matter was again remanded to the Financial Commissioner, Haryana, to decide the matter afresh in accordance with law after excluding the hereditary claim.

6. This order of the Division Bench was assailed by respondent No.4 by filing Special Leave to Appeal (Civil) No.19349 of 2013, which came up for hearing on 05.07.2013 (Annexure P-5) before the Hon'ble Supreme Court, which was dismissed with a direction to the Financial Commissioner to decide the issue without being influenced by any of the observations of the High Court.

7. Financial Commissioner, Haryana, again heard the parties and passed an order dated 05.08.2014 (Annexure P-6) allowing the appeal of respondent No.4 yet again, by setting aside the order passed by the Commissioner and upholding the order passed by the Collector appointing respondent No.4-Mahavir Singh as the Lambardar of the village. While passing the said order, learned Financial Commissioner had prepared a chart of the comparative merit of the petitioner as well as respondent No.4 and assessed them accordingly on the following aspects i.e. age, educational qualification, public post held, contribution to small savings/ family planning, land holding. On assessment of these parameters, age went in favour of Mahavir Singh being younger. Both the candidates were found to be at equal footing as both were matriculate. On public post held, Mahavir Singh being resident of Village Wazirpura, was found to be more accessible to villagers while petitioner-Rattan Singh lived in urban hamlet of Gohana and was running a shop and thus, was not found suitable apart from the fact that respondent No.4 was a member of the Block Samiti and, therefore, a part of Panchayati Raj institution as compared to Rattan Singh-petitioner, who was a Municipal Councillor. Observation was made that job experience of Mahavir Singh as a member of the Block Samiti is more relevant for the land holders than Rattan Singh. On the aspect of contribution of small savings and family planning, Rattan Singh was assessed at a higher pedestal but the said aspects were said to be irrelevant keeping in view the unattractiveness of small savings schemes and there being no more targets allocated towards family planning cases. Mahavir Singh was assessed better on the financial aspect also but was observed that it was not a primary factor for selecting a Lambardar.

8. The primary factor which was taken into consideration by the Financial Commissioner was the service rendered to the State by the candidate or his family and the personal influence, character, ability and freedom of indebtedness. Services rendered to the State by the family of respondent No.4 were given weightage as the grandfather of the said respondent was the Lambardar of the village as compared to Rattan Singh apart from the fact that Mahavir Singh was a member of the Panchayati Raj institution, whereas petitioner-Rattan Singh was a Municipal Councillor and, therefore, was more of urbanite with a shop at Gohana. Personal influence and freedom from indebtedness was assessed qua the petitioner and respondent No.4 at equal footing and there being

recommendations of the subordinate staff in favour of respondent No.4, the same was also given due weightage apart from choice of the Collector, which had tilted in favour of Mahavir Singh-respondent No.4 leading to his appointment as Lambardar. The choice exercised by the Collector was found by the Financial Commissioner, Haryana, to be bereft of any arbitrariness, capriciousness or perversity, which could call for interference.

9. This has led to the filing of the present writ petition by Rattan Singh challenging the order dated 05.08.2014 (Annexure P-6) passed by the Financial Commissioner, Haryana-respondent No.1 and the order dated 27.04.2006 (Annexure P-1) passed by the Collector, Sonepat.

10. Learned counsel for the petitioner has attacked the impugned orders by asserting that the Financial Commissioner, Haryana, has gone overboard in reading much more in the order of the Supreme Court than what was observed therein. Referring to the observations made by the Financial Commissioner in the order, which according to him, were contemptuous, he contends that the Financial Commissioner has failed to take note of the fact that the validity and legality of the order dated 20. 03.2013 (Annexure P-4) passed by the Division Bench of this Court was upheld and the limited observation which was made by the Supreme Court was that the Financial Commissioner would decide the issue without being influenced by any observation made by the High Court. His submission is that these observations of the Supreme Court were limited to the extent of a prima facie opinion which was expressed by the Division Bench of this Court, wherein it was mentioned that the petitioner, who was an appellant before the Division Bench, appeared to be a better candidate, however, the opinion with regard to the benefit of hereditary claim conferred upon respondent No.4 based upon the settled law, has been duly upheld but the Financial Commissioner while passing the impugned order dated 05.08.2014 (Annexure P-6) has again given the benefit of grandfather being Lambardar of the village as a service rendered to the State. The Financial Commissioner has failed to appreciate that the Division Bench judgment of this Court had not been set aside and, therefore, was binding upon the Financial Commissioner, who had proceeded to decide the matter contrary to the said judgment.

The observations of the Division Bench with regard to the social service rendered by the petitioner and the consideration thereof has again not been taken into consideration. Details with regard to service rendered by the petitioner vis-à-vis respondent No.4 has not been looked into which was called upon by the Division Bench to be taken into consideration while remanding the case. For the details, he has referred to the order dated 07.12.2006 (Annexure P-2) passed by the Commissioner, Rohtak Division, Rohtak. He contends that these contributions of the petitioner, which relate to his social work and the service rendered by him to the State apart from reflecting upon the personal experience and character as also his ability to perform, have been ignored by the Financial Commissioner while passing the impugned order. As regards the observation of the Financial

Commissioner that the petitioner is resident of Gohana, whereas respondent No.4 resides in Wazirpura and, therefore, would be easily accessible to the villagers is an observation without taking into consideration the ground realities as the Lambardari belongs to five villages with Gohana being one of the said villages. He asserts that as per the geographical situation of village Gohana, it is the best place being centrally located from where the candidate for Lambardari will be more suitable and not from Wazirpura, which lies on a corner of the area and Dariapur and Sainipur villages at the other side and Nanha Nagar on south side. With Gohana being centrally placed, he would be equally available to all other villages and, therefore, is better suited with regard to accessibility. Merely because the petitioner is running a shop, although not so admitted, this would not be a disqualification. As regards the contribution of the petitioner in family planning and small savings scheme, the same has not to be seen in the context of present day as the relevant date would be the date, on which the initial appointment was made i.e. in the year 2006 when these factors were not only relevant but such contributions were given great weightage. The observation of the Financial Commissioner, therefore, that these are irrelevant, is unsustainable. Counsel has also asserted that the Financial Commissioner has failed to take into consideration the fact that the order of the Commissioner was under challenge before him in an appeal preferred by respondent No.4, who had merely remanded the case to consider all the evidence available on the file and decide the matter afresh, which did not call for any interference as there are detailed reasons assigned for such a remand.

Counsel for the petitioner has also challenged the order of the Collector and attacked the same by observing that the Collector had proceeded to appoint Mahavir Singh on two points. One by giving him the benefit of hereditary claim that he had remained Sarbrah for seven years and second that subordinate authorities had recommended his name.

He contends that there are no rules for appointment of Sarbrah Lambardar for Backward Class Lambardar and the recommendations of the subordinate authorities are not binding upon the Collector, who has to apply his independent mind on perusal of the records and taking a decision in accordance with the provisions of the Revenue Act and Rules. His contention is that the order of the Collector, thus, cannot sustain and deserves to be set aside. Prayer has been made for allowing the writ petition by upholding the order of the Commissioner, Rohtak Division, Rohtak, and setting aside the impugned orders.

11. On the other hand, learned counsel for respondent No.4 has asserted that in the light of the observations of the Supreme Court in its order dated 05.07.2013 (Annexure P-5), the Financial Commissioner has rightly proceeded to decide the matter and the issue without being influenced by any of the observations made by the High Court. His submission is that whatever has been observed by the High Court in its order dated 20.03.2013 (Annexure P-4) could not have been taken into consideration except for the observations made therein with regard to

remand of the case but anything said with regard to the merits of the candidates was to be ignored. His submission is that the choice of the Collector has to be given due weightage and it cannot be set aside unless it is found to be violative of some mandatory Lambardari Rules or otherwise wholly perverse and suffering from any fatal infirmity or grave irregularity. He asserts that there is no such reason which would call for interference in the order of the Collector appointing respondent No.4 as Lambardar. As regards the recommendations of the subordinate officers, he contends that the recommendations of the subordinate officers deserve due consideration as they remain in constant touch with prominent persons of the village while performing their administrative duties. They have an opportunity to watch the conduct and demeanor of the candidate very closely, who appear before them on various occasions. Their inputs are of great help to the Collector to come to a conclusion and thus, have been rightly taken into consideration. A person, who has got a long experience of seven years as Sarbrah Lambardar, would be well versed with the duties and responsibilities of the Lambardar and having gained through experience of the job, is better placed and more suitable for appointment to the post of Lambardar.

He contends that provisions of appointment to the post of Sarbrah Lambardar are very much available under the Revenue Rules as applicable to the State of Haryana. Reference in this regard is made to Rules 27 to 30 which exist on the rule book, which are applicable not only to the General category Lambardars, who are appointed under Rule 15 but also to the Lambardars, who are appointed to the Scheduled Castes and Backward Class category under Rules 19-B and 19-C of the Revenue Rules. The contention of the petitioner that for appointment to the post of Sarbrah Lambardar under the Backward Class category, there is no provision under Rule 19-B, if accepted, then under Rule 15, under which a General category Lambardar is appointed, the same also does not provide for appointment of Sarbrah Lambardar. The result thereof would be that no Sarbrah would be ever appointed even for General category Lambardar. He, thus, contends that Rules 27 to 30 of the Revenue Rules would be applicable to all categories of Lambardars, wherever the requirements of the said Rules are fulfilled.

He submits that nothing has been observed by the Financial Commissioner in the order, which would be contrary to the judgment of the Division Bench of this Court. He asserts that it is only a statement which is a verbatim reproduction in the written arguments submitted to the Financial Commissioner and not the observations of the said authority and, therefore, may be ignored. While supporting the impugned order dated 05.08.2014 (Annexure P-6) passed by the Financial Commissioner, he contends that a well reasoned and detailed order has been passed by the said authority keeping in view the Division Bench judgment of this Court, which had remanded the case to the said authority for fresh decision. The observations have been duly taken note of and each aspect has been weighed properly in the right perspective while concluding the issue. The settled principles of law have been taken note of and a balanced approach has been followed while passing the impugned order, which do not call for any interference by this Court. Prayer has, thus, been made for dismissal of the writ petition.

12. I have considered the submissions made by the counsel for the parties and with their assistance, have gone through the records of the case.

13. The basis principle on which both the counsel do not have any dispute is that the choice of the Collector has to be respected and due weightage has to be given to it. If the order of the Collector does not suffer from any jurisdictional infirmity or patent factual/legal error or is not laced with perversity and/or arbitrariness, the same should not be interfered with by the appellate as well as revisional authorities. The judgments relied upon by the counsel for the parties on this aspect, therefore, are not being referred to.

14. The first aspect which requires to be dealt with is the effect of the order dated 05.07.2013 passed by the Supreme Court in Special Leave to Appeal (Civil) No.19349 of 2013, wherein the challenge was to the Division Bench judgment of this Court dated 20.03.2013 (Annexure P-4) passed in LPA No.554 of 2012 titled as Rattan Singh Versus Financial Commissioner, Haryana and others. The said order dated 5. 07.2013 (Annexure P-5) reads as follows:-

"Heard learned counsel for the petitioner and perused the relevant material.

We do not find any valid and legal ground for interference. The special leave petition is dismissed. However, the Financial Commissioner, is directed to decide the issue without being influenced by any of the observation made by the High Court."

15. Perusal of the above order would show that the Hon'ble Supreme Court did not find any fault or legal ground to interfere with the order dated 20.03.2013 (Annexure P-4) passed by the Division Bench of this Court while dismissing the Special Leave Petition. The observation with the direction to the Financial Commissioner was to the extent of deciding the issue without being influenced by any observation made by the High Court. When read in this context, the obvious mention of these words was with regard to the prima facie opinion expressed by the Division Bench on appraisal of the comparative merits of the candidates that 'petitioner herein appeared to be a better candidate', was to be ignored and would have no influence on the decision to be taken by the Financial Commissioner. That apart, all other aspects including the directions, were binding upon the Financial Commissioner as also the law which was settled therein. The Division Bench of this Court while passing the order dated 20.03.2013 had primarily observed that the Financial Commissioner has been influenced by the fact of hereditary claim of respondent No.4 being the grandson of the deceased Lambardar, which has been taken to be a relevant factor while appointing him as the Lambardar. The observations of the Division Bench of this Court with regard to the hereditary claim being violative of Article 14 of the Constitution of India and taking that into consideration for selection was found to be illegal and void,

have not been interfered by the Hon'ble Supreme Court and, therefore, could not have been taken into consideration at all by the Financial Commissioner while deciding the revision petition on remand.

16. The learned Financial Commissioner in the order dated 05.08.2014 (Annexure P-6), which has been passed on remand, has again given weightage to the fact of the grandfather of respondent No.4 being the former Lambardar of the village while taking into consideration family contribution of respondent No.4, which is unsustainable in the light of the observations of the Division Bench of this Court in Karnail Singh Versus State of Haryana 1973 PLJ 676. This judgment has been followed in various judgments of this Court including Division Benches such as Harinder Singh Versus Divisional Commissioner Patiala and others, 2012 (2) LAR 607 (P&H DB), Sharif Versus Financial Commissioner, Haryana and others, 2014 (2) LAR 97 (P&H DB), Davinder Singh Versus Financial Commissioner, Haryana and others, 2013 (1) LAR 304 (P&H DB), Jaibir Singh Versus State of Haryana and others, 2012 (1) LAR 672 (P&H DB) and Raja Singh Versus Commissioner, Faridkot Division and others, 2012 (3) LAR 119 (P&H DB).

17. As regards the conclusion in the order dated 05.08.2014 (Annexure P-6) with regard to the personal influence and the service rendered to the society as provided under Rule 15 (c) & (d), the same also is without taking into consideration the merits of the petitioner, particularly his contribution in the social field while making a comparative assessment of the merits of the two candidates. Those aspects have again been ignored by the Financial Commissioner while passing the order dated 05.08.2014. The order, therefore, passed by the Financial Commissioner, Haryana, suffers from this flaw.

18. As regards the aspect of the better accessibility of a candidate to the population of the villages is concerned, the learned Financial Commissioner has not taken into consideration that the Lambardari being of five villages, residence/ place of work, where a person is generally available would be relevant. As pleaded by the petitioner and not specifically refuted, Gohana is one of the five villages and is centrally located whereas, Wazirpura where respondent No.4 resides is in a corner of the area of five villages. This village Gohana is easily accessible from all villages as compared to Wazirpura, which aspect has been ignored, rather not taken into consideration. Merely because the residence of the petitioner is in Village Gohana, which is an urban hamlet area, would not be enough to come to a conclusion that he would not be accessible to the villagers. Similarly, he running a shop there, would in itself not be a reason for finding him unsuitable as there is every possibility of engaging a servant to look after the work of the shop while he can attend to the duties and responsibilities of the post of Lambardar.

19. The appointment to the post of Lambardar in this case was made by the Collector on 27.04.2006 (Annexure P-1) so the Rules which will be applicable would be as prevalent on the said date.

20. Now coming to the aspect with regard to the plea raised by the counsel for the petitioner that Rule 19-C as applicable to the State of Haryana does not provide for appointment of Sarbrah Lambardar. Admittedly, Rule 19-C relates to appointment of a Backward Class Lambardar and sub-rule 2 of Rule 19-C states that the condition specified in Rule 19-B shall also be applicable to the appointment made under sub-rule 1 and, therefore, the conditions specified in Rule 19-B would also be relevant, which read as follows:-

"(a) Service rendered to the State by himself or by his family.

(b) His personal influence, character, ability and freedom from indebtedness."

21. It may be added here that the general/broad principles have been laid down in Rule 19-B of the Revenue Rules for appointment to the post of Lambardar. These can be termed as the guiding principles for appointment irrespective of the category of post of Lambardar. Apart from these, there are certain accepted principles, which, over a period of time, have been acknowledged and recognized by various Courts and are expected of a Lambardar i.e. a person's integrity, good reputation, experience and interest in public affairs, which could include holding of various posts and responsibilities either as an elected or nominated person etc. which can also be taken into consideration. Anything and/or any factor, which reflects upon the suitability of a candidate for appointment to the post of Lambardar, is open for consideration by the competent authority, which may be relatable to the duties to be performed by the Lambardar.

22. Appointment to the General category Lambardar is admittedly under Rule 15 as applicable in the year 2006, which reads as follows:-

"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) extent of property in the estate possessed by the candidate;

(c) services 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.]

[In case of an ex-headman of an estate or Sub-division thereof in the territory now comprising the State of [Haryana] who had resigned or was dismissed on account of his participation in a national movement before partition and another headman was appointed in his place, the present incumbent of the post shall be removed irrespective of the provisions of rule 16 and the ex-headman would be appointed in his place if he has not rendered himself unfit for appointment for any reasons given in rule 16 except imprisonment for a political offence before 15th August, 1947. In case the ex-headman is no longer alive, a person of his family who would under the rules have been entitled to be headmen if the resignation or dismissal had not intervened, would be appointed as headman. But when no such person exist there would be no need to remove the existing Lambardar.]

(g) [------]

23. A perusal of all the above Rules would show that there is no provision for appointment of a Sarbrah/Substitute Lambardar under any of the categories, however, these Rules provide for appointment of Sarbrah/Substitute Lambardar in Rules 26 to 30. These Rules are general in character and would apply to all categories, whether General or reserved and are applicable in the exigencies, as have been provided therein. It, thus, cannot be said that there are no Rules under which Sarbrah Lambardar can be appointed as he is only a substitute to discharge the duties of the Lambardar. These Rules have not been challenged and, therefore, are very much in existence, have force of law and thus, applicable. The contention, thus, of the counsel for the petitioner that there can be no Sarbrah Lambardar appointed for a Backward Class category, is not sustainable and thus, rejected.

24. As regards the contention of learned counsel for the petitioner that the Collector cannot rely upon the opinion of the recommendation of the subordinate revenue officers, again cannot be accepted as the revenue officers remain in constant touch with not only the public at large but the prominent persons of the village and the area while performing their administrative duties and, therefore, get opportunity to closely watch the conduct and demeanor of the candidates. They can be said to be the eyes and ears of the Collector as they are in the field and, therefore, put in their inputs and valuable suggestions to be taken into consideration by the Collector while taking an independent decision to assess the eligibility and suitability of a candidate. Thus, the reliance of the Collector on their recommendations can be a relevant factor and cannot be said to be unacceptable. In case the Assistant Collector, on consideration of those recommendations apart from his own assessment, comes to an opinion about a particular candidate, the same cannot be said to be unjustified or without any basis. It needs to be added and clarified here that the inputs and suggestions of the subordinate revenue officers are only recommendations and not in any manner binding on the Collector as he has to take his own independent decision.

25. As regards the order dated 27.04.2006 (Annexure P-1) passed by the Collector, Sonepat, is concerned, the same is directly hit by the observations of the Division Bench of this Court in order dated 20.03.2013 (Annexure P-4) passed in LPA No.544 of 2012 and, therefore, cannot sustain.

26. In view of the above, the impugned order dated 05.08.2014 (Annexure P-6) passed by the Financial Commissioner, Haryana-respondent No.1 and the order

dated 27.04.2006 (Annexure P-1) passed by the Collector, Sonepat-respondents No.3 cannot sustain and deserve to be set aside and are hereby set aside.

27. The matter is remanded to the Collector, Sonepat, for fresh decision in accordance with law.

28. Parties are directed to appear before the Collector, Sonepat, on 10.12.2019.

29. The Collector, Sonepat, shall thereafter pass a fresh order in accordance with law within a period of four months from the date of appearance of the parties on the basis of the evidence available on the file by giving an opportunity of hearing to the parties.

30. Since respondent No.4-Mahavir Singh is at present performing the duties of Lambardar, he shall continue to do so till the decision is taken by the Collector as per the above directions.