

42. We are, therefore, entirely in agreement with the learned Judge that the appellant is estopped from setting up its claim as a tenant.

43. The appeal is, therefore, dismissed and the cross objections are allowed. Both the issues are answered in favour of the first respondent. This order and judgment is stayed up to and including 31.05.2016 to enable the appellant to challenge this judgment. The interim orders shall continue till then.

Appeal dismissed.

Cross objections are allowed.

PUNJAB AND HARYANA HIGH COURT

Before: Paramjeet Singh Dhaliwal, J.

CWP No. 7234 of 2004

Decided on: 27.04.2016

Sukhjinder Pal Singh

Petitioner

Versus

State of Punjab and others

Respondents

Present: Mr. Shailendra Jain, Sr. Advocate with Mr. Amandeep Singh, Advocate for the petitioner.

Mr. B.S.Cheema, DAG, Punjab.

Mr. M.L.Saggar, Sr. Advocate with Mr. Gaurav Grover and Mr. Sunny Saggar, Advocates, for respondent No.3.

A. Punjab Land Revenue Rules, Rule 14, 15 (Punjab) -- Creation of post of Lambardar -- Appointment of Lambardar -- Under Rule 14, Commissioner or Financial Commissioner are competent to grant sanction for the new post of Lambardar -- When a new post is created, provisions of Rule 15 are applicable.

(Para 8)

B. Punjab Land Revenue Rules, Rule 15 -- Appointment of Lambardar -- Lambardar is a village headman -- His main job is the collection of revenue -- Criterion for appointment to the post of Lambardar, *inter alia*, includes educational qualification, age, experience in working of Lambardari, land and property, character, ability and freedom from indebtedness.

(Para 10)

C. Punjab Land Revenue Rules, Rule 14, 15 -- Creation of post of Lambardar -- Appointment of Lambardar -- There are two pattis of village Daudpur, i.e. Dakhli Chak and Kharji Chak -- Commissioner granted permission for creation of a new appointment of Lambardar in village Daudpur -- Held, anyone residing in village Daudpur could apply for the newly created post of Lambardar -- Objection that the post was created for the residents of Patti Chak Kharji only, not for the inhabitants of entire village Daudpur, is devoid of merits.

(Para 11)

D. Punjab Land Revenue Rules, Rule 15 -- Appointment of Lambardar -- Hereditary claim -- Hereditary claim has been held to be *ultra vires* and, therefore, cannot be pressed into service in cases relating to appointment of a Lambardar except where other merit is equal.

(Para 12)

E. Punjab Land Revenue Act, 1887 (XVII of 1887), Section 13, 16 -- Punjab Land Revenue Rules, Rule 15 -- Appointment of Lambardar -- Choice of Collector -- Power of Financial Commissioner -- Remand of case -- Appointment of Lambardar is primarily the prerogative and administrative act of the District Collector and selection made by him is normally not to be undone unless and until it is shown that the same suffers from gross irregularity, perversity or there is some patent error in the appointment -- Even if the Financial Commissioner came to the conclusion that the Collector and Commissioner have not taken into consideration the services rendered by private respondent being ex-serviceman, then he could remand the case for reconsideration of the said facts -- Order of Financial Commissioner appointing private respondent as Lambardar set aside.

(Para 14, 21)

F. Punjab Land Revenue Rules, Rule 15 -- Appointment of Lambardar -- Ex-serviceman -- Factum of ex-serviceman may be valid consideration to keep in view but it alone would not be enough to seek preference over other parameters for taking march over the others.

(Para 14)

G. Punjab Land Revenue Rules, Rule 15 -- Appointment of Lambardar -- Criminal case -- Acquittal in -- Effect of -- A person to be appointed on the post of Lambardar should be enjoying good reputation and unblemished image -- Petitioner has good reputation and unblemished image and is not found to be involved in any criminal case - - On the other hand a FIR u/s 323/324/34 IPC was registered against private respondent -- Although, he has been acquitted, yet mere acquittal will not wash away the stigma attached to registration of a criminal case.

(Para 16)

H. Punjab Land Revenue Rules, Rule 15 -- Appointment of Lambardar -- Age -- Younger in age preferred -- Petitioner was 31 years old and private respondent was 57 years old at the time of filing of application -- Private respondent is much older than the petitioner and, therefore, a young energetic person is to be preferred for the post of Lambardar.

(Para 17)

Cases referred:

1. Karnail Singh vs. State of Haryana etc. 1974 PLR 67.
2. Sher Singh vs. Financial Commissioner and others, 2012 (3) L.A.R. 88 (P & H).
3. Ranbir Singh vs. State of Haryana and Ors. 2015 (1) L.A.R. 703.
4. Ranjit Singh vs. Financial Commissioner, Animal Husbandry, Punjab and others 2011 (2) L.A.R. 399.

5. Mahavir Singh vs. Khialia Ram & Ors. 2009 (1) L.A.R. 571 (SC).
6. Lila Ram Vs. Asa Ram, 1955 Lahore Law Times 29.
7. Phool Kumar Vs. State of Haryana and others, 2009 (2) L.A.R. 421 (P&H).
8. Nirbhey Singh vs. Financial Commissioner, Haryana 2008 (1) L.A.R. 1 (P&H DB).
9. Balwinder Singh vs. Financial Commissioner/Appeals-II, Punjab and others 2011 (3) R.C.R. (Civil) 962.
10. Jagdish Singh vs. Financial Commissioner, Punjab and others, CWP-25857-2015 dated 10.12.2015.
11. Hari Chand vs. Financial Commissioner (Revenue), Punjab and others 2015 (4) R.C.R. (Civil) 921.
12. Pargat Singh vs. Financial Commissioner (Revenue), Punjab and others 2016 (1) L.A.R. 217 (P&H).
13. Inder Singh vs. Financial Commissioner, Haryana and others 2015 (1) R.C.R. (Civil) 885.
14. Kulbir singh @ Kulvir singh vs. Kewal Singh and others 2016 (1) PLR 495.

JUDGMENT

PARAMJEET SINGH DHALIWAL, J. –

1. Instant writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari quashing the order dated 21.04.2004 (Annexure P-5) passed by respondent No.2- Financial Commissioner, Cooperation Punjab whereby the orders dated 11.12.2002 (Annexure P-2) and 27.01.2004 (Annexure P-4) passed by the District Collector, Kapurthala and the Commissioner, Jalandhar Division, respectively, appointing the petitioner as Lambardar, have been set aside and respondent No.3 has been appointed as Lambardar.

2. Brief facts of the case are that on demand of residents of village Daudpur, additional post of Lambardar of village Daudpur was created by the Commissioner, vide letter No.6506 dated 26.11.2001, under Section 28 of the Punjab Land Revenue Act read with Rule 14 of the Punjab Land Revenue Rules (as applicable to Punjab). In pursuance of the same, Naib Tehsildar, Dhillwan was asked to invite applications for appointment of new Lambardar in village Daudpur. The concerned Patwari got effected the proclamation by beat of drum in the village to invite applications for the newly created post of Lambardar. In response to the proclamation, petitioner-Sukhjinder Pal Singh, Jarnail Singh, respondent No.3-Sarmail Singh, Jaswant Singh and Sucha Singh, submitted their applications to the Assistant Collector-IInd Grade, Dhillwan. The matter was referred to the local police for character verification of all the candidates. As per the police report, a criminal case bearing FIR No.15 dated 01.06.1993, under Sections 323/324/34 IPC, P.S.Dhillwan was found to be registered against respondent No.3-Surmail Singh whereas a case bearing FIR No13 dated 28.03.1998, under Sections 447/427/148/149 IPC, P.S.Dhillwan was found to be registered against Jaswant Singh, however, they

were acquitted in the aforesaid cases. Two cases bearing FIR No.13 dated 28.03.1998 and FIR No.111 dated 12.10.1979, P.S.Dhilwan, were found to be registered against Sucha Singh, however, he was also acquitted in both the cases. There was nothing found to be incriminating against petitioner-Sukhjinderpal Singh and Jarnail Singh. Naksha Lambardari was got prepared from the village Patwari in respect of all the candidates. Naib Tehsildar and S.D.M. Kapurthala recommended the name of petitioner-Sukhjinderpal Singh. The District Collector after considering the comparative merits of all the candidates found the petitioner to be fit and suitable candidate and ultimately appointed him as such vide order dated 11.12.2002 (Annexure P-2). Feeling aggrieved, respondent No.3 preferred an appeal before the Commissioner, Jalandhar Division, Jalandhar which has been dismissed vide order dated 27.01.2004 (Annexure P-4). Being dissatisfied, respondent No.3 preferred revision before respondent No.2-Financial Commissioner, Cooperation, Punjab who allowed the same and set aside the orders dated 11.12.2002 (Annexure P-2) and 27.01.2004 (Annexure P-4) passed by the District Collector, Kapurthala and the Commissioner, Jalandhar Division, respectively, appointing the petitioner as Lambardar and further appointed respondent No.3 as Lambardar, vide impugned order dated 21.04.2004 (Annexure P-5). Hence, this writ petition.

3. Upon notice, respondent No.3 put in appearance through her counsel and filed written statement with the averments that village Daudpur consists of two patties known as Dakhli Chak and Kharji Chak. It is alleged that *chak patti* Kharji and *chak patti* Dakhli are separated by a distance of 1-1/2 kms. In between two *chaks/pattis*, there is village Mirzapur. The abadi of both the chaks is also separate. Santokh Singh, Lambardar of village Chak Dakhli, was not attending the grievances of the inhabitants/right holders of Chak Kharji. Due to this reason, the inhabitants of Chak Kharji made a representation dated 27.07.2001 to the Deputy Commissioner, Kapurthala for creation of additional post. In fact, the post of Lambardar was advertised for Chak Kharji, as such a person from Chak Kharji can be appointed. It is further averred that the petitioner does not own any property in Chak Kharji. The petitioner and his real uncle, Santokh Singh, Lambardar are having houses/land in Chak Dakhli. The answering respondent served the Army for more than 25 years, fought 1962, 1965 and 1971 wars and retired on 30.04.1987. He was awarded Raksha Medal, 1965 and Sainya Seva Service Medal with Clasp (J & K). His father was a freedom fighter and had been arrested three times alongwith late Giani Kartar Singh during the freedom struggle. Respondent No.3 earlier served in the Army Service Core and thereafter in M.E.S. Other averments in the writ petition have been denied and prayer is made for dismissal of the writ petition.

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

5. Learned senior counsel for the petitioner vehemently contended that the Commissioner created the post for village Daudpur under rule 14 of the Punjab Land Revenue Rules (as applicable to Punjab). There was no mentioning about the particular patti of village Daudpur, therefore, the inhabitants of both the *pattis* i.e. Dakhli Chak and Kharji Chak were eligible for the post of Lambardar. The petitioner is more meritorious than respondent No.3. The petitioner is younger in age than respondent No.3 and is having 61 kanals of land. The petitioner has studied upto 10th standard. On the other

hand, respondent No.3 was aged about 57 years at the time of filing of application and is having only 6 kanals of land. Besides this, mother of the petitioner remained Sarpanch of the village and as such, he is having popularity in the village. Moreover, the revenue authorities recommended the name of the petitioner and on that basis, the District Collector appointed him as Lambardar. Even though, respondent No.3 has been acquitted in the criminal case but this still leaves a scar on his reputation. The petitioner has an unblemished record. Learned senior counsel lastly contended that the impugned order has been passed on surmises and conjectures, therefore, is liable to be set aside.

6. Per contra, learned State counsel and learned senior counsel for respondent No.3 vehemently opposed the contentions of learned senior counsel for the petitioner and supported the impugned order. They contended that respondent No.3 has served the Army for about 25 years in M.E.S. Section. Respondent No.3 belongs to Patti Chak Kharji of the village for which new post has been created. A false criminal case was registered against respondent No.3 in which he has been acquitted. The Collector while appointing the petitioner as Lambardar, has not considered the services rendered by respondent No.3 in the Army, which was required to be taken into consideration. Learned senior counsel made reference to Rule 15 of the Punjab Land Revenue Rules (as applicable to Punjab) to indicate that respondent No.3 has been rightly appointed in consideration of the services rendered by him to the nation.

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

8. It is pertinent to mention here that under Rule 14 of the Punjab Land Revenue Rules (as applicable to Punjab), Commissioner or Financial Commissioner are competent to grant sanction for the new post of Lambardar. When a new post is created, provisions of Rule 15 of the Punjab Land Revenue Rules (as applicable to Punjab) are applicable.

9. A reference to the relevant Rule 15 of the Punjab Land Revenue Rules (as applicable to Punjab), for appointment of Village Headman, would be beneficial to decide the controversy. The said rule reads as under:-

“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) the property in the estate possessed by the candidate to secure the recovery of land revenue;*
- (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.*

10. The Lambardar is a village headman. His main job is the collection of

revenue. He is paid fixed remuneration as well as some commission. The criterion for appointment to the post of Lambardar, *inter alia*, includes educational qualification, age, experience in working of Lambardari, land and property, character, ability and freedom from indebtedness.

11. Firstly, it would be appropriate to decide whether the post for Lambardar was created for Patti Chak Kharji or it was for village Daudpur. Perusal of letter dated 26.11.2001 (Annexure P-1) reveals that the Commissioner, Jalandhar Division, Jalandhar granted permission for creation of a new appointment of Lamberdar in village Daudpur, Tehsil Dhilwan, District Kapurthala. In view of the above, it is apparent that anyone residing in village Daudpur could apply for the newly created post of Lambardar, as such the objection of learned senior counsel for respondent No.3 that the post was created for the residents of Patti Chak Kharji only, not for the inhabitants of entire village Daudpur, is devoid of merits.

12. Now I would deal with the comparative merits of the petitioner and respondent No.3 in view of Rule 15 of the Punjab Land Revenue Rules (as applicable to Punjab). Perusal of file reveals that none of the persons have hereditary claim. Otherwise also, the hereditary claim has been held to be *ultra vires* and, therefore, cannot be pressed into service in cases relating to appointment of a Lambardar except where other merit is equal. In this regard, reliance can be placed upon **Karnail Singh vs. State of Haryana etc. 1974 PLR 67.**

13. Perusal of record reveals that petitioner-Sukhjinder Pal Singh is having 61 kanals 7 marlas of land whereas respondent No.3- Surmail Singh is having 6 kanals of land. So far as services rendered to the State by the candidates individually or by their family are concerned, respondent No.3 earlier served in the Army Service Core and thereafter in M.E.S., however, there is nothing to show that the petitioner has rendered any service to the State. As far as the personal influence of candidates is concerned, the mother of petitioner remained Sarpanch of the village, however, there is nothing on file favouring respondent No.3 on this count. So far as character of the candidates is concerned, the character of petitioner was found to be unblemished, however, an FIR was found to be registered against respondent No.3. Further, as far as the strength and importance of the community from which selection of a headman is to be made, is concerned, the petitioner and respondent No.3 belong to the same community and from the brotherhood also. So far as services rendered by the candidates or by their families in the national movements to secure freedom of India is concerned, respondent No.3 claimed that his father was a freedom fighter and had been arrested three times along with late Giani Kartar Singh during the freedom struggle. However, there is no categorical evidence led by respondent No.3 in this regard.

14. It is pertinent to mention here that the appointment of Lambardar is primarily the prerogative and administrative act of the District Collector. The selection made by him is normally not to be undone unless and until it is shown that the same suffers from gross irregularity, perversity or there is some patent error in the appointment. The District Collector after considering the comparative merits of the candidates, appointed the petitioner as Lambardar. The said findings of the District Collector have been affirmed by the Commissioner, Jalandhar Division, Jalandhar. However, vide impugned order

dated 21.04.2004 (Annexure P-5), the Financial Commissioner appointed respondent No.3 as Lambardar on the ground that he has served the Army for about 25 years and is now getting pension. It is not the case of respondent No.3 that the Collector and Divisional Commissioner have ignored the factum of him being ex-serviceman. The order dated 11.12.2002 (Annexure P-2) reveals that the Collector was conscious of the fact that respondent No.3 being an ex-serviceman. Vide order dated 27.01.2004 (Annexure P-4), the Commissioner, Jalandhar Division, Jalandhar also appreciated the fact that respondent No.3 is an ex-serviceman but did not find any illegality or perversity in the order dated 11.12.2002 (Annexure P-2) passed by the Collector. The Collector and the Commissioner, Jalandhar Division, Jalandhar have taken note of the factum of respondent No.3, being ex-serviceman and found the petitioner to be meritorious than respondent No.3 and he cannot claim that the said fact was not considered by the Collector and Commissioner. It is pertinent to mention that the factum of respondent No.3 being ex-serviceman may be valid consideration to keep in view but it alone would not be enough for respondent No.3 to seek preference over other parameters for taking march over the others. Nevertheless, the Collector and the Commissioner, Jalandhar Division, Jalandhar gave preference to the petitioner keeping in view his age and better land holding. In this regard, reliance can be placed upon ***Sher Singh vs. Financial Commissioner and others*, 2012 (3) L.A.R. 88 (P & H), *Ranbir Singh vs. State of Haryana and Ors.* 2015 (1) L.A.R. 703 and *Ranjit Singh vs. Financial Commissioner, Animal Husbandry, Punjab and others* 2011 (2) L.A.R. 399.**

15. Even if respondent No.2 came to the conclusion that the Collector and Commissioner have not taken into consideration the services rendered by respondent No.3 being ex-serviceman, then respondent No.2 could remand the case for reconsideration of the said facts. This Court finds that so far as merits of petitioner and respondent No.3 are concerned, the petitioner has an edge.

16. Admittedly, a person to be appointed on the post of Lambardar should be enjoying good reputation and unblemished image. The petitioner has good reputation and unblemished image and is not found to be involved in any criminal case. On the other hand, FIR No.15 dated 01.06.1993, under Sections 323/324/34 IPC, P.S.Dhilwan was registered against respondent No.3. Although, he has been acquitted, yet mere acquittal will not wash away the stigma attached to registration of a criminal case.

17. It is also pertinent to mention here that petitioner -Sukhjinder Pal Singh was 31 years old and respondent No.3 was 57 years old at the time of filing of application. Respondent No.3 is much older than the petitioner and, therefore, a young energetic person is to be preferred for the post of Lambardar.

18. Keeping in view the fact that publication was effected in the year 2001 and almost 16 years have lapsed; the petitioner has been working as Lambardar being appointed by the Collector; no stay has been operating against the order of the Collector and respondent No.3 has already turned out to be 73 years old approximately, I do not intend to remand the case, at this stage.

19. Besides this, the Hon'ble Supreme Court in ***Mahavir Singh vs.***

Khialia Ram & Ors. 2009 (1) L.A.R. 571 (SC) = 2009(1) R.C.R. (Civil) 757 has held that age of a candidate was relevant factor in the cases of appointment to the post of Lambardar and 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. The Hon'ble Supreme Court further held in **Mahavir Singh's case (supra)** that other things being equal, a candidate aged 36 years was rightly appointed as Lambardar in preference to a candidate aged 62 years. The facts in **Mahavir Singh's case (supra)** were quite similar to the facts of the present. The relevant findings rendered by the Hon'ble Supreme Court in **Mahavir Singh's case (supra)** are as under:

"14. It is now a well-settled principle of law, keeping in view the decisions in regard to the appointment of Lambardar in the State of Punjab, that age of a candidate is a relevant factor.

In Lt. Malik Abbas Khan v. Ghulam Haidar [1940 Lahore Law Times 25], it was stated :

"...It is certainly not wise, save in very exceptional circumstances, to appoint for the first time, an inamkhor or zaildar whose age is 60 or more."

In Kalyan Singh v. Haidar [1928 Lahore Law Times 33], the Financial Commissioner held that ordinarily the Collector's choice appointing a Zaildar or Sufedpost should not be interfered with even though the appellate authority believes that his choice was not the best choice.

Similar view was expressed in Lila Ram v. Asa Ram [1955 Lahore Law Times 29] in the following terms :

• "...While it is now an established principle that there should be no interference with the choice made by the Collector, it does not follow that where the Collector's order is based on a misrepresentation of facts, there should still be no interference."

xxxxxxx to xxxxxx

18. There cannot be any doubt or dispute whatsoever that a writ court could interfere with a finding of fact when the same inter alia is found to be perverse. However, neither any such finding has been arrived at by the High Court nor do we find any and as such the decision of this Court relied upon by Mr. Mahajan in Bhagat Ram v. State of Himachal Pradesh [(1983)2 SCC 442] cannot be said to have any application whatsoever in this case. The High Court furthermore failed to take into consideration that while exercising its power of judicial review, it exercises a limited jurisdiction. The court, it is well-settled, is ordinarily concerned with the decision making process and not the merit of the decision."

20. In view of law laid down by Hon'ble the Supreme Court of India in the case of **Mahavir Singh's (case) supra** and **Lila Ram Vs. Asa Ram, 1955 Lahore Law Times 29** followed by a Division Bench of this Court in the case of **Phool Kumar Vs. State of Haryana and others, 2009 (2) L.A.R. 421 (P&H) = 2010(2) RCR (Civil) 819**, the choice of the District Collector cannot be lightly set aside. In **Nirbhey Singh vs. Financial Commissioner, Haryana 2008 (1) L.A.R. 1 (P&H DB) = 2007 (4) R.C.R. (Civil) 594**, a Division Bench of this

Court has held that once the Collector finds a candidate more suitable, his choice is to be respected. Similar view has been expressed in ***Balwinder Singh vs. Financial Commissioner/Appeals-II, Punjab and others*** 2011 (3) R.C.R. (Civil) 962, judgment dated 10.12.2015 rendered in CWP-25857-2015, titled as '***Jagdish Singh vs. Financial Commissioner, Punjab and others***', ***Hari Chand vs. Financial Commissioner (Revenue), Punjab and others*** 2015 (4) R.C.R. (Civil) 921, ***Pargat Singh vs. Financial Commissioner (Revenue), Punjab and others*** 2016 (1) L.A.R. 217 (P&H) = 2015 (3) R.C.R. (Civil) 341, ***Inder Singh vs. Financial Commissioner, Haryana and others*** 2015 (1) R.C.R. (Civil) 885, ***Kulbir singh @ Kulvir singh vs. Kewal Singh and others*** 2016 (1) PLR 495.

21. In view of the above, the instant petition is allowed and the impugned order dated 21.04.2004 (Annexure P-5) passed by respondent No.2 is hereby set aside and the orders dated 11.12.2002 (Annexure P-2) and 27.01.2004 (Annexure P-4) passed by the District Collector, Kapurthala and the Commissioner, Jalandhar Division, respectively, are restored. The petitioner is appointed as Lambardar of the village.

22. Costs made easy.

Petition allowed.

PUNJAB AND HARYANA HIGH COURT

Before: Darshan Singh, J.

CR No.850 of 2016 (O&M)

Decided on: 20.05.2016

Raminder Singh Judge

Petitioner

Versus

Jasroop Judge

Respondent

Present: Mr. Mandeep S. Sachdev, Advocate for the petitioner.

A. Hindu Marriage Act, 1955 (25 of 1955), Section 13, 24 – Divorce petition – Maintenance *pendente lite* -- Mere fact that at one point of time, the wife was earning is no ground to decline the maintenance *pendente lite* – Similarly, the fact that the wife is capable of earning is also no ground to decline her the maintenance *pendente lite* -- Maintenance *pendente lite* can only be denied u/s 24 of the Act, if the wife had sufficient income to maintain herself.

(Para 5)

B. Hindu Marriage Act, 1955 (25 of 1955), Section 13, 24 – Divorce petition – Maintenance *pendente lite* -- ITR of husband shows that he had gross salary of more than Rs. 6 lacs -- Wife is also entitled to the same standard of living as being enjoyed by the husband – No illegality committed by Ld. Trial Court granting maintenance *pendente lite* to the wife at the rate of Rs.18,000/- per month from the date of the application.

(Para 6)