

wherein the Hon'ble Supreme Court observed that age of a candidate was relevant factor in the cases of appointment to the post of Lambardar. 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 case.

17. Respectfully following the law laid down by the Hon'ble Supreme Court in **Mahavir Singh's case (supra)** and a Division Bench of this Court in **Ranjit Singh's case (supra)**, this Court is of the considered view that in view of the given fact situation of the present case, it is only the order passed by the Commissioner, which deserves to be upheld.

18. There is no denying the fact that ordinarily choice of the Collector is not to be interfered with, in the cases of appointment of Lambardar. However, it is equally true that this rule is not an absolute one. Whenever the order passed by the Collector is found to be suffering from patent illegality or perversity, the higher revenue authorities would be well within their jurisdiction to upset the order passed by the District Collector. That is what has been done and rightly so by the Commissioner while passing his order dated 16.2.2010 (Annexure P-4).

19. No other argument was raised.

20. Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the view that the present writ petition deserves to be allowed.

21. Consequently, the order dated 4.5.2011 (Annexure P-5) passed by the Financial Commissioner is set aside. Order dated 16.2.2010 (Annexure P-4) passed by the Commissioner, Gurgaon Division, remanding the case back to Collector for fresh decision after considering merits of the candidates, is ordered to be restored.

22. Resultantly, the instant writ petition stands allowed.

**Petition allowed.**

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### **PUNJAB AND HARYANA HIGH COURT**

**Before: Rajive Bhalla & Naresh Kumar Sanghi, JJ.**

Letters Patent Appeal No. 1576 of 2012

Decided on: 17.05.2013

Neeraj Kumar

Appellant

Versus

State of Haryana and others

Respondents

Present: Mr. Arun Jain, Senior Advocate, with Mr. Sunil Sharma, Advocate, for the appellant.

Mr. D.Khanna, Additional Advocate General, Haryana for respondent nos. 1 to 5.

Mr. S.K.Chauhan, Advocate, for Mr. Raj Mohan Singh, Advocate for respondent no.6.

**A. Punjab Land Revenue Rules, Rule 15 -- Appointment of Lambardar -- Duty of Collector -- A Collector, may not be required to pen a judgment, like a civil court but is expected, to deal with all relevant objections and facts, howsoever, brief may be his consideration.**

**(Para 7)**

**B. Punjab Land Revenue Rules, Rule 15 -- Appointment of Lambardar -- A lambardar, also called a village headman, or a village officer -- Rule 15 of the 1909 Rules are merely illustrative and not exhaustive of relevant factors that may be taken into consideration, while appointing a lambardar.**

**(Para 11)**

**C. Punjab Land Revenue Rules, Rule 20 -- Duties of Lambardar -- A lambardar is called upon, by the revenue, police and administrative officers, to assist in various matters like disputes regarding possession of land, demarcation of land, identification of accused persons and attending to revenue and police officers when they visit the village for inspection of crops or for other official matters -- A lambardar is called upon by inhabitants of his village to attest documents, identify them when they register document etc. -- To hold that duties of a lambardar are limited in nature or to suggest that his office is merely ornamental, in our considered opinion, is an incorrect enunciation of the office of a lambardar and his duties.**

**(Para 12)**

**D. Punjab Land Revenue Rules, Rule 15 -- Appointment of Lambardar -- Availability in village -- Availability of a lambardar, in the village, is, a significant factor to be considered, while appointing a lambardar and if a question mark is raised upon a candidate's availability in the village, the Collector would, necessarily, be required to consider and decide such an objection.**

**(Para 12)**

**E. Punjab Land Revenue Rules, Rule 15 -- Appointment of Lambardar -- Employee's candidature -- Where a person is in service whether government or private, his service may not by itself be a disqualification, but his availability in the village, would be a relevant factor to be considered by the Collector.**

**(Para 12)**

**F. Punjab Land Revenue Act, 1887 (XVII of 1887), Section 13, 15 -- Constitution of India, Article 226 -- Appointment of Lambardar -- Choice of Collector -- Availability in village -- Objection of -- Consideration of -- Failure of a Collector to consider an objection as to availability of a candidate, particularly when such an objection is raised, would be an error of jurisdiction, liable to be corrected by the appellate and/or the revisional authority -- Commissioner rightly set aside the order of Collector and appellant was appointed as Lambardar -- Jurisdiction under Article 226 of the Constitution of India as the power of judicial review is directed against the decision making process and not against the decision -- Order of Commissioner were neither perverse nor arbitrary**

and, therefore, did not call for interference.

(Para 12-14)

**G. Punjab Land Revenue Rules, Rule 15 -- Appointment of Lambardar – Teacher's candidature -- Teacher in a government school and though his service is not a disqualification, his service requires his presence in the school during school hours or, for at least, a major part of the day -- If he performs the duties of a lambardar, he will have to remain absent from the school thereby affecting the studies of his wards -- If, on the other hand, he performs his duties as a teacher, he may not be available to residents of the village, for a major part of the day, thereby depriving residents of the village of his services as a lambardar -- His appointment is not warranted.**

(Para 15)

**Cases referred:**

1. Amarjit Kaur v. Financial Commissioner (Co-operation), Punjab and others, 2011(3) LAR 89.

**JUDGMENT**

**RAJIVE BHALLA, J. –**

1. The appellant prays that order dated 30.8.2012, allowing the writ petition, filed by respondent no.6, as well as order dated 4.3.2008 passed by the Collector, Gurgaon, appointing respondent no.6, as lambardar, may be set aside.

2. Counsel for the appellant submits that the Collector appointed respondent no. 6 as lambardar by ignoring that he would not be available in the village as he is a teacher in a government school and works on a transferable post. The Commissioner rightly set aside the order passed by the Collector by holding that respondent no.6 would not be available in the village. The Financial Commissioner has affirmed this order. The orders passed by the Commissioner and the Financial Commissioner have been set aside by holding that government service is not a disqualification and the mere fact that respondent no.6 is posted in a school at a distance of 5 to 6 Kilometers from the village, is irrelevant. Counsel for the appellant contends that the question in dispute was not one of government service but one of availability of respondent no.6 in the village as he is a teacher in a government school. Admittedly, respondent no.6 is a teacher in a government school and, therefore, there would always be a question mark over his availability in the village. The availability of a candidate is a significant factor and as respondent no.6 would not be available to residents of the village during the course of the day, the findings recorded by the Commissioner and the Financial Commissioner have been wrongly reversed. The absence of the words “perversity” or an “arbitrary exercise of power”, in the order passed by the Commissioner, does not render his order, illegal or void so as to invite interference, in the exercise of power under Article 226 of the Constitution of India.

3. Counsel for respondent no.6 submits that government service is not a disqualification and as respondent no.6 is posted at a distance of 5 to 6 kilometers from the village, he would be easily available to residents of the

village as and when required. The Commissioner did not record a finding that the order passed by the Collector is perverse or arbitrary. The writ petition was, therefore, rightly allowed. It is further submitted that in **Amarjit Kaur versus Financial Commissioner (Co-operation), Punjab and others, 2011(3) LAR 89**, it was held that mere fact that a candidate is running a school, is not a disqualification for being appointed as a lambardar, therefore, the appeal may be dismissed.

4. We have heard counsel for the parties, perused the impugned order as well as orders passed by the Collector, the Commissioner and the Financial Commissioner.

5. The questions that arise for adjudication is:- (a) whether, while considering appointment to the post of lambardar, the availability of a candidate, in the village, is a relevant factor, and (b) whether the order passed by the Commissioner, holding that respondent no.6 would not be available in the village, as affirmed by the Financial Commissioner, should have invited interference, in the exercise of power of judicial review, under Article 226 of the Constitution of India.

6. The post of lambardar of village Haqdarapur, (Krishnapuri), Tehsil Pataudi, District Gurgaon, fell vacant. The appellant and respondent no.6 applied for the post. The Collector appointed respondent no.6, by holding that he is more meritorious and mature as he has knowledge of Hindi and English, is double M.A. B.Ed, has passed examination in Geeta and Ramayana (epics) and is spiritual in his thoughts. The appellant raised a specific plea that respondent no.6 would not be available in the village, as he is employed as a teacher in a government school. The plea was neither considered nor adjudicated by the Collector. A relevant extract from the operative part of the order passed by the Collector reads as follows:-

“ I have heard the arguments of both the counsel and have perused the material on record. After perusal of the material on record, I have come to the conclusion that Shri Ram Vart candidate is more meritorious and matured person than the other candidate. He has the knowledge of Hindi and English and is double M.A. and B.Ed also. Besides this he has passed Geeta Ramayana examinations and due to this is being influenced by the spiritual thoughts, therefore, he can perform the work of Lambardari in effective manner. In my opinion, he will not discriminate with any body. Therefore, Shri Ram Vart son of Shri Kuber Dutt Shashtri, resident of village Haqdarapur, Tehsil Pataudi, District Gurgaon is appointed as Lambardar of village Haqdarapur in place of late Shri Suresh Chander, Lambardar. Sanad Lambardari be issued.”

7. A Collector, may not be required to pen a judgment, like a civil court but is expected, to deal with all relevant objections and facts, howsoever, brief may be his consideration. The Collector, as is apparent from his order, has not dealt with the objection raised by the appellant, regarding the non-availability of respondent no.6, in the village.

8. The appellant filed an appeal. The Commissioner considered the objection regarding non-availability of respondent no.6, in the village and after holding that respondent no.6 would not be available in the village, during his duty hours etc., set aside the order passed by the Collector and appointed the

appellant as lambardar. A relevant extract from the order passed by the Commissioner reads as follows:

“.....He has more agricultural land and he is always available in the village whereas the respondent is posted in Govt. School at a distance of 5/6 Km and due to this he cannot be available in the village. The post of respondent is transferable and he can be transferred to a distance place at any time.....”

**9.** The Financial Commissioner affirmed this order by dismissing the revision, filed by respondent no.6.

**10.** The writ petition filed by respondent no.6 has been allowed, orders passed by the Financial Commissioner and the Commissioner, have been set aside and order passed by the Collector has been restored by holding that the choice of the Collector is final and as reasons assigned by the Commissioner do not indicate that the discretion exercised by the Collector was arbitrary. It has also been held that mere government service is not a disqualification and as duties performed by a lambardar, are limited in nature, his posting at a distance of about 5 to 6 Kilometers from the village, cannot be viewed as a disqualification.

**11.** A lambardar, also called a village headman, or a village officer, is appointed under Section 28 of the Punjab Land Revenue Act, 1887 (as applicable to the State of Haryana) read along with rule 15 of the Rules framed thereunder (hereinafter referred to as the “1909 Rules”). Rule 15 of the 1909 Rules enumerates the factors to be considered while appointing a lambardar and opens with the expression “.....regard shall be had amongst other matters.....” thereby clearly indicating that factors enumerated in Rule 15 of the 1909 Rules are merely illustrative and not exhaustive of relevant factors that may be taken into consideration, while appointing a lambardar.

**12.** The duties of a lambardar, as suggested and held in the impugned order, are not limited in nature. A lambardar is called upon, by the revenue, police and administrative officers, to assist in various matters like disputes regarding possession of land, demarcation of land, identification of accused persons and attending to revenue and police officers when they visit the village for inspection of crops or for other official matters. A lambardar is called upon by inhabitants of his village to attest documents, identify them when they register document etc. To hold that duties of a lambardar are limited in nature or to suggest that his office is merely ornamental, in our considered opinion, is an incorrect enunciation of the office of a lambardar and his duties. The availability of a lambardar, in the village, is, therefore a significant factor to be considered, while appointing a lambardar and if a question mark is raised upon a candidate's availability in the village, the Collector would, necessarily, be required to consider and decide such an objection. It must follow that, where a person is in service whether government or private, his service may not by itself be a disqualification, but his availability in the village, would be a relevant factor to be considered by the Collector. The failure of a Collector to consider an objection as to availability of a candidate, particularly when such an objection is raised, in our considered opinion, would be an error of jurisdiction, liable to be corrected by the appellate and/or the revisional authority. The principle that the choice of the Collector is final is a rule of prudence and must, therefore, be invoked only where the order does not suffer from a failure to

decide an objection as to the merits of a candidate.

13. A perusal of the order passed by the Collector reveals that the appellant raised a plea that respondent no.6 would not be available in the village on account of his government service. The Collector, as referred to hereinbefore, did not consider, much less, decide this objection and instead proceeded to appoint respondent no.6, thereby rendering his order illegal, and sufficient to invite interference by the Commissioner, who duly considered this aspect, and, after holding that respondent no.6 would not be available in the village, rectified this error by setting aside the order passed by the Collector, and ordered the appointment of the appellant. The failure of the Commissioner to record the words "perverse", arbitrary or illegal etc." would not render his order illegal. An order is "perverse", "arbitrary" or illegal" for failure to consider relevant factors, or law and not for want of the words "perverse", "illegal" and "arbitrary".

14. The orders passed by the Commissioner and the Financial Commissioner do not reveal a perverse or arbitrary exercise of discretion or jurisdiction that could invite interference in the exercise of power under Article 226 of the Constitution of India. The Commissioner, in our considered opinion, was well within the bounds of his jurisdiction, as an appellate authority to appraise the order passed by the Collector and upon finding that the Collector had not dealt with the objection regarding non-availability of respondent no.6, in the village, set aside the order passed by the Collector and appointed the appellant as lambardar, after holding that respondent no.6 would not be available in the village, in view of his service as a teacher in a government school. The order passed by the learned Commissioner, duly affirmed by the learned Financial Commissioner, in our considered opinion, should not have invited interference in exercise of jurisdiction under Article 226 of the Constitution of India as the power of judicial review is directed against the decision making process and not against the decision. The reasons assigned by the learned Commissioner were neither perverse nor arbitrary and, therefore, did not call for interference.

15. Admittedly, respondent no. 6 is a teacher in a government school and though his service is not a disqualification, his service requires his presence in the school during school hours or, for at least, a major part of the day. If he performs the duties of a lambardar, he will have to remain absent from the school thereby affecting the studies of his wards. If, on the other hand, he performs his duties as a teacher, he may not be available to residents of the village, for a major part of the day, thereby depriving residents of the village of his services as a lambardar. The Commissioner, in our considered opinion, rightly held that as availability of respondent no.6 would always be in doubt, his appointment is not warranted. The finding so recorded, was neither perverse nor arbitrary and, therefore, should not have been interfered in exercise of powers under Article 226 of the Constitution of India.

16. The judgment in **Amarjit Kaur's case (supra)** is irrelevant as in the said case, the candidate was the owner of the school. The school was being managed, on her behalf, by teachers and other staff members. It was held that as the petitioner was not required to be present in the school at all times, her candidature could not be rejected on the ground that she will not be available in the school. The situation in the present case is entirely different on facts as

respondent no.6 is a teacher and is required to be present in school.

17. In view of what has been held hereinabove, the appeal is allowed, the impugned order dated 30.8.2012 is set aside and orders passed by the Commissioner and the Financial Commissioner are restored, with no order as to costs.

**Appeal allowed.**

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**PUNJAB AND HARYANA HIGH COURT**

**Before: Rameshwar Singh Malik, J.**

Civil Writ Petition No. 7536 of 2011

Decided on: 20.03.2013

Shri @ Siri Niwas

Petitioner

Versus

State of Haryana and others

Respondents

Present: Mr. Sunil Panwar, Advocate for the petitioner.

Ms. Kirti Singh, DAG, Haryana for the State.

Mr. R.S. Mamli, Advocate for respondent No.4.

**A. Punjab Land Revenue Act, 1887 (XVII of 1887), Section 13, 15 -- Appointment of Lambardar – Power of Financial Commissioner -- Once the order passed by the District Collector has been upheld by the Commissioner, there was hardly any scope left for the Financial Commissioner to interfere even if he was of a different view -- Financial Commissioner himself compared the merits and demerits of both the candidates and arrived at a different conclusion -- Mandatory findings while reversing the orders that either of the orders passed by the District Collector or by the Commissioner were based on misrepresentation of facts or were found to be suffering from any patent illegality or perversity or jurisdictional error not recorded -- Order of Financial Commissioner is liable to be set aside.**

**(Para 14,15)**

**B. Punjab Land Revenue Rules, Rule 15 -- Appointment of Lambardar – Criminal case – Acquittal from -- Once the petitioner has been acquitted about 20 years back -- Non suiting the petitioner on account of his involvement in the criminal case is based on erroneous approach and the order is not sustainable.**

**(Para 19)**

**Cases referred:**

1. Nirbhey Singh v. Financial Commissioner, Haryana, 2008(1) L.A.R. 1 (P&H DB) = 2007(4) RCR (Civil) 594.
2. Gurbachan Singh v. Financial Commissioner (Appeal-I), Punjab, 2001(4) RCR (Civil) 22.
3. Inder Singh v. Financial Commissioner, Haryana and others, CWP No. 512 2008 dated 22.5.2008.