

(11) The issue has also been considered by a Division Bench of this Court in the case of **Sachin Sharma versus Punjab University (4)**, wherein following observations have been made:-

“4. We have heard learned counsel for the parties at some length. The facts are hardly in dispute in the present case. The petitioner alongwith number of other candidate could not submit their final year result or even detailed mark-sheet before the competent authority within the prescribed period i.e. 4.7.2001. They were unable to produce the said documents even by extended date i.e. 20.7.2001. The result was declared on 20.8.2001. Thereafter the petitioner could have produced the said result before the authorities. It is clear that no fault is attributable to any of the respondents. As per the Full Bench judgment of this Court in the case of **Amardeep Singh Sahota v. State of Punjab and others**, 1993(4) SCT 328 (P&H) (FB): 1993 (4) SLR 673 and **Rahul Prabhakar v. Punjab Technical University, Jalandhar and others**, 1997 (3) SCT 526 (P&H) (FB): 1997 (3) **PLR 13** terms and conditions of the brochure are binding....”

(12) In view of the above factual premises and settled legal position, the petitioners were ineligible for the post of Ayurvedic Medical Officer for non-completion of compulsory rotatory internship and rightly declared as such. I find no merit. The writ petition dismissed.

M. Jain

Before Ajai Lamba, J.

JAGDISH,—Petitioner

versus

STATE OF HARYANA AND OTHERS,—Respondents

CWP No. 15834 of 2010

18th May, 2011

Constitution of India, - Art. 226 - Punjab Land Revenue Rules, 1909 -Rl. 14, 17 & 20 - Appointment of Lambardar - Merits of the candidates - Suitability of candidates to be considered in

context of duties to be discharged - Whether pendency of a criminal case against a candidate be a circumstance enough to consider him to be unsuitable to serve as Lambardar - Criminal proceedings - Charges have been framed by a court of law - Candidate is eligible to compete - However, would not be suitable.

Held, That the authorities under the Punjab Land Revenue Act, 1887 and the Rules framed thereunder are required to consider the eligibility of the candidates at the first instance and thereafter suitability of the candidates to serve as a Lambardar. Suitability of the candidates is required to be considered in context of the duties to be discharged by a Lambardar as provided under Rule 20 of the Punjab Land Revenue Rules.

(Paras 12)

Further held, that in the case in hand, respondent-Sultan Singh is involved in a criminal case. Charges have been framed by a court of law and the said respondent would be required to stand trial. In such circumstances, this Court is of the considered opinion that although the respondent is eligible to compete for the post of Lambardar, however, would not be suitable. This is particularly so because the merit of the petitioner and the private respondent is nearly comparable.

(Paras 15)

Harkesh Manuja, Advocate, for the petitioner(s).

B.S. Saini, Sr. DAG, Haryana.

A.K. Bura, Advocate, for respondent no. 4.

AJAI LAMBA, J. (ORAL)

(1) Lambardar for village Garhi Ujalekhan, Tehsil Gohana, District Sonapat was to be appointed.

(2) Vide order Annexure P-1 dated 31.10.2006 passed by Collector, Sonapat, the petitioner was appointed Headman/Lambardar for the village. Respondent no. 4-Sultan Singh and one Jaspal carried appeals. Vide order Annexure P-3 dated 01.02.2008 passed by Commissioner, Rohtak Division, Rohtak, respondent no. 4-Sultan Singh was appointed as Lambardar. The

petitioner carried a revision before the Financial Commissioner. Vide order Annexure P-4 dated 27.11.2008 passed by Financial Commissioner, the petitioner was appointed as Lambardar. Perusal of order Annexure P-4 indicates that the order passed by the Commissioner was set aside. Order passed by the Collector has been upheld and the petitioner has been appointed as Lambardar.

(3) It has been held by the Financial Commissioner that while FIR pending against respondent no. 4 does not disqualify him from appointment as Lambardar, however, the petitioner has been found to be more meritorious by the Collector, whose choice should not be interfered with unless there is illegality in the order.

(4) Respondent no. 4 filed a Civil Writ Petition No. 2509 of 2009 that has been dismissed vide order Annexure P-5 dated 17.02.2009.

(5) The respondent filed Letters Patent Appeal No. 538 of 2009 which has been allowed vide order Annexure P-6 dated 17.03.2010. It has been held that comparative merit of the candidates was not considered by the Collector. Candidature of respondent no. 4 was rejected on the ground of pendency of FIR. The Financial Commissioner had not recorded any finding about the merits of the candidates. The Financial Commissioner had also not recorded any reason finding fault with the order of Divisional Commissioner that a charge under Section 325 IPC cannot disqualify a candidate. In such circumstances, the case was remanded to the Financial Commissioner to take a decision afresh.

(6) Vide impugned order Annexure P-7, Financial Commissioner, Haryana has directed appointment of respondent no. 4 as Lambardar. In the impugned order, following has been said in regard to the criminal case:-

“I have gone through the arguments put forth by both the parties. As regards pending criminal case against Sultan Singh, I accept the arguments that it is a frivolous matter. Even after 5 years no finding or evidence has come against him in any court. The investigating officer has already given his findings about his innocence. Therefore, I consider that the said FIR lodged 5 years ago after initiation of the

proceedings for appointment of lambardar and in which no adverse finding has come on record, cannot be held against the respondent Sultan Singh.”

(7) In regard to the relative merit, it has been said that the petitioner and the private respondent are nearly of the same age. Respondent-Sultan Singh is matriculate whereas petitioner is 7th pass. Sultan Singh is son of deceased Lambardar and has also served as Sarbrah Lambardar.

(8) Learned counsel for the petitioner has pointed out that the criminal case could not have been brushed aside by the Financial Commissioner in the impugned order in so much as charges have already been framed against respondent no. 4 by a Court having competent jurisdiction. Framing of charge prima facie indicates involvement of the respondent.

(9) Learned counsel for respondent no. 4 contends that the respondent has not been convicted and, therefore, involvement in a criminal case per se cannot be taken into account.

(10) I have considered the contentions of the learned counsel for the parties.

(11) The main issue required to be adjudicated by this Court is whether pendency of a criminal case against respondent no. 4 would be a circumstance enough to consider the respondent to be unsuitable to serve as a Lambardar.

(12) The authorities under the Punjab Land Revenue Act, 1887 and the Rules framed thereunder are required to consider the eligibility of the candidates at the first instance and thereafter suitability of the candidates to serve as a Lambardar. Suitability of the candidates is required to be considered in context of the duties to be discharged by a Lambardar as provided under Rule 20 of the Punjab Land Revenue Rules. Following has been held in para nos. 8 and 9 in decision dated 28.04.2011 rendered in ***CWP No. 9552 of 2008 entitled Harbhajan Singh vs. Financial Commissioner (Co-operation), Punjab and others:-***

“8. So as to discharge the duties of a Headman/Lambardar, under Rule 20, a person is required to have an impeccable record and good character. Duties to be discharged by a

headman/Lambardar are given out in Rule 20 of the Punjab Land Revenue Rules, which when extracted, read as under:-

“20. Duties of headman.- *In addition to the duties imposed upon headman by law for any purpose, a headman shall—*

- (i) collect by due date all land revenue and all sums, recoverable as land revenue from the estate, or subdivision of an estate in which he holds office, and pay the same personally or by revenue money order or by remittance of currency notes through the post [or at places where treasury business is conducted by the {State Bank of India or any Scheduled Bank as notified by the State Government from time to time}, by cheque on a local Bank] at the place and time appointed in that behalf to the Revenue Officer or assignee empowered by Government to receive it;*
- (ii) collect the rents and other income of the common land, and the account for them to the persons entitled thereto;*
- (iii) acknowledge every payment received by him in the books of the landowners and tenants;*
- (iv) defray joint expenses of the estate and render accounts thereof as may be duly required of him;*
- [(v) report to the Tehsildar the death or any assignee of land revenue or Government pensioner residing in the estate, or the marriage or re-marriage of a female drawing a family pension and residing in the estate, or the absence of any such person for more than a year];*
- [(vi) report to the Tehsildar and Collector all encroachments on and injury to the roads, public streets and Government, Nazul and Panchayat land;]*
- (vii) report any injury to Government buildings made over to his charge;*

- (viii) *carry out, to the best of his ability, any orders that he may receive from the Collector requiring him to furnish information or to assist in providing on payment supplies or means of transport for troops or for officers of Government on duty;*
- (ix) *assist in such manner as the Collector may from time to time direct at all crop inspections, recording of mutations, surveys, preparation of records of right, or other revenue business carried on within the limits of the estate;*
- (x) *attend the summons of all authorities having jurisdiction in the estate, assist all officers of the Government in the execution of their public duties, supply, to the best of his ability any local information which those officers may require, and generally act for the landowners, tenants and residents of the estate or sub-division of the estate in which he holds office in their relations with Government;*
- (xi) *report to the Patwari any outbreak of disease among animals [or human beings];*
- (xii) *report to the Patwari the deaths of any rightholders in their estates;*
- (xiii) *report any breach or cut in a Government irrigation canal or channel to the nearest canal officer, or canal Patwari;*
- (xiv) *under the general or special directions of the Collector, assist by the use of his personal influence and otherwise all officers of Government and other persons, duly authorised by the Collector, in the collection and enrolment of recruits for military service whether combatant or non-combatant;*
- (xv) *render all possible assistance to the village postman, while passing the night in the village, in safeguarding the cash and other valuables that he carried.”*

9. *For discharge of duties, as can be made out from the provisions of Rule 20 extracted above, Lambardar is required to interact with residents in the Estate and collect information, assist the revenue authorities etc. If a Lambardar does not have a clean record, surely, the functions cannot be discharged effectively. A Lambardar, under the circumstances is required to have a clean record. The petitioner and private respondent, however, are involved in criminal cases and, therefore, are not suitable to discharge the functions of Lambardar.*

(13) In **Jog Dhian versus Financial Commissioner, Haryana and others (1)** a Division Bench has held in para no. 13 in the following terms (relevant portion):-

“It may be true that once an accused is acquitted on a criminal charge framed against him, even though by giving benefit of doubt, he is presumed to be innocent but at the same time, such a person cannot command respect from the public as, surely, the people cannot have much confidence and rely upon a person, who, even though, might have been acquitted but who has been tried for murder and remained in custody, either in judicial or police....”

(14) In **Gurdev Singh versus Financial Commissioner (Appeals-II), Punjab, Chandigarh and others (2)**, following has been held in para no. 8 (relevant portion):-

*“..... The way the Collector and other authorities have been wavering in passing one order and another would not speak well of them. Respondent No.4 is highly qualified but he suffers an infirmity, being in Government service. It is certainly a factor which can be taken into consideration by the authorities while appointing him for the post of Lambardar. He is younger which is an advantage in his favour **but he has not been able to maintain a clean record and had faced prosecution for a serious charge under***

(1) 2005 (2) PLR 306

(2) 2009 (4) RCR (C) 808

Section 304B IPC. He may have earned acquittal but that in itself would not mean that he has maintained a clean record. In the cases of Kabul Singh (supra) (Kabul Singh v. The Financial Commissioner, Punjab, 2006(3) RCR (Civil) 313) and Jog Dhian (supra) (Jog Dhian v. Financial Commissioner, Haryana and others, 2005(1) RCR (Civil) 658), two different Division Benches of this Court considered this aspect and came to take a view that even acquittal from a criminal charge would not be enough to ignore this fact while considering a person for appointment as Lambardar. After all, Lambardar is required to have a dealing with the people at large and they must have a confidence in Lambardar, which, to an extent, would get dented if someone has remained involved in a criminal case and is appointed. Acquittal in our system of criminal trial would mean that the prosecution has not been able to prove the charge.” (emphasis supplied).

(15) In the case in hand, respondent-Sultan Singh is involved in a criminal case. Charges have been framed by a court of law and the said respondent would be required to stand trial. In such circumstances, this Court is of the considered opinion that although the respondent is eligible to compete for the post of Lambardar, however, would not be suitable. This is particularly so because the merit of the petitioner and the private respondent is nearly comparable. The Financial Commissioner in impugned order Annexure P-7 dated 03.08.2010 has not considered the law, as noticed above, in correct perspective.

(16) In view of the peculiar facts and circumstances of the case, this petition is allowed. Order Annexure P-7 dated 03.08.2010 passed by Financial Commissioner and order Annexure P-3 dated 01.02.2008 passed by Commissioner Rohtak are hereby quashed. Order passed by Collector Annexure P-1 is upheld.

(17) No costs.

V. Suri