

Before Alok Singh, J.

BALWINDER SINGH,—Petitioner

versus

**FINANCIAL COMMISSIONER/APPEAL-II, PUNJAB
& OTHERS,—Respondents**

CWP No.13637 of 2009

9th August, 2011

Constitution of India, 1950 -Art. 226/227 - Appointment of Lambardar - Post of Lambardar fell vacant due to death of the then Lambardar - Candidature of petitioner compared with other candidates and petitioner appointed as Lambardar - Appointment challenged before Divisional Commissioner which was dismissed - Revision petition was however allowed and respondent 4 appointed as Lambardar on ground that petitioner is running a PCO, is also a LIC agent and is also running a School and hence will not be readily available to villagers.

Held, That choice of the Collector in the matter of appointment of Lambardar should not lightly be interfered by the higher authorities or by this Court. The choice of the Collector can only be interfered with when higher authorities or this Court find that Collector has been misled by placing irrelevant material or Collector has failed to notice important material/evidence which would have resulted in different opinion or where opinion of the Collector is outcome of extraneous considerations.

(Para 8)

Further held, that in the present case, Financial Commissioner in revision has accepted new points and has permitted respondent No.4 to raise those points, which were never raised before the Collector as well as before the Divisional Commissioner.

(Para 9)

Further held, That a candidate for the post of Lambardar cannot be expected to be unemployed or merely engaged in agriculture activities.

Further held, That running a PCO in the village itself does not mean that petitioner shall not be available in the village to perform duties of

Lambardar. Neither having PCO nor having small shop in the village should be construed as disqualification for the post of Lambardar if candidate is otherwise found suitable for the post. Petition is allowed.

(Para 12 & 13)

Munish Gupta, Advocate, *for the petitioner.*

Jaswinder Singh, DAG, Punjab.

K.P.S. Dhillon, Advocate, for respondent No.4.

ALOK SINGH, J.

(1) Petitioner has invoked the jurisdiction of this Court under Article 226/227 of the Constitution of India challenging the order dated 17.12.2008 passed by Financial Commissioner/Appeals-II, Punjab, thereby setting aside the orders passed by Commissioner, Jalandhar, as well as District Collector, Hoshiarpur, appointing the petitioner as Lambardar of the village.

(2) Brief facts of the present case are that on the death of then Lambardar Sh. Mehnga Singh of village Chak Mallan, Tehsil Garshankar, District Hoshiarpur on 7.3.1997, post of Lambardar fell vacant. After completing all the formalities, learned District Collector, Hoshiarpur, has compared the candidature of petitioner and respondent No.2 along with candidature of Sh. Gurbax Ram and Sh. Santa Singh and appointed petitioner as Lambardar vide order dated 4.11.2004 by observing as under: -

- “1. Candidate Sh. Balwinder Singh s/o Dalip Singh is 33 years of age. His educational qualification is Senior Secondary Part-II.
2. Candidate Sh. Gurbax Ram s/o Ranjha Ram as per his statement is 62 years of age. He is 10th Pass and Ex-serviceman, but he has not produced any documentary proof of his age, education and service.
3. Candidate Sh. Tarsem Lal s/o Gurdas Ram is 44 years of age. He is matriculate. He is running a Karyana Shop.
4. Candidate Sh. Santa Singh s/o S. Munshi Ram as per his statement is 60 years of age and 6th pass but he has not attached any documentary proof in this regard.

I have considered the comparative of all the candidates. Candidate Sh. Balwinder Singh s/o Sh. Dalip Singh is young, mature and better qualified. His name is duly recommended by Tehsildar Garhshankar and Sub Divisional Magistrate, Garhshankar, hence he is preferred and appointed as SC Lambardar of village Chak Mallan Tehsil Garhshankar, Distt. Hoshiarpur in place of deceased S.C. Lambardar Sh. Mehnga Singh.”

(3) Feeling aggrieved, respondent No.4 herein and Gurbax Ram preferred appeals before the Divisional Commissioner, Jalandhar. Learned Divisional Commissioner vide order dated 21.12.2005 dismissed the appeals filed by respondent No.4 herein and Gurbax Ram. Thereafter, respondent No.4 preferred a revision before the Financial Commissioner/Appeals-II, Punjab. Learned Financial Commissioner having observed that petitioner herein (respondent therein) is running PCO and is an LIC agent and apart from this is running a school in Jandoli, so he will not be readily available to the villagers, allowed the revision filed by respondent No.4 herein setting aside the order passed by Collector and Divisional Commissioner and was further pleased to appoint respondent No.4 Lambardar of the village.

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

(5) Learned counsel for the petitioner, while placing reliance on Annexure P-6, has vehemently argued that LIC agency of the petitioner was terminated w.e.f. 15.2.2001, therefore, petitioner was not working for LIC when post of Lambardar fell vacant and he was appointed Lambardar by the Collector vide order dated 4.11.2004. Learned counsel for the petitioner, while placing reliance on Annexure P-7, has argued that petitioner is not running any school rather he has let out his building to the school, which is not being run by the petitioner, but by the lessee of the building. Learned counsel has further argued that running a PCO in the village is no disqualification for the appointment of the Lambardar. He states that a candidate seeking appointment as Lambardar cannot be expected to be unemployed youth or a small farmer.

(6) Learned counsel for respondent No.4 could not dispute Annexures P-6 and P-7.

(7) Hon'ble Apex Court in the matter of **Mahavir Singh versus Khiali Ram and others (1)**, has held as under: -

“21. It is, therefore, not a case where the finding of the Collector can be said to be perverse. It has also not been established that the said statutory authority while taking a decision failed to take into consideration the relevant factors or based its decision on extraneous considerations or on irrelevant factors not germane therefore.

22. *In Dalpat Abasaheb Solunke v. B.S. Mahajan this Court held :*

“12. It will thus appear that apart from the fact that the High Court has rolled the cases of the two appointees in one, though their appointments are not assailable on the same grounds, the court has also found it necessary to sit in appeal over the decision of the Selection Committee and to embark upon deciding the relative merits of the candidates. It is needless to emphasise that it is not the function of the court to hear appeals over the decisions of the Selection Committees and to scrutinize the relative merits of the candidates. Whether a candidate is fit for a particular post or not has to be decided by the duly constituted Selection committee which has the expertise on the subject. The court has no such expertise. The decision of the Selection Committee can be interfered with only on limited grounds, such as illegality or patent material irregularity in the constitution of the Committee or its procedure vitiating the selection, or proved mala fides affecting the selection, etc. It is not disputed that in the present case the University had constituted the Committee in due compliance with the relevant statutes. The Committee consisted of experts and it selected the candidates after going through all the relevant

(1) (2009) 3 SCC 439

material before it. In sitting in appeal over the selection so made and in setting it aside on the ground of the so-called comparative merits of the candidates as assessed by the court, the High Court sent wrong and exceeded its jurisdiction.”

(8) From the dictum of the Hon'ble Apex Court, it is thus clear that choice of the Collector in the matter of appointment of Lambardar should not lightly be interfered by the higher authorities or by this Court. The choice of the Collector can only be interfered with when higher authorities or this Court find that Collector has been misled by placing irrelevant material or Collector has failed to notice important material/evidence which would have resulted in different opinion or where opinion of the Collector is outcome of extraneous considerations.

(9) Undisputedly before the Collector, respondent No.4 never raised the points that petitioner is LIC agent and is running a school. Had these points been raised before the Collector, petitioner could have produced before the Collector Annexures P-6 and P-7 that his LIC agency was terminated way back in 2001 and he himself is not running the school rather school is being run in his building by the lessee. In the present case it seems that learned Financial Commissioner in revision has accepted new points and has permitted respondent No.4 to raise those points, which were never raised before the Collector as well as before the Divisional Commissioner.

(10) Even otherwise, from the perusal of Annexures P-6 and P-7, I am satisfied that opinion of the Collector was perfectly valid and justified and interference by Financial Commissioner was uncalled for.

(11) Now question comes as to whether running a PCO in the village by the candidate is disqualification for the post of Lambardar? or as to whether candidate for the post of Lambardar should be unemployed or merely engaged in the agriculture activity?

(12) This Court in the case of *Amarjit Kaur vs. Financial Commissioner, CWP No.6665 of 2010* and in the case of *Sukhchain Singh vs. Financial Commissioner, CWP No.782 of 2010* decided on **29.7.2011** has held that candidate for the post of Lambardar cannot be expected to be unemployed or merely engaged in agriculture activities.

(13) In the opinion of this Court, running a PCO in the village itself does not mean that petitioner shall not be available in the village to perform duties of Lambardar. Neither having PCO nor having small shop in the village should be construed as disqualification for the post of Lambardar if candidate is otherwise found suitable for the post.

(14) No other point is raised.

(15) In view of the above, order impugned cannot be sustained.

(16) Petition is allowed. Order passed by learned Financial Commissioner is set aside and of Collector dated 4.11.2004 is restored.

M. JAIN

Before Alok Singh, J.

AMARJIT KAUR,—Petitioner

versus

**FINANCIAL COMMISSIONER(COOP), PUNJAB
& OTHERS,—Respondents**

CWP No.6665 of 2010

29th July, 2011

Constitution of India, 1950 -Art. 226/227 - Appointment of Lambardar -Appointment challenged before Divisional Commissioner who set aside her appointment on ground that she is running a School and hence will not be readily available to villagers - Revision petition against order also dismissed by Financial Commissioner.

Held, That Lambardar cannot be expected to be an unemployed or merely engaged in agricultural activities. Merely because petitioner is running a school at Talwara, would not mean that she will not be available in the village to perform duties of Lambardar. Petitioner has given sufficient explanation that she has engaged several teachers and staff in the school to look after the management, other jobs and teaching activities, therefore, presence of the petitioner in the school regularly is not required, which was wrongly disbelieved by the learned Commissioner. Merely because,