

(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,

Lambardar is running a school in the nearby city, cannot be a basis to create doubt that in future she would not be available in the village to discharge duties of Lambardar.

(Para 4)

Further held, that if other qualities or qualifications of the candidate are appealing and he is permanent resident of the village and ordinarily residing in the same village, his candidature should not be refused solely on the ground he is engaged in some commercial activities near the village to earn his livelihood.

(Para 5)

Further held, That neither Divisional Commissioner nor Financial Commissioner had recorded any finding that the Collector has over-looked any important material, which would have resulted in the different opinion or action of the Collector is out of extraneous consideration or Collector was misled by placing irrelevant record before him, therefore, order of the Collector ought not to have been disturbed by the authorities below. In the opinion of this Court, Divisional Commissioner, as well as, Financial Commissioner, were not well within their jurisdiction while disturbing the opinion/decision of the Collector appointing the petitioner as Lambardar.

(Para 8)

Harsh Bunger, Advocate, *for the petitioner*.

Jaswinder Singh, D.A.G., Punjab, for respondent Nos. 1 to 3.

Puneeta Sethi, Advocate, for respondent No.4.

ALOK SINGH, J.

(1) Petitioner has invoked extra ordinary / supervisory jurisdiction of this Court under Articles 226/227 of the Constitution of India, assailing impugned order dated 27.11.2009 passed by Financial Commissioner (respondent No.1), as well as order dated 28.08.2007 passed by the Commissioner, Jalandhar Division, Jalandhar (respondent No.2).

(2) Petitioner was appointed Lambardar by the Collector, Kapurthala, vide order dated 06.12.2006, however, order of the Collector was challenged in an appeal before the Commissioner by respondent No.4 herein. The learned Commissioner having held that present petitioner (respondent therein) is running a school at Talwara, therefore, her availability in village Rajpur, to perform the duties of Lambardar seems to be doubtful,

while availability of the candidate in the village is a paramount consideration. Learned Financial Commissioner also agreed with the Commissioner, Jalandhar Division and dismissed the revision filed by the present petitioner.

(3) The only question involved in the present petition is, as to whether a Lambardar is expected to be unemployed or merely engaged in agricultural activities?

(4) In the opinion of this Court, 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, Lambardar is running a school in the nearby city, cannot be a basis to create doubt that in future she would not be available in the village to discharge duties of Lambardar.

(5) In the opinion of this Court if other qualities or qualifications of the candidate are appealing and he is permanent resident of the village and ordinarily residing in the same village, his candidature should not be refused solely on the ground he is engaged in some commercial activities near the village to earn his livelihood.

(6) Hon'ble Apex Court in the matter of **Mahavir Singh versus Khiali Ram and others (1)**, in paragraphs No. 20 and 21 has held as under :-

“20. The High Court while exercising its jurisdiction under Article 226 of the Constitution of India is basically concerned with the correctness of the decision making process and not the merit of the decision. It has not been found by the High Court that Collector in expressing his opinion as regards comparative merit of appellant vis-à-vis respondent No.1 committed an error in his decision making process. The principles of natural justice have been complied with. Procedure laid down in the Rules had also been complied

(1) 2009(3) SCC 439

with. It is also not correct to say, as has been contended by Mr. Mahajan that the Collector had not taken into consideration the services rendered by the respondent No.1 to the State. He did acknowledge that the respondent No.1 had rendered the services to the State as a member of the Armed Forces. The Collector also took into consideration that the views of the respectable of the village were in favour of appellant as also the fact that he had participated in the collection work of the village and helped the government officials at the time of their visit. He furthermore took into consideration the fact that the Naib Tehsildar, Hansi had also recommended his name. Even the Circle Revenue Officer had recommended therefor.

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 therefor.”*

(7) In view of the dictum of the Apex Court, decision of the Collector can only be upset when higher authorities or this Court finds that Collector has been misled by irrelevant factors or has escaped any important material while considering the candidature or action of the Collector seems to be out of extraneous consideration.

(8) Neither Divisional Commissioner nor Financial Commissioner had recorded any finding that the Collector has over-looked any important material, which would have resulted in the different opinion or action of the Collector is out of extraneous consideration or Collector was misled by placing irrelevant record before him, therefore, order of the Collector ought not to have been disturbed by the authorities below. In the opinion of this Court, Divisional Commissioner, as well as, Financial Commissioner, were not well within their jurisdiction while disturbing the opinion/decision of the Collector appointing the petitioner as Lambardar.

(9) Present petition is allowed. Orders impugned are set aside, order of the Collector dated 06.12.2006 is restored.

M. JAIN