

Before S. S. Saron, J.

AMANDEEP SINGH,—Petitioner

versus

STATE OF PUNJAB AND OTHERS,—Respondents

CWP No. 1261 of 2008

10th August, 2009

*Constitution of India, 1950—Arts. 14,15,16 and 226/227—
Punjab Land Revenue Act, 1887—S. 16—Punjab Land Revenue
Rules,—Rl. 15 and 17—Selection to the post of Lamberdar—
Financial Commissioner not to interfere in the order of the Revenue
authorities, if orders of the revenue authorities below him are well
thoughtout—Hereditary claim under rule 15 of the Punjab Land
Revenue Rules to be considered—Writ petition allowed.*

Held, that in respect of powers of revision, the Financial Commissioner is to examine the matter on the basis of record and ascertain whether there has been any error of jurisdiction in the passing of the order. The Financial Commissioner is normally not to interfere if the orders of the revenue authorities below him are well thought out and well considered. Interference with the orders of the lower authorities is warranted if the findings of fact are perverse or there is non-appreciation or non-consideration of material on record. Simply because another view on the basis of evidence and facts is possible is no ground for the learned Financial Commissioner to interfere with the reasons recorded and conclusions consistently reached at by the lower revenue authorities.

(Para 7)

Further held—that no doubt, an appointment cannot be based on hereditary claim but nevertheless it is to be given weightage. Rule 15 of the Punjab Land Revenue Rules, provides for matter to be considered in the first appointment.

(Para 9)

Further held—that the lower revenue authorities were well aware that the petitioner was working in a Government office and yet have found

him to be more suitable was not liable to be interfered with by the learned Financial Commissioner. In the circumstances, the learned Financial Commissioner gravely exceeded his revisional jurisdiction, besides, erred in setting aside the concurrent findings and conclusions recorded by the learned lower revenue authorities in appointing the petitioner as Lambardar.

(Para 10)

J.S. Thind. Advocate. *for the petitioner.*

H.S. Gill. Deputy Advocate General, Punjab. *for respondents No. 1 to 4.*

S.S. Ranghi. Advocate *for respondent No. 5.*

S.S. SARON, J.

(1) The petitioner aggrieved against the order dated 11th January, 2008 (Annexure-P.11) passed by the learned Financial Commissioner (Revenue), Punjab Chandigarh (respondent No. 2) has filed the present petition seeking quashing of the said order.

(2) Gurbax Singh, father of the petitioner was previous Lambardar of Village Burj Sidhwan. On his death on 29th January, 2004 the process was initiated for filling the said vacancy of Lambardar. A proclamation was made in the village inviting applications for consideration for appointment as Lambardar. Seven applications were received which included those of Amandeep Singh (petitioner) and Sukhchain Singh (respondent No. 5). The Naib Tehsildar-cum-Assistant Collector 2nd Grade, Malout in terms of his order dated 17th June, 2004 (Annexure-P.3) found the petitioner suitable for appointment as Lambardar. It was observed that his father late Shri Gurbax Singh was Lambardar of the village and, therefore, he was conversant with the work of Lambardari. Besides, he was working as a Clerk in Government High School, Burj Sidhwan. He was an educated person and had produced his Matriculation certificate. The members of the Panchayat of Burj Sidhwan in terms of their recommendations (Annexure-P.4) also found the petitioner to be more suitable. The Tehsildar, Malout,—*vide* his report dated 24th June, 2004 also recommended the name of the petitioner for appointment as Lambardar. The Assistant Collector Grade I-cum-SDM, Malout,—*vide* order dated 5th July, 2004 considered the comparative

merit of the petitioner and respondent No. 5. It was noticed that petitioner has 15 Killas (Acres) of Land and Sukhchain Singh (respondent No. 5) had no land in his own name. Both were working at that time. The petitioner was working as Clerk in Government High School in the village whereas Sukhchain Singh (respondent No. 5) was working on private basis at Malout. Gurbax Singh, father of the petitioner had worked as Lambardar from 1977 to 2004 meaning thereby that the petitioner was from the Lambardari family. It was also observed that there was no impediment for a government employee for being appointed. Balbir Singh, father of Sukhchain Singh (respondent No. 5) had deposed an affidavit (Annexure-P.7) in which he stated that Amandeep Singh (Petitioner) had helped his father in the Lambardari work and that he is an educated and a mature person. He, therefore, withdrew his application for Lambardari in favour of the petitioner. The District Collector, Muktsar.—*vide* order dated 30th September, 2004 (Annexure-P.8) considered the comparative merit of both the candidates. It was observed that both the candidates were working. Amandeep Singh (petitioner) was working as Clerk in Government High School. Sukhchain Singh (respondent No. 5) was working in a private concern at Malout. The petitioner has 15 Killas of land whereas (respondent No. 5) had no land of his own and he became owner after decision of a case on transfer basis. Therefore, it was observed that the petitioner was more eligible than the other candidate i.e. respondent No. 5. Besides, Rules 15 and 17 of the Punjab Land Revenue Rules were not an impediment for a Government employee to be appointed as Lambardar. On becoming a defaulter, recovery could be easily effected from such a person being a government employee. Besides, the petitioner was son of the deceased Lambardar and was well conversant with the Lambardari work and his name had been recommended by all the lower revenue authorities. Accepting the report, the District Collector, Muktsar.—*vide* order dated 30th September, 2004 (Annexure-P.8) appointed the petitioner as Lambardar. Sukhchain Singh (respondent No. 5) aggrieved against the said order of the District Collector preferred an appeal and the Commissioner, Ferozepur Division Ferozepur,—*vide* order dated 22nd December, 2005 (Annexure-P.9) dismissed the same. Sanad Nambardari dated 18th January, 2005 (Annexure-P.10) was issued in favour of the petitioner. Sukhchain Singh (respondent No. 5) filed a revision petition before the Financial Commissioner (Revenue), Punjab. The learned Financial Commissioner came to the conclusion that though there

was no bar to the appointment of a government employee as a Lambardar, however, in the present case the petitioner was not the right choice for appointment as Lambardar because he was occupying a transferable government post and could be transferred at any time from the village which could cause inconvenience to the residents of village and the revenue officers to whom he was supposed to assist as Lambardar. It was observed that his duty is from 9.00 a.m. to 5.00 p.m. on all working days and as such he could not discharge his duties as Lambardar during the said period. On the other hand Sukhchain Singh (respondent No. 5) was a youngman of 31 years and energetic and more educated and as stated by him (Sukhchain Singh-respondent No. 5) he was not employed in any private firm at that time and in merit he had an edge over the petitioner. It was also observed that the petitioner had been given the benefit of hereditary claim whereas it is settled law that hereditary claim is to be given weightage only when both the candidates are equal in merit. The office of Lambardar, it was observed, was not a hereditary office and son of a Lambardar is not automatically to be appointed as Lambardar in place of his father. It was also observed that the Lambardari is an office and not a reward or gift, nor could it be regarded as a mere honour or decoration. Accordingly, the revision petition was accepted and the orders of the lower revenue authorities were set aside. Aggrieved against the same the petitioner has filed the present petition.

(3) Learned counsel for the petitioner has submitted that the learned Financial Commissioner gravely erred in setting aside the well merited and considered orders passed by the lower revenue authorities. It is submitted that there is no bar to the appointment of a government employee as Lambardar and all the revenue authorities including the District Collector and the Commissioner having held the petitioner to be more suitable, the orders appointing him as Lambardar are liable to be sustained and upheld. A pointed reference has been made to the affidavit (Annexure-P.7) of Balbir Singh, who is the father of respondent No. 5 in which he (Balbir Singh) has given up his claim in favour of the petitioner.

(4) In response, learned counsel for respondent No. 5 has submitted that the learned Financial Commissioner has passed a just and reasoned order and the same is liable to be upheld. It is submitted that the

petitioner is working on a transferable post and, therefore, he would not be able to look after the work of Lambardari. It is further submitted that at present he is posted at Ferozepur. A reference has been made to the order dated 27th February, 2009 (Annexure-P.12) in terms of which the petitioner has been suspended and his headquarters has been fixed at office of District Education Officer (Senior Secondary), Ferozepur.

(5) Learned counsel for the petitioner has further submitted that order dated 27th February, 2009 (Annexure-P.12) has been placed on record by the petitioner by way of replication. It is submitted that the said order has been passed without basis and respondent No. 5 has political links and, therefore, he has managed to get the petitioner suspended.

(6) I have given my thoughtful consideration to the contentions of the learned counsel for the parties. As has already been noticed, the revenue authorities other than the Financial Commissioner i.e. the Naib Tehsildar-cum-Assistant Collector 2nd Grade, Tehsildar-cum-Assistant Collector 2nd Grade, SDM-cum-Assistant Collector 1st Grade, the District Collector and the Commissioner, Ferozepur Division, Ferozepur have found the petitioner to be a more suitable candidate for appointment as Lambardar. Besides, the entire members of Gram Panchayat of Burj Sidhwan have given a certificate (Annexure-P.4) which is to the effect that the petitioner be appointed as Lambardar. Balbir Singh, the father of Sukhchain Singh (respondent No. 5) has deposed an affidavit (Annexure-P.7) withdrawing his candidature for appointment as Lambardar in favour of the petitioner.

(7) This Court in exercise of its supervisory writ jurisdiction does not sit in appeal over the findings reached at by the revenue authorities. It may, however, be noticed that the powers of the Financial Commissioner (respondent No. 1) are that of a revision under Section 16 of the Punjab Land Revenue Act, 1887. In respect of powers of revision, the Financial Commissioner is to examine the matter on the basis of record and ascertain whether there has been any error of jurisdiction in the passing of the order. The Financial Commissioner is normally not to interfere if the orders of the revenue authorities below him are well thought out and well considered.

Interference with the orders of the lower authorities is warranted if the findings of fact are perverse or there is non-appreciation or non-consideration of material on record. Simply because another view on the basis of evidence and facts is possible is no ground for the learned Financial Commissioner to interfere with the reasons recorded and conclusions consistently reached at by the lower revenue authorities.

(8) In the present case all the revenue authorities recorded concurrent findings of facts based on record that the petitioner is a more suitable candidate. At the revisional stage interference is to be minimum and that also where it is so warranted in the facts and circumstances of the case. Normally, in the matter of Lambardari it has been held that the choice of District Collector is not to be interfered with or lightly undone, until and unless there is a gross irregularity, perversity or patent error which would warrant the order that has been passed to be nullified. No such grave irregularity, perversity or patent error has been noticed in the conclusion reached at by the District Collector in appointing the petitioner as Lambardar. Besides, the order appointing the petitioner as Lambardar has also been upheld by the Commissioner.

(9) The revenue authorities noticed that the petitioner is son of the deceased Lambardar. No doubt, an appointment cannot be based on hereditary claim but nevertheless it is to be given weightage. Rule 15 of the Punjab Land Revenue Rules, provides for matters to be considered in the first appointment. 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.”

Keeping in view the parameters that have been provided, the claim of the petitioner having been held to be more meritorious the same was not liable to be interfered with by the learned Financial Commissioner.

(10) Learned counsel for respondent No. 5 has, however, submitted that the petitioner holds a transferable post and, therefore, he would not be able to discharge the functions of Lambardar. In this respect it may be noticed that at the time of considerations, the respondent No. 5 himself was doing a private job. At that stage the revenue authorities had found the petitioner to be more suitable. In **Amarjeet Singh versus Financial Commissioner Appeals Punjab and others (1)** a Division Bench of this Court considered a case where the petitioner therein, who was employed in the Punjab State Electricity Board was not appointed as a Lambardar. It was observed that the petitioner who holds a transferable post and can be transferred and the competent authorities knowing the factual position could have taken the view that the petitioner should not be appointed as Lambardar. The claim of the petitioner was duly considered by the Collector, the Commissioner and the Financial Commissioner in the said case and it was held that the orders do not violate any provision of law and no ground for interference was made out. Therefore, it was a case where a person who was working on a transferable post was not appointed. It was, however, observed by the Division Bench that the competent authority knowing the factual position that the person serving with the Electricity Department should not be appointed as Lambardar. In the present case both the candidates i.e. the petitioner and respondent No. 5 were working and the petitioner was found more suitable. In **Karnail Singh versus The State of Haryana and others**, this Court held that Rule 17

(1) 2002 (2) PLJ 456 (P&H)

(2) 1973 PLJ 676 (DB)(P&H)

(ii) of the Punjab Land Revenue Rules may seem to attach too much importance to the claim of heredity and the selection of the successor is sought to be confined to a male lineal descendant or the nearest collateral. Rule 17 (ii) may seem to make discrimination or distinction on the ground of heredity or family connection. The said rule, it was observed, may, therefore, appear to be violative of the fundamental rights guaranteed under Articles 14, 15 and 16 of the Constitution. There is no dispute with the said proposition. It may, however, be noticed that the said rule was considered in the context of Rule 17 (ii) which relates the matters to be considered in appointment of successors. The present case is of one under Rule 15 where hereditary claim is one of the factors among others to be taken into account while considering the respective claims of the candidates for first appointment to the post of Lambardar and is not to be given paramount importance as is given in Rule 17 (ii). In respect of the matters to be considered for first appointment as Lambardar, hereditary claim is to be given weightage and not paramount importance as is given in terms of Rule 17 (ii). Therefore, the ratio of the judgment in **Karnail Singh's case** (*supra*) is inapplicable. It may be noticed that a Division Bench of this Court in **Sukhminder Singh versus Financial Commissioner (3)** held that appointment of Government servant cannot be ignored on account of being a Government servant if he is otherwise eligible and suitable for the post of Lambardar. Therefore, the fact that the lower revenue authorities were well aware that the petitioner was working in a Government office and yet have found him to be more suitable was not liable to be interfered with by the learned Financial Commissioner. In the circumstances, the learned Financial Commissioner gravely exceeded his revisional jurisdiction, besides, erred in setting aside the concurrent findings and conclusions recorded by the learned lower revenue authorities in appointing the petitioner as Lambardar.

(11) Consequently, the writ petition is allowed and the impugned order dated 11th January, 2008 (Annexure-P.II) is set aside and quashed.

A. Agg.