

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

LPA No. 881 of 2013 (O & M)

Date of decision : 30.9.2013

AshfakApplicant-Appellant

Vs.

The Financial Commissioner, Haryana and othersRespondents

CORAM: Hon'ble Mr. Justice Jasbir Singh
Hon'ble Mr. Justice G.S. Sandhawalia

Present:- Mr. R.S. Chauhan, Advocate, for the applicant-appellant
Mr. D. Khanna, Addl. AG, Haryana
Mr. Tejinder K. Sodhi, Advocate, for the respondents

Jasbir Singh, J. (Oral)

This appeal has been filed against an order dated 20.2.2013, passed by a learned Single Judge, vide which CWP No. 10585 of 2011, filed by the appellant, was dismissed.

Dispute in this appeal pertains to appointment against the post of *Lambardar* in Village Ghaseda. On accrual of post, applications were invited. After getting report from the Field Revenue Staff, before the Collector, the appellant and respondent No.4 emerged as the contesting candidates. Vide order dated 31.12.2009, the Collector appointed the appellant as *Lambardar* in the village. It was stated that on comparison of the merits, the appellant was found meritorious as compared to respondent No.4

Respondent No.4 went in appeal, which was allowed by the Commissioner vide order dated 13.7.2010. Relevant portion of the order

reads thus :-

“I have considered the arguments advanced by the Ld. Counsel and have also gone through the record on file carefully. The vacancy of lambardar arose due to the death of Gangadhar Lambardar of Village Ghaseda. There are two villages namely Nakhrola and Ellahabad attached with village Ghaseda. There are four posts of Lambardar in the village. It is admitted by both the parties that one Lambardar belongs to Nakhrola village and the other belongs to Ellahabad village. These villages are at a distance from the main abadi of village Ghaseda. The Ld. Collector has appointed the respondent Ashfak who belongs to Nakhrola village. The Ld. Collector has ignored the claim of the appellant (who is the son of deceased Lambardar). The appellant also belongs to main village Ghaseda which is unrepresented so far as the Lambardar is concerned after the death of Gangadhar Lambardar. The Ld. Collector should have kept in mind the convenience of habitants of main village Ghaseda. Moreover, the Ld. Collector has ignored the hereditary claim of the appellant. The appellant is literate and is 4th class pass. As per provisions contained in Rule 15 of the Punjab Land Revenue Rules, a candidate should be literate preferably middle pass for the appointment of Lambardar.

In view of the above, the order of Ld. Collector is not based on merits and there is a material irregularity as the candidate from the main village Ghaseda has been ignored and a person, who belongs to Nakhrola village, which is at a distance of about 2 KMs as per statement of the appellant, has been preferred. Moreover, a Lambardar has already been appointed who belongs to village Nakhrola.”

It was noted that Revenue Estate of Village Ghaseda consist of three villages i.e. Ghaseda, Nakhrola and Ellahabad. It was further

noticed that previous *Lambardar*, on account of whose death post had accrued, was resident of Village Ghaseda whereas, as per admitted facts on record, the appellant is resident of Village Nakhrola. It was also noticed that, may be part of same Revenue Estate, but all the Sub-Divisions of the village Ghaseda are situated at a distance (about 2 Kilometers) from each other.

Order passed by the Collector was reversed and matter was remitted to decide it afresh.

The appellant went in revision, which was dismissed by the Financial Commissioner on 4.5.2011. The Financial Commissioner also noticed that Village Nakhrola and Ghaseda are situated two Kilometers away from each other. It was also observed that a candidate from Village Ghaseda needs to be appointed as *Lambardar* in the village.

The appellant came to this Court by filing CWP No. 10585 of 2011, which was dismissed on 20.2.2013 by the learned Single Judge.

Relevant portion of the order reads thus :-

“It is the own pleaded case of the petitioner that he is resident of village Nakhrola. It is also admitted position on record that earlier *Lambardar* Late Sh. Gangadhar was resident of village Ghaseda. In the present case, the Gram Panchayat was stated to be comprising three villages namely Ghaseda, Nakhrola and Ellahabad. The villages of the petitioner and respondent No.4 are at a distance of about 2 Kms. If this is the undisputed factual position, then the Commissioner as well as the Financial Commissioner have committed no error of law while passing their respective impugned orders. Having said that, this Court feels no hesitation to conclude that the writ petition is misconceived and without any substance.

Once it is admitted that the earlier Lambardar was the resident of village Ghaseda and the present post of Lambardar has fallen vacant on account of his death, then it goes without saying that post was to be filled up amongst the residents of village Ghaseda, to which this post belongs. At the most, all the three villages can be said to be representing three patties (parts of same revenue estate). Further, it has also come on record that another Lambardar was already there in village Nakhrola. If the order passed by the District Collector is upheld, there would be two Lambardars from village Nakhrola and none would be representing village Ghaseda.

In this view of the matter, petitioner was not eligible to be considered for the post of Lambardar, which had admittedly fallen vacant on account of death of the earlier Lambardar Gangadhar, who was resident of village Ghaseda, whereas the petitioner is resident of village Nakhrola. Thus, the impugned orders passed by the Commissioner and Financial Commissioner deserve to be upheld.

The next question that falls for consideration of this Court is that in the absence of the petitioner, respondent No.4 would be the only candidate and there would be no contest. In this view of the given fact situation of the case, the only workable solution is that the District Collector, Palwal, is directed to initiate de novo proceedings inviting fresh applications from eligible and interested candidates, with a view to fill up the post of Lambardar belonging to village Ghaseda, by passing an appropriate order, in accordance with law. In this regard, there is no serious opposition either from learned counsel for the petitioner or from learned counsel for respondent No.4.

No other argument was raised.”

Orders passed by the Commissioner and the Financial Commissioner were upheld with a modification, appointment of

respondent No.4 as *Lambardar* was also set aside and it was further directed that let the proceedings be initiated de-novo for appointment of *Lambardar* in village Ghaseda. A specific finding was given that as the previous *Lambardar* was resident of Village Ghaseda, a candidate be appointed from that village only.

At the time of hearing, it is only stated that as the Revenue Estate is one, sub-division may be different, resident of Nakhrola can also be appointed as *Lambardar* in the village.

We have gone through the orders passed and are satisfied that on account of sub-divisions in the Revenue Estate, it will be in the interest of justice that the person from the village, to which deceased *Lambardar* belonged, be appointed as *Lambardar*.

If no person is opting to apply from Village Ghaseda, then candidature of others including the appellant and respondent No.4 can be considered.

Accordingly, the appeal stands disposed of.

(Jasbir Singh)
Judge

(G.S. Sandhawalia)
Judge

30.9.2013
Ashwani