

2025:PHHC:033251



**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP-26495-2022 (O&M)
Date of Decision: 07.03.2025

ANKUSH

...Petitioner

Versus

FINANCIAL COMMISSIONER REVENUE, PUNJAB AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Munish Puri, Advocate
and Mr. Harsh Thakur, Advocate
for the petitioner.

Mr. Nirmaljit Singh Diwana, Sr. D.A.G., Punjab.

Mr. S.K. Chaudhary, Advocate
for respondent No.2.

HARSH BUNGER, J. (ORAL)

Prayer in the present petition, filed under Article 226 of the Constitution of India, is for issuance of a writ in the nature of *certiorari* for setting aside the order dated 06.12.2021 (Annexure P-1) passed by the learned Financial Commissioner, Punjab.

A further prayer has been made for restoring the order dated 07.12.2017 (Annexure P-3) passed by learned Collector, Pathankot as well as order dated 06.06.2018 (Annexure P-2) passed by the learned Commissioner, Jalandhar Division, Jalandhar; whereby, the petitioner was appointed as the *Lambardar* of Village Bhoa, Tehsil and District Pathankot.

2. Briefly, on demise of Sh. Des Raj, previous *lambardar* of Village Bhoa, Tehsil and District Pathankot, proceedings were initiated for filling up the vacancy. In pursuance of the proclamation made in the village, three candidates, including the petitioner-Ankush and respondent No.2-Kamal Kumar Tarnaich applied for the afore-said post. The Tehsildar, Pathankot as well as the Sub-Divisional Magistrate, Pathankot recommended the candidature of respondent No.2-Kamal Kumar Tarnaich for appointment to the afore-said vacancy and the matter was placed before the learned Collector, Pathankot.

2.1 The learned Collector, Pathankot, vide order dated 07.12.2017 (Annexure P-3) appointed the present petitioner as the *Lambardar* of Village Bhoa.

2.2 Feeling aggrieved against the Collector's order, respondent No.2-Kamal Kumar Tarnaich preferred an appeal before the learned Commissioner (Appeals), Jalandhar, which came to be dismissed vide order dated 06.06.2018 (Annexure P-2).

2.3 Still aggrieved, respondent No.2-Kamal Kumar Tarnaich preferred a revision petition (***ROR-213-2019***) before the learned Financial Commissioner, Punjab, which came to be allowed vide order dated 06.12.2021 (Annexure P-1); whereby, the orders passed by the learned Collector as well as learned Commissioner, were set aside and respondent No.2-Kamal Kumar Tarnaich has been appointed as the *Lambardar*.

2.4 Hence, the present writ petition.

3. Heard.

4. In the present case, although the petitioner was appointed as the *Lambardar* by the learned Collector, Pathankot, which was further affirmed

by the learned Commissioner (Appeals) Jalandhar; however, the learned Financial Commissioner has set aside the orders passed by the learned Collector, Pathankot and the learned Commissioner (Appeals) and appointed respondent No.2-Kamal Kumar Tarnaich, as the *Lambardar*, by observing as under :-

“6. I have heard counsels for both the parties and have given thoughtful consideration to the written arguments and evidences submitted by them in support of their case. On perusal of the case and relevant orders of the lower courts, I find that after the death of Sh. Des Raj, previous lambardar, a post of lambardar in village Bhoa, Tehsil Pathankot, District Pathankot fell vacant. In response to the proclamation, three persons including the present petitioner and respondent applied for the post of lambardar. Vide report dated 28.04.2017, the SDM, Pathankot recommended the name of petitioner Kamal Kumar Tarnaich for the post of lambardar but the District Collector Pathankot vide order dated 07.12.2017 appointed the respondent as lambardar of village Bhoa, Tehsil Pathankot, District Pathankot on the ground of hereditary claim only as provided under Rule 15 of the Punjab Land Revenue Rules, 1909. As per Rule 15 of the Punjab Land Revenue Rules, 1908 (applicable to the Punjab), at the time of appointment of the Lambardar, regard shall be had to various factors including the hereditary claim. Mere fact that the respondent is grandson of the deceased Lambardar of the village is no ground to consider the candidature of the appellant in preference to other facts of the case. It is settled law that if more suitable and meritorious candidate is available, he should be appointed as Lambardar without giving preference to the candidate of having hereditary claim. The Collector has to look into the naksha Lambardari

prepared by the subordinate authorities and then take a decision about the suitability of the person who can perform the job of the Lambardar to the satisfaction of the revenue authorities and the public at large to whom he has to serve. In this case, the SDM, Pathankot vide report dated 28.04.2017 had also recommended the name of the petitioner Kamal Kumar Tarnaich but the District Collector vide order dated 07.12.2017 appointed the respondent as lambardar without giving any reason for disagreement with report dated 28.04.2017. If reports of the revenue officers are to be discarded without assigning any reason then the entire exercise of getting reports from the revenue officers becomes meaningless. In the present case, after evaluating the comparative merits and demerits of both the candidates, I find that the petitioner is most suitable candidate for the post of lambardar because petitioner is 45 years and the respondent is 24 years old thus, the petitioner is matured, physically fit to discharge the duties of Lambardar. The petitioner is also a Graduate and has undergone Dairy farming Course, Specialized Bee Keeping Course and Mushroom Training Course held by the Punjab Government Departments. Further, the petitioner is holder of certificate from GNDU, Amritsar in Hiking and Trekking. He attended Hiking, Trekking and adventure camp (TANC) of Ministry of Youth Affairs and Sports, Govt. of India, Basic Mountaineering Course awarded with Grade "A" of Himalayan Mountaineering Institute, Darjeeling, Advanced Mountaineering Course awarded with Grade "A" of Directorate of Mountaineering and Allied Sports, Manali. Moreover, there is nothing on record against the petitioner and keeping in view of his suitability for the post of lambardar, the SDM vide his report dated 28.04.2017 had also recommended his name. Therefore, in view of the decision of Sombir

Versus Financial Commissioner, Haryana reported as 2009(1) RCR (Civil) 280, wherein it has been held that no doubt choice of the competent authority in the appointment of lambardar should not ordinarily be interfered with but if from the facts of the case it is shown that the order was perverse then the appellate and revisional authorities cannot shut their eyes to the facts of the case, I find that the District Collector appointed the respondent as lambardar by giving the benefit of hereditary claim which has been struck down by the Hon'ble Courts. Thus, the order dated 07.12.2017, passed by the District Collector, Pathankot suffers from illegality and perversity and liable to be set aside.

7. Resultantly, I accept the present revision petition and set aside the orders dated 06.06.2018 passed by Commissioner, Jalandhar Division, Jalandhar and the order dated 07.12.2017 passed by the District Collector, Pathankot. The petitioner is appointed as lambardar of the village Bhoa, Tehsil Pathankot, District Pathankot. 'Sanad Lambardari' be issued in favour of the petitioner. Copy of this order communicated to the courts below. File be consigned to the record room."

5. A perusal of the above extracted order passed by the learned Financial Commissioner (Appeals), Punjab would clearly show that the name of respondent No.2 was recommended by both the lower Revenue Officers; however, the learned Collector, Pathankot, while appointing the petitioner as the *Lambardar*, did not record any reason for not agreeing with the recommendations made by the lower Revenue Officers in favour of respondent No.2, which has persuasive value. It is further noticed that respondent No.2 is a graduate and has also undergone Dairy Farming Course, Specialized Bee Keeping Course and Mushroom Training Course.

Respondent no.2 was also found to be actively involved in Sports. Learned Financial Commissioner has observed that the petitioner herein, was appointed as the *Lambardar*, primarily on account of his hereditary claim, which has already been struck down by this Court, being *ultra vires*. Accordingly, the learned Financial Commissioner appointed respondent No.2 herein as *lambardar* of Village Bhoa, after finding him suitable candidate.

6. Another submission has been made by learned counsel for respondent No.2 that petitioner (Ankush) has gone abroad (New Zealand) in October, 2024 and that too without seeking any permission or informing the learned Collector, Pathankot in that regard. It is further submitted that since the month i.e. October, 2024, petitioner (Ankush) is abroad and has not returned yet; resultantly, he has not performed any *lambardari* work since October, 2024 till date.

7. Learned State counsel has also informed that before going abroad, the petitioner has neither sought permission nor informed the Office of Deputy Commissioner, Pathankot.

8. In view of the afore-said submission raised on behalf of respondent No.2 as well as learned State counsel, the learned counsel for the petitioner was called upon to produce the passport of the petitioner and in response thereto, a photocopy of the passport along with the visa, has been handed over in the Court today, which is taken on record, subject to all just exceptions.

9. A perusal of the photostat copy of the passport of the petitioner would indicate that the petitioner left India on 20.10.2024 for New Zealand, where he arrived on 22.10.2024. It is not disputed by learned counsel for the

petitioner that the petitioner is presently in New Zealand. That apart, the photocopy of the New Zealand visa of the petitioner, reads as under :-

“Application number: WV01114073

Client number : 85862322

6 October 2024

Kia ora Ankush,

New Zealand work visa approval

Application number WV01114073 for a New Zealand Work Visa – Accredited Employer Work Visa has been approved. If this application has been made through an immigration adviser, lawyer or other representative who is exempt from licensing, this entire document must be provided to the applicant.

Work Visa details

Applicant details

Name : Ankush

Date of birth: 23-August-1992

Gender: Male

Passport number: Y6470231

Nationality: India

Client number: 85862322

Visa conditions

The start date of this visa is 07 October 2024.

This visa allows multiple entry – you can enter New Zealand multiple times using this visa.

You must arrive in New Zealand before 07 March 2025.

The last date you may re-enter New Zealand is 24 months after the date of your first arrival in New Zealand.

This visa expires 24 month(s) after the date of your first arrival in New Zealand.

Your job must be full-time, providing at least 30 hours of work each week.

Financial support evidence not required.

Return/onward ticket not required.

Stay subject to grant of entry permission.

The holder may only work as DUTY MANAGER in Waikato for TAJ NEXUS LIMITED.

Must be paid at or above \$ 29.70 per hour.

Must provide evidence of remuneration if requested.

You must leave before visa expiry or face deportation.

May not be placed in a triangular employment arrangement with a controlling third party.”

10. A perusal of the above extracted visa would clearly indicate that the petitioner has gone abroad on work visa and the validity of the said visa

is 24 months. This Court, accordingly, has a reason to believe that the petitioner is not available to the villagers to carry out the duties of the *lambardar*. It is well settled that the availability of the candidate in the village is a very vital consideration for the post of *Lambardar*.

11. Considering the totality of circumstances, I find no reason to interfere in the order passed by the learned Financial Commissioner and the same is, accordingly, upheld. Resultantly, the instant writ petition fails and the same is dismissed.

12. All pending applications (if any) shall also stand closed.

March 07, 2025
gurpreet

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No