

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-21013-2015 (O&M)

Reserved on: 12.12.2024

Pronounced on: 18.01.2025

Subhash Chand

.....Petitioner

Versus

Financial Commissioner, Haryana and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MS. JUSTICE KIRTI SINGH**

Argued by: Mr. Vineet Chaudhary, Advocate
for the petitioner.

Mr. P.P. Chahar, Sr. DAG, Haryana.

SURESHWAR THAKUR, J.

1. The present reference becomes generated from the order pronounced by the learned Single Bench of this Court, on 06.12.2017 upon CWP-21013-2015, wherein, the learned Single Bench of this Court has passed the following order:-

*“(a) whether in case the post of Lambardar is a civil post and his dismissal or removal also attracts the provisions of Article 311 of the Constitution of India which are attracted to the cases of other government servants, as held by the Division Bench of this Court in **Sukhminder Singh’s case (supra)**, and, also the Lambardar is paid remuneration, the said person, who is holding a civil post as Lambardar, can be appointed to another government job/civil post?*

(b) whether a person in the government job can be allowed to work as a Lambardar through a substitute (Sarbrah Lambardar) or a Sarbrah Lambardar is appointed in terms

of Rule 27 of the Rules only to make a stop gap arrangement.”

2. Consequently, under the orders of Hon’ble the Chief Justice, the instant Larger Bench has been constituted.

3. The counsels appearing today before this Court have been heard at length.

4. Before answering the reference (supra), this Court also deems it fit, and appropriate to also formulate and accordingly answer the following issues.

a) that the post of Lambardar is a civil post and thereby the causing of his dismissal or removal therefrom also attracts the provisions of Article 311 of the Constitution of India

b) Furthermore, this Court also declare therein that thereby a Lambardar who occupies a civil post, thus cannot claim eligibility for his being appointed against some other civil post?

5. This Court in CWP-8529-1987, titled as ‘**Sukhminder Singh V. Financial Commissioner**’ reported in **(1992) 102 PLR 73**, has held that a Government servant is fully eligible for appointment as a Lambardar, and he cannot be ignored only on that account if he is otherwise eligible and suitable for that post, relevant paragraph whereof becomes extracted hereinafter.

“3. We do not find any merit in the contention of the learned counsel. To be in the service of the Government cannot be a disqualification for appointment as Lambardar, especially when the post of a Lambardar, is itself a civil post and dismissal or removal therefrom also attracts the provisions of Article 311 of the Constitution of India as the same are attracted in the case of other Government servants. Moreover, the provision for appointment of a Sarbrah Lambardar itself indicates that the actual performance of duties of the office of Lambardar can be done by the person other than the Lambardar

himself, meaning thereby that if a Government servant is appointed as a Lambardar his appointment as Lambardar will not in any way interfere in the discharge of his duties as a Government servant. Therefore, we are in complete agreement with the view taken by the learned Financial Commissioner, appeals that a Government servant is fully eligible for appointment as Lambardar and he cannot be ignored only on that account if he is otherwise eligible and suitable for that post.”

6. The said view taken by the learned Single Bench of this Court became overruled through a verdict rendered by a Division Bench of this Court in LPA-1357-2013, titled as ‘**Devinder Sharma V. Financial Commissioner and others**’, wherein, a view different from the (supra) view became taken. Relevant paragraph thereof becomes extracted hereinafter.

“We have gone through that judgment. The above said judgment was passed in ignorance to the provisions of Rule 20 of the Rules. Rule 20 provides multifarious duties to be performed by a Lambardar. A person who is in permanent government service is supposed to remain out of village at least for 9 to 10 hours in a day. In case of his need, he will not be available.”

7. The above conflict of views, thus has led to the making of the instant reference to this Court, through the makings of orders by Hon’ble the Chief Justice, thereupon the same is required to be answered.

8. Some of the Relevant provisions are reproduced as Under:-

Article 311 of the Constitution of India

311. (1) *No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.*

[(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

[Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:

Provided further that this clause shall not apply—]

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or (c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final.]

Provisions of Punjab Land Revenue Rules 1909

(hereinafter referred to as ‘the Rules of 1909’)

“15. Matters to be considered in first appointments.-- In all first appointments of headman, regard shall be had among other matters to--

(a) his experience as substitute/Sarbarah Lambardar;

(b) extent of property in the estate possessed by the candidate;

(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 done;

(f) services rendered by himself or by his family in the national movements to secure freedom of India.”

Rule16. Dismissal of headmen. - (i) A headman shall be dismissed when -

(a) he is sentenced to imprisonment for one year or upwards or to any heavier sentence ; or

(b) in an estate owned altogether or chiefly by Government he ceases to possess the interest which led to his appointment ; or

(c) in any other estate he ceases to be a land-owner in the estate or sub-division of the estate in respect of which he holds office ; or

(d) he has mortgaged his holding and has delivered possession to mortgagee; but in special cases the Collector may with the Commissioner's sanction retain him in his office under such circumstances, if he can furnish adequate security for the payment of the revenue he has to collect and for the due discharge of his duties; or

(e) his holding has been transferred under section 7 of the Land Revenue Act, or the assessment thereof has been annulled under section 73 of the same Act.

(ii) A headman may be dismissed when -

(a) criminal proceedings which have been taken against him show that he is unfit to be entrusted any longer with the duties of his office ; or

(b) he is seriously embarrassed by debt, or if his unencumbered holding is so small as to disqualify him in the Collector's opinion for the responsibility attached to the office of headman ; or

(c) owing to age or physical or mental incapacity, or absence from the estate, he is unable to discharge the duties of his office ; or

[(d) there is reason to believe that he has taken part in, or concealed illicit distillation, or the smuggling of, cocaine, opium or charas] ;

[(e) he takes part in any unconstitutional agitation against the Government or fails to give his active support to the Government in the maintenance of law and order.]

(f) he neglects to discharge his duties, or is otherwise shown to be incompetent;

"20. Duties of headman. In addition to the duties imposed upon headman by law for any purpose, a headman shall-

(i) collect by due date all land revenue and all sums, recoverable as land revenue from the estate, or sub-division of an estate in which he holds office, and pay the same personally or by revenue money order or by remittance of currency notes through the post or at places where treasury business is conducted by the State Bank of India or any Scheduled Bank as notified by the State Government from time to time, by cheque on a local Bank at the place and time appointed in that behalf to the Revenue Officer or assignee empowered by Government to receive it;

(ii) collect the rents and other income of the common land, and account for them to the persons entitled thereto;

(iii) acknowledge every payment received by him in the books of the landowners and tenants;

(iv) defray joint expenses of the estate and render accounts thereof as may be duly required of him;

(v) report to the tehsildar the death of any assignee of land revenue or Government pensioner residing in the estate, or the marriage or re-marriage of a female drawing a family pension and residing in the estate; or the absence of any such person for more than a year;

(vi) report to the tehsildar and Collector all encroachments on and injury to the roads, public streets and Government, Nazul and panchayat land;

(vii) report any injury to Government buildings made over to his charge;

(viii) carry out, to the best of his ability, any orders that he may receive from the Collector requiring him to furnish information or to assist in providing on payment supplies or means of transport for troops or for officers of Government on duty;

(ix) assist in such manner as the Collector may from time to time direct at all crop inspections, recording of mutations, surveys, preparation of records of right, or other revenue business carried on within the limits of the estate,

(x) attend the summons of all authorities having jurisdiction in the estate, assist all officers of the Government in the execution of their public duties, supply, to the best of his ability any local information which those officers may require, and generally act for the landowners, tenants and residents of the estate or sub-division of the estate in which he holds office in their relations with Government;

(xi) report to the patwari any outbreak of disease among animals (or human beings).

(xii) report to the patwari the deaths of any right-holders in their estates.

(xiii) report any breach or cut in a Government Irrigation canal or channel to the nearest canal officer (or canal patwari).

(xiv) under the general or special directions of the Collector assist by the use of his personal influence and otherwise all officers of Government and other persons, duly authorized by the Collector, in the collection and enrolment of recruits for military service whether combatant or non-combatant.

(xv) render all possible assistance to the village postman, while passing the night in the village, in safeguarding the cash and other valuables that he carries."

Rule 21. Remuneration of headmen. - (i) The remuneration of a headman in an estate or sub-division of an estate owned chiefly or altogether by Government shall be such a portion of the village officer's cess or of the income accruing to Government from the estate, as may be sanctioned by the Financial Commissioner.

(ii) In other estates the remuneration of a headman shall be the remuneration appointed when the land-revenue of the estate was last assessed.

[(iii) In any case not provided for by sub- sections (i) and (ii) a headman shall receive a portion of the village officer's cess equal to 5%, of the land-revenue for the time being assessed on the estate or portion of the estate in which he holds office whether the assessment is leviable or not.]

(iv) The Collector may at any time revise and alter the existing arrangements in an estate regarding the collection of the land-revenue by the different headman and the division of the remuneration between them. [-].

9. Though the Bench strength of the instant Bench is co-equal to the Bench strength of the Court which made the (supra) decision in LPA (supra), wherebys disconcurrence became expressed with the view taken by the learned Single Bench of this Court in **Sukhminder Singh's**

case (supra). Significantly, though therebys, especially given the coram of the instant Bench being co-equal to the coram of the Division Bench but obviously makes the verdict pronounced in LPA (supra), to be binding upon this Court.

10. Be that as it may, the only weighty reason for this Court to yet disconcur vis-a-vis the verdict recorded in LPA (supra), rather would become well grooved, in the niche, that the dis concurrence as made therein, qua the verdict rendered in **Sukhminder Singh's case (supra)**, rather being per in curium the verdict rendered by the Apex Court in case Civil Appeal No.254 of 1964, titled as '**State of Assam and others V. Kanak Chandra Dutta**'.

11. Since this Court for the reasons to be assigned hereinafter makes the (supra) decision rendered by the Apex Court in (supra) case to be applicable to be facts at hand, therebys this Court proceeds to negate the view taken by the LPA Bench of this Court.

12. Needless to state that this Court also proceeds to negate the view taken by the learned Single Bench of this Court in **Sukhminder Singh's case (supra)**, with a declaration of law therein, that a government servant is fully eligible for appointment as a Lambardar and that he cannot be ignored only on that account if he is otherwise eligible and suitable for that post.

13. If so, this Court for the reasons to be assigned hereinafter negates the view taken by the LPA Bench of this Court, besides also it negates the view taken by the learned Single Bench of this Court in **Sukhminder Singh's case (supra)**.

14. Before proceeding to assign detailed objective reasons, for stating so, it is deemed imperative to extract the relevant paragraphs

which become carried in the verdict (supra) recorded by the Apex Court. The relevant paragraphs became embodied in paragraphs 9 to 12 thereof, paragraphs whereof become extracted hereinafter.

9. The question is whether a Mauzadar is a person holding a civil post under the State within Article [311](#) of the Constitution. There is no formal definition of "post" and "civil post". The sense in which they are used in the Services Chapter of Part XIV of the Constitution is indicated by their context and setting. A civil post is distinguished in Article 310 from a post connected with defence; it is a post on the civil as distinguished from the defence side of the administration, an employment in a civil capacity under the Union or a State, see marginal note to Article [311](#). In Article [311](#), a member of a civil service of the Union or all-India service or a civil service of a State is mentioned separately, and a civil post means a post not connected with defence outside the regular civil services. A post is a service or employment. A person holding a post under a State is a person serving or employed under the State, see the marginal notes to Articles 309, 310 and 311. The heading and the sub-heading of Part XIV and Chapter I emphasise the element of service. There is a relationship of master and servant between the State and a person said to be holding a post under it. The existence of this relationship is indicated by the State's right to select and appoint the holder of the post, its right to suspend and dismiss him, its right to control the manner and method of his doing the work and the payment by it of his wages or remuneration. A relationship of master and servant may be established by the presence of all or some of these indicia, in conjunction with other circumstances and it is a question of fact in each case whether there is such a relation between the State and the alleged holder of a post.

10. *In the context of Articles 309, 310 and 311, a post denotes an office. A person who holds a civil post under a State holds "office" during the pleasure of the Governor of the State, except as expressly provided by the Constitution, see Article 310. A post under the State is an office or a position to which duties in connection with the affairs of the State are attached, an office or a position to which a person is appointed and which may exist apart from and independently of the holder of the post. Article 310(2) contemplates that a post may be abolished and a person holding a post may be required to vacate the post, and it emphasises the idea of a post existing apart from the holder of the post. A post may be created before the appointment or simultaneously with it. A post is an employment, but every employment is not a post. A casual labourer is not the holder of a post. A post under the State means a post under the administrative control of the State. The State may create or abolish the post and may regulate the conditions of service of persons appointed to the post.*

11. *Judged in this light, a Mauzadar in the Assam Valley is the holder of a civil post under the State. The State has the power and the right to select and appoint a Mauzadar and the power to suspend and dismiss him. He is a subordinate public servant working under the supervision and control of the Deputy Commissioner. He receives by way of remuneration a commission on his collections and sometimes a salary. There is a relationship of master and servant between the State and him. He holds an office on the revenue side of the administration to which specific and onerous duties in connection with the affairs of the State are attached, an office which falls vacant on the death or removal of the incumbent and which is filled up by successive appointments. He is a responsible officer exercising delegated powers of Government. Mauzadars in the Assam Valley are appointed Revenue Officers and ex*

officio Assistant Settlement Officers. Originally, a Mauzadar may have been a revenue farmer and an independent contractor. But having regard to the existing system of his recruitment, employment and functions, he is a servant and a holder of a civil post under the State.

12. Counsel for the State stressed the fact that normally a Mauzadar does not draw a salary. But a post outside the regularly constituted services need not necessarily carry "a definite rate of pay". The post of a Mauzadar carries with it a remuneration by way of a commission on collections of Government dues. Counsel stressed the fact that a Mauzadar is not a whole time employee. But a post outside the regularly constituted services may be a part-time employment. The conditions of service of a Mauzadar enable him to engage in other activities.

Reason for this Court disconcurring with the verdicts respectively recorded by the learned Single Bench as well as by the Division Bench of this Court

15. In (supra) case, the dispute related to whether a Mauzadar appointed in the State of Assam, became entitled to receive the protection of Article 311 of the Constitution of India. In the said case the therein Mauzadar became enjoined with the responsibility to collect land revenue on behalf of the State. He also becomes spoken in the relevant therein rules to be a revenue contractor. The appointment of the said Mauzadar is detailed therein to be made by the Deputy Commissioner, besides the order of his dismissal is also declared to be made by the Deputy Commissioner of the district concerned. Moreover, the office of Mauzadar is stated therein to be heritable, but in case the successor of the deceased Mauzadar is a minor, thereupons there is permissibility of appointment of a Sarbrah Mauzadar. In the face of the said performance of duties by the Mauzadar appointed in the State of

Assam, thus the Apex Court in the hereinabove paragraphs rather declared that a Mauzadar is the holder of a civil post, thus within the ambit of Article 311 of the Constitution of India.

16. The cullings of the finer nuance(s) of the underlinings made in the hereinabove extracted paragraphs, are, that a person would be deemed to be holding a civil post in terms of Article 311 of the Constitution of India upon satisfaction being made vis-a-vis:

- a) There existing a relationship of master and servant between the State, and the person concerned, whereby the person concerned, can be stated to be holding a civil post.
- b) The existence of such a relationship becomes indicated therein to become sparked, thus from the State's right to select and appoint the holder of the post.
- c) The right to suspend and dismiss him.
- d) The right to control the manner and method of his working.
- e) The payment of his wages or remuneration(s).

17. Furthermore, it was also declared therein, that a civil post under the State is an office or a position to which duties in connection with the affairs of the State are attached, besides is an office or a position, to which a person is appointed and which may exist apart from and independently of the holder of the post. Furthermore, any post which is under the administrative control of the State, is also declared to be falling within the scope of a civil post, as declared by Article 311 of the Constitution of India.

18. Bearing in mind the above parameters and applying them to the duties (supra), as become performed by the Mauzadar, who become

appointed in the State of Assam, the Apex Court concluded, that since the State has the power and right to select, the power to suspend and the power to dismiss him, besides when he is a subordinate public servant working under the supervision and control of the Deputy Commissioner. Moreover, when he receives remuneration, in the form of commissions on the collections of revenues becoming made and sometimes is paid a salary. Furthermore, when he aides the State in connection with the performance of its administrative duties, inasmuch as, with the Mauzadar performing the (supra) functions, thereby when he becomes the delegatee of the State vis-a-vis the apposite functions relating to his collecting land revenues on behalf of the State. Consequently, the Apex Court declared that a Mauzadar, is deemed to be a public servant and also is the holder of a civil post in the State.

19. Though, in the said judgment, the Apex Court, did also delve into that aspect that since a Mauzadar does not have any fixed salary whether therebys he is yet to be deemed to be the holder of a civil post. However, in respect of the said aspect, the Apex Court in the verdict (supra) took a view that since the post of a Mauzadar, thus carries with it rather remunerations in the shape of the payable commissions on collections made by him of government dues. Therefore, the said purported deterrent in declaring that a Mauzadar is not the holder of a civil post, but was declared to thus become completely effaced. Conspicuously also since the conditions of service relating to the appointment of a Mauzadar, enable him to engage in other activities, thereby it was declared that the engagements by the Mauzadar in activities, other than his performing the (supra) duties, does not yet forbid the occupier vis-a-vis the post of a Mauzadar, to

claim that the said occupied post does not adorn the character of a civil post.

20. Pursuant to the culling of the above finer nuance, from the verdict (supra), made by the Apex Court, this Court is to bear in mind; a) The duties to be performed by the Lambardar/ village Headman appointed in the State of Punjab; b) The duties to be performed by the village Headman and or the by the Lambardar, stand detailed in Rule 15 of the Rules of 1909. Moreover, since the appointment of the Lambardar are made under the orders of the District Collector, besides when an order dismissing from his service is also made in terms of Rule 16 of the Rules of 1909, thus by the Collector in the revenue district concerned. Consequently, since the duties as performed by the (supra) and as become detailed in Rule 20 of the Rules of 1909, thus are in synchronicity with the duties as become detailed in the verdict (supra), to become enjoined to become performed by a Mauzadar, who becomes appointed in the State of Assam. Therefore, when there is complete inter se analogy appertaining to the authority who makes the relevant appointment and who also becomes empowered to dismiss the relevant appointee. Therefore, the effect of the said inter se analogy, is that, thereby the (supra) parameter(s) detailed in the verdict (supra) of the Apex Court, but are also tritely applicable to the facts at hand.

21. Be that as it may, the remuneration to be paid to the village Headman becomes detailed in Rule 21 of the Rules of 1909. Since a reading of the said rule, makes pronouncements that the headman shall receive a portion of the village officer's cess equal to 50% of the land revenue for the time being assessed on the estate or portion of the estate in which he holds office whether the assessment is leviable or not.

22. Therefore, since in the verdict (supra) rendered by the Apex Court, thus the therein functioning Mauzadar, but was a recipient of remuneration in a manner alike to the one as detailed in Rule 21 of the Rules of 1909, whereupon, the Apex Court declared that he is a revenue contractor, as therebys when he assists the Collector in the revenue administration. Moreover when therebys in the verdict (supra), the Mauzadars in the State of Assam were declared to be aiding the District Collector in the matters relating to the revenue administration. Resultantly, when therebys a conclusion was made in verdict (supra) that thus emerges the relationship of a master and servant, between Mauzadar and the State Government concerned. Resultantly, the said apposite inter se analogy also lead sto a similar conclusion ensuing from this Court, vis-a-vis the instant Lambardars are similarly working as servants of the State Government concerned, besides also when the methodology as envisaged for payments being made to the Mauzadars appointed in the State of Assam, is also similar to the methodology created in the Rules of 1909, for making payments to the instant Lambardars, who are appointed under the Rules of 1909, therebys also the said decision is squarely covering to the instant case.

23. Resultantly, given the emergence of (supra) inter se synchronicity inter se the facts detailed in the verdict (supra) rendered by Apex Court, with the facts at hand, therebys this Court proceeds to fortifyingly dis concur with the verdict recorded by the Single Bench of this Court, as also dis concurs with the verdict recorded by Division Bench of this Court.

24. The further reason for this Court dis concurring with the verdict recorded by the learned Single Bench of this Court in

Sukhminder Singh's case (supra), ensues from the fact that therein a declaration of law is made, to the effect, that a government servant is fully eligible for appointment as a Lambardar and he cannot be ignored only on that account, if he is otherwise eligible and suitable for that post. Since this Court has while applying the (supra) expositions of law, to the facts at hand, as appertaining to whether a village Lambardar, who is appointed in the State of Punjab/Haryana, is the holder of a civil post, thus has declared him to be the holder of a civil civil post. Resultantly therebys if he is yet declared to become qualified to seek appointment against a government post, therebys this Court would be faltering in coming to a conclusion, that a village Lambardar thus is the holder of a civil post. Resultantly, to avoid the emergence of the said conflict, this Court declares that the verdict of the learned Single Bench of this Court, is also per in curium, to (supra) verdict rendered by the Apex Court, which has been applied to the facts at hand.

25. Since for all the above stated reasons, since the judgment made by the LPA Bench in case (supra), besides when also the (supra) decision recorded by the learned Single Bench of this Court, but both are per curium the judgment rendered by the Apex Court on 03.10.1966, in case (supra). Resultantly besides conspicuously, also when the decision made by the Apex Court in case (supra) was on a date earlier to the pronouncement of the verdict made by the LPA Bench in the year 2013, therebys this Court fortifyingly declares the judgment delivered by the LPA Bench of this Court, to be per in curium the (supra) judgment made by the Apex Court. Moreover, this Court also declares that the judgment passed in **Sukhminder Singh's case (supra)**, is also per in curium, as it has merged into the judgment made by the LPA

Bench of this Court, as arose therefrom. Resultantly therebys the rule of propriety, that a co-equal Bench strength of the High Court, is to agree, with the view taken earlier by a co-equal Bench strength of the High Court, unless there are validly recorded reasons rather for making distinguishments therewith or the earlier judgment is per in curium, but thus does not become either violated nor becomes breached.

26. The post of Lambardar both in the State of Punjab/Haryana is declared to be of a civil post, thus in terms of the decision made by Apex Court in (supra) judgment. The post of Lambardar is heritable and if the successor of the deceased Lambardar rather is a minor, thereupon there is permissibility for the appointment of a Sarbrah Lambardar. Moreover, since this Court has stated that the post of a Lambardar in the State of Punjab/Haryana is a civil post, therebys a Lambardar who is appointed to such a civil post rather is barred to become appointed to another civil post.

27. The reference is answered accordingly.

(SURESHWAR THAKUR)
JUDGE

(KIRTI SINGH)
JUDGE

18.01.2025
Ithlesh

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No