SUPREME COURT OF INDIA

Anokh Singh

Vs.

Punjab State Election Commission

C.A.No…..of 2010

(B.Sudershan Reddy and Surinder Singh Nijjar JJ.)

29.10.2010

JUDGMENT

Surinder Singh Nijjar, J.

1. Leave granted.

2. These appeals arise out of a common judgment of the Punjab and Haryana High Court dated 5.12.2008 in Writ Petition Nos. 7727 of 2008, 8264 of 2008, 8270 of 2008, 8279 of 2008, 8310 of 2008 and 11724 of 2008.

3. The primary issues raised in all these writ petitions were:-

> "i) Whether the office of a Lambardar would be an `office of profit' so as to disqualify the incumbent of such an office to seek election as Panch of the Gram Panchayat.
>
> ii) Whether the Anganwari workers employed in the various social-welfare schemes in the State of Punjab held an `office of profit' and consequently disqualified for seeking election to the Gram Panchayats.
>
> iii) Whether the State Election Commissioner, Punjab was justified in issuing the clarificatory Memorandum, Memo No. SEC-2008/4365 dated 30.4.2008 on the subject "General Elections to Panchayat Samitis and Zila Parishads - 2008 Clarification regarding contesting of election by Lambardars and Anganwari workers."

4. Civil Writ Petition No. 7727 of 2008 was filed by a Lambardar, who was seeking election to the Gram Sabha, Village Ladpur, Tehsil Amloh, Distt. Fatehgarh Saheb. He had come to know from a news item in the Daily `Ajit' dated 3.5.2008 that Lambardar and Anganwari workers have been debarred from contesting election as Member Panchayat. On enquiry, the appellant came to know that a Circular Memo No. SEC-2008/4365 has been issued conveyed

to all the Deputy Commissioners-cum-District Electoral Officers in the State that Lambardars and Anganwari workers, who are ineligible to contest elections as Member of Panchayat because they hold `office of profit'. As a result of which, the appellant was debarred from contesting the election as Member Panchayat, which he intended to contest as he was otherwise duly qualified to contest the same. The prayer in the writ petition was for issuance of a writ in the nature of certiorari quashing the impugned memorandum by which Lambardars and Anganwari workers have been debarred from contesting the elections.

5. Similarly, the Civil Writ Petitions No. 8264 of 2008, 8270 of 2008, 8279 of 2008 and 8310 of 2008 were filed by Anganwari workers claiming that they could not be disqualified as they were not holding any `office of profit'. Civil Writ Petition No. 11724 of 2008 sought a direction to the respondents not to permit respondent No. 5, who was an Anganwari worker to participate in the election of Sarpanch of Gram Panchayat of Village Ghaloti.

6. The High Court upon detailed consideration of the entire matter concluded that the office of Lambardars is an `office of profit' and, therefore, the Lambardar would be disqualified from contesting the election. To this extent, the impugned memorandum was held valid. Consequently, Civil Writ Petition No. 7727 of 2008 was dismissed.

7. With regard to the Anganwari workers, the High Court held that the Anganwari workers did not hold any civil post under the Government. It is also held that the Anganwari workers do not hold an `office of profit' under the State Government. Consequently, Civil Writ Petition Nos. 8264 of 2008, 8270 of 2008, 8279 of 2008 and 8310 of 2008 were allowed and the impugned memorandum was quashed so far as it pertained to the Anganwari workers.

8. In view of the decision rendered in the aforesaid writ petitions, Civil Writ Petition No. 11724 of 2008 for issuing direction not to permit the Anganwari worker, respondent No. 5, to participate in the election of Sarpanch of Gram Panchayat was dismissed.

9. In this appeal, we are only concerned with the issue as to whether an incumbent Lambardar would hold an `office of profit' under the Government.

10. Although by a common order, the High Court has decided the writ petitions in two parts. The first part relates to the Lambardars in C.W.P. 7727 of 2008 and connected matters. In these matters, the High Court crystallized three issues for consideration. Firstly, whether the disqualification prescribed under Section 208 of the Panchayati Raj Act or the disqualification prescribed under Section 11 of the State Election Commission Act is applicable in case of the petitioner. Secondly, whether the petitioner, as a Lambardar, holds an `office of profit'. Thirdly, whether in view of clause (1) of Article 243F of the Constitution read with Section 2(a) of the Punjab State Legislature (Prevention of disqualifications) Act, 1952, the petitioner shall not be deemed to be disqualified for being chosen as a member of a Panchayat as the office of Lambardar is one of the offices of profit, holding which does not attract disqualification.

11. The second part relates to Anganwari Workers in CWP No.11724 of 2008, CWP No. 8264 of 2008 and connected matters. The issues highlighted in these matters are:

> "Firstly whether the Anganwari workers were holding `office of profit'. Secondly whether the State Election Commission was justified in issuing circular dated 30.4.2008 clarifying that Anganwari workers are disqualified to contest the election of Members of Panchayats."

12. In the matters concerning Lambardars, the High Court observes that in view of the judgment of this Court in *Som Lal Vs. Vijay Laxmi & Ors.*[1] the disqualifications prescribed under Section 11 of the State Election Commission Act would prevail. Under the Panchayati Raj Act, by virtue of Section 208 a person would be disqualified to contest the elections as a member of Panchayat, if he is a whole-time salaried employee of the State Government. But under Clause 11(g) of State Election Commission Act, a person is so disqualified if he holds an `office of profit' under the State Government. However, the issue has been set at rest by this Court in Som Lal's case (supra), therefore, we need not say more on this issue.

13. Now the next issue would be to see whether the High Court was correct in concluding that the office of Lambardar would be an `office of profit' under the Government, as the incumbent would be entitled to receive an honorarium of Rs.900/- per month.

14. We have heard the learned counsel for the parties. The learned counsel appearing for the appellant submits:

> "(i) An office of Lambardar is merely a heritage office as his paramount duty was to collect land revenue which has been abolished in the state of Punjab.
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> (ii) A Lambardar is only being paid an honorarium of Rs.900/- per month with no other remuneration, emolument, perquisite or facilities. The logic behind paying such payment is that he does not have to spend money out of his own pocket while discharging his duties.
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> (iii) The Punjab State Legislature (Prevention of Disqualification) Act, 1952, section 2 of the Act enumerates that a person shall not be disqualified for being chosen as and for being a member of the Punjab State Legislature for holding `office of profit' under Government of India or Govt. of State of Punjab and hence memo dated issued by the respondent dated 30.4.2008 is void ab initio.
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> (iv) The respondent, i.e. Punjab State Election Commission has no power and authority under the Punjab State Election Commission Act, 1994 to issue the memorandum in question.

(v) The disqualification of the appellant from contesting the election is clearly ultra vires of the Constitution of India and also provisions of Punjab State Election Commission Act, 1994."

15. On the other hand, the counsel for the respondent submits:

"(i) Exemption from being called an `office of profit' granted to the office of the Lambardar under the Punjab State Legislature (Prevention of Disqualification) Act, 1952 applies only in the case of election to State Legislative Assembly and not in case of election as Member of Panchayat.

(ii) The Government exercises power of appointment and removal over `office of profit' for those who perform functions for the government and receives remuneration in form of honorarium, conditions laid down as indicative of `office of profit' in *Maulana Abdul Shakoor Vs. Rikhab Chand and Anr*[2] *and Shivamurthy Inamdar Vs. Agadi Sanganna Andanappa*[3].

(iii) The word `profit' connotes the idea of a pecuniary gain and if the pecuniary gain is received in connection with the office, it is an `office of profit' irrespective of whether the gain is actually received or not.

(iv) The Amount of money received is not important and neither is the label attached to the pecuniary gain being made, as long as money is received by virtue of holding the office.

16. In our opinion, even this issue is no longer res integra. In a recent judgment in the case of *Mahavir Singh Vs. Khiali Ram & Ors.*[4] this Court has held that: "Although the post of Lambardar is governed by the provisions of the Punjab Land Revenue Act and the Rules framed thereunder, holder of the said post is not a government servant. He does not hold a civil post within the meaning of Article 309 of the Constitution of India."

17. Since the Lambardar is not holding any post under the Government, no salary is payable to him. There is no pay scale attached to the office of Lambardar. Therefore, it cannot be said that he is in receipt of any remuneration.

18. The duties to be performed by a Lambardar and the remuneration, for holding the said office are tabulated in Rules 20 and 21 of the Punjab Land Revenue Rules. These rules are as under:

"20. 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 at the place and time appointed in that behalf to the Revenue Officer or assignee empowered by Government to receive it.

Selected lambaradars, approved by the Collector, may pay land revenue and all sums recoverable as land revenue from the estate or sub division of an estate in which they hold office, by cheques on the Imperial Bank of India, provided that there is a branch of the Imperial Bank at the headquarters of the district in which the said estate is include;

(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 land owners and tenants;

(iv) defray joint expenses of the estate and render account 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 all encroachments on roads including village roads or on Government waste lands and injuries to or appropriations of, nazual property situated within the boundaries of the estate;

(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 or 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 or mutations surveys preparation of record of rights, 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 land owners, tenants and residents of the estate or sub division of the estate in which he holds office in their relations with the Government;

(xi) report to the patwari any outbreak of disease among animals;

(xiii) 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, (ziledar) or canal patwari; (xiv) under the general or special directions of the collector, to assist by the use of his personal influence and otherwise all officers of Government and other persons, duly authorised 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." Remuneration of the headman was as under : "Rule 21 (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 remunerations appointed when the land revenue of the estate was last assessed.

(iii) In any case not provided for by sub-section (i) and (ii), a headman shall receive a portion of the village cess equal to five per cent 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 alter the existing arrangements in an estate regarding the collection of the land revenue by the different headmen and the division of the remuneration between them."

19. Under the aforesaid rules, the Lambardar was receiving a portion of the village officer's cess or of the income accruing to the Government from the estate which was fixed by the Financial Commissioner. Under Rule 21(iii), the Lambardar was entitled to a portion of the village officer's cess equal to ten percent of the land revenue assessed on the estate or the portion of the estate in which he holds office, whether the assessment is levied or not. It is an undisputed fact that the Punjab Government has abolished land revenue. Therefore, Lambardar has no land revenue to collect. Thus the Lambardar would not receive any remuneration as 10% of the land revenue assessed.

20. Thereafter the aforesaid percentage of cess has been replaced by an honorarium of Rs.500/- pm under a circular dated 9.10.2006 issued by the Government of Punjab,

Department of Revenue and Rehabilitation to all Deputy Commissioners in the State. Currently the Lambardar receives Rs.900/- per month as honorarium.

> "This honorarium is merely compensatory to meet the out of pocket expenses, incurred in the performance of his duties."

21. The High Court has rejected the submission that such an honorarium would not fall within the ambit of the term `office of profit'. The High Court has concluded that –

> "In the instant case, the Lambardars are being appointed by the official of the Government and they can be removed by the official of the Government. Their appointments are under the statute and are in overall control of the Government. They are also receiving monthly honorarium which cannot be said to be compensatory in nature [Emphasis supplied]. The facts of this case are fully covered by the aforesaid tests laid down for finding out whether the office of profit is an office under a Government."

22. In our opinion, the High Court has erroneously distinguished the observations of this Court in the case of *Shivamurthy Swami Inamdar Vs. Veerabhadrappa Veerappa*[5]. In the aforesaid case, this Court laid down some of the tests that may be relevant to determine as to whether a particular office can be said to be an `office of profit'. These tests are:-

> "(1) Whether the Government makes the appointment;
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> (2) Whether the Government has the right to remove or dismiss the holder;
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> (3) Whether the Government pays the remuneration;
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> (4) What are the functions of the holder? Does he perform them for the Government; and
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> (5) Does the Government exercise any control over the performance of those functions?"
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> All the five tests would be relevant to determine that whether a particular office is an office under the Government. For determining whether such an office is also an `office of profit', tests 3, 4, 5 assume importance. It is, therefore, necessary to evaluate the nature and the importance of the functions performed. It would be essential to determine whether it would be necessary for the person holding an office under the Government to incur any expenditure in performance of the functions. These matters would then have to be correlated to any honorarium, allowance or stipend that may be attached to the office. Without examining any of these issues, the High Court concluded that the honorarium received by the Lambardar is not compensatory in nature. We are unable to endorse the approach adopted by the High Court."

23. Bearing in mind these tests, we may now examine whether the office of Lambardar is an `office of profit'. It would be apparent from the facts that though the Lambardar may not be holding a civil post, he would be holding an office under the Government. The Lambardar is not paid any salary but is entitled to receive an honorarium of Rs.900/- per month. He receives no salary, emoluments, perquisites or facilities. Is that sufficient to conclude that he holds an `office of profit'? This seems to be the conclusion reached by the State Election Commissioner, whilst issuing the impugned circular dated 30.4.2008. The High Court affirmed the aforesaid conclusion.

24. The term `office of profit' has not been defined in the Constitution, Representations of Peoples Act, Punjab State Election Commission Act or the Panchayati Raj Act. It is one of those rare terms which is not even defined in the *General Clauses Act, 1897*. It has, however, been judicially considered in numerous judgments of this Court. We may notice here some of the judgments.

25. In Gatti Ravanna, son of *Gatti Subanna, Gubbi Taluk, Mysore State Vs. G.S.Kaggeerappa, Merchant, Gubbi*[6] considered whether a person holding the position of the Chairman of Gubbi Taluk Development Committee, could be said to be holding an `office of profit' under the Government. In that case, the Chairman was entitled to a fee of Rs.6/- for each sitting of the aforesaid Committee. It was clearly held by this Court that a fee of Rs.6/- which the Chairman was entitled to draw for each sitting of the Committee was neither meant to be payment by way of remuneration nor it could amount to profit; and the fee was paid to the Chairman to enable him to meet "out of pocket expenses, which he has to incur for attending the meetings of the Committee." It was held as under:-

> “The plain meaning of the expression seems to be that an office must be held under Government to which any pay, salary, emoluments or allowance is attached. The word "profit" connotes the idea of pecuniary gain. If there is really a gain, its quantum or amount would not be material; but the amount of money receivable by a person in connection with the office he holds may be material in deciding whether the office really carries any profit.
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> From the facts stated above, we think it can reasonably be inferred that the fee of Rs 6 which the non-official Chairman is entitled to draw for each sitting of the committee, he attends, is not meant to be a payment by way of remuneration or profit, but it is given to him as a consolidated fee for the out-of-pocket expenses which he has to incur for attending the meetings of the committee. We do not think that it was the intention of the Government which created these Taluk Development Committees which were to be manned exclusively by non-officials, that the office of the Chairman or of the members should carry any profit or remuneration.”

26. The High Court gives no reason for concluding that the honorarium received by a Lambardar is not compensatory in nature. The High Court erred in not analyzing the real and

substantive nature of the honorarium. The High Court failed to take notice of the fact that the respondents had placed no material on the record to establish that the honorarium of Rs.900/- would result in a net gain to the Lambardar. In other words, the out of pocket expenses for attending to the duties of a Lambardar would be less than Rs.900/- per month. This court in *S.Umrao Singh Vs. Darbara Singh & Ors.*[7] has clearly held:-

> "5. The payment to a Chairman, Panchayat Samiti, under Rule 3 is described in the rule as a monthly consolidated allowance in lieu of all other allowances for performing all official duties and journeys concerning the Panchayat Samiti within the district, including attending of meetings, supervision of plans, projects, schemes and other works, and also for the discharge of all lawful obligations and implementation of Government directives. This provision in very clear language shows that the allowance paid is not salary, remuneration or honorarium. It is clearly an allowance paid for the purpose of ensuring that the Chairman of a Panchayat Samiti does not have to spend money out of his own pocket for the discharge of his duties. It envisages that, in performing the duties, the Chairman must undertake journeys within the district and must be incurring expenditure when attending meetings, supervising plans, projects, schemes and other works and also in connection with the discharge of other lawful obligations and implementation of Government directives. No evidence has been led on behalf of the appellant to show that a Chairman of a Panchayat Samiti does not have to perform such journeys in the course of his official duties and to incur expenditure in that connection. The State Government, which was the competent authority, fixed the allowance for a Chairman of a Panchayat Samiti at Rs 100 per month, obviously because it was of the opinion that this sum will be required on an average every month to meet the expenses which the Chairman will have to incur in this connection. In these circumstances, the burden lay on the appellant to give evidence on the basis of which a definite finding could have been arrived at that the amount of Rs.100 per month was excessive and was not required to compensate the Chairman for the expenses to be incurred by him in the discharge of his official duties as envisaged in the rule. That burden clearly has not been even attempted to be discharged by the appellant.
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> 8. Our attention was drawn by learned counsel to the fact that in Rule 7 the persons entitled to daily allowance are divided into two categories and a Chairman of a Panchayat Samiti belonging to Category I is entitled to Rs 6 per diem when a Member of the Samiti belonging to Category II is only entitled to Rs 4 per diem. The argument was that there was no explanation for payment at a higher rate to the Chairman and, consequently, it must be held that the Chairman must be making gain out of the payment to him of daily allowance. We are unable to accept this submission. The daily allowance is invariably fixed after estimating what extra expenditure in a day the person concerned would have to incur. A Chairman, it appears, was expected to incur more expenditure per day than a Member, and that seems to be the reason why a higher rate of daily allowance was prescribed for him. In any case, such a payment is clearly meant only to cover additional expenditure and out-of-pocket expenses of the

> Chairman and, while no evidence has been advanced to show that out of the amount received as daily allowance the Chairman will in fact invariably make a saying, it cannot be held that this payment would result in gain so as to make the office an office of profit."
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> The aforesaid observations are squarely applicable to the facts and circumstances of this case. Even the payment of allowances to Chairman Panchayat Samiti was held to be out of pocket expenses. It was emphasised that the burden lay on the appellant to give evidence to show that amount paid would be in excess of the expenses. It was further observed that even with regard to higher allowance paid to Chairman for performing duties outside the district, there was no evidence from which an inference could be drawn that the allowance paid would be in excess of the expenditure incurred in performance of the duties by the Chairman."

27. In the case of *K.B. Rohamare Vs. Shanker Rao Genuji Kolhe*[8], this Court again considered the factors which are necessary to be taken into consideration :- i) Whether the office in question is an office holding under the Government; and ii) Whether such an office is an `office of profit'. Considering the question in the light of the test laid down in the case of Shivamurthy Swami (Supra), it was held that a member of the Board would be holding an office under the Government. It was, however, observed that mere drawal of the daily allowance and traveling allowance could not make membership of the Board, an `office of profit' as the allowances drawn by such member would be merely compensatory in nature. In coming to the aforesaid conclusion, this Court considered the nature of the payment made to the members of the Board. It was observed that the dictionary meaning of the word `honorarium' would not be of much help. Therefore, "the matter must be considered as a matter of substance ratter than of form, the essence of payment rather than its nomenclature".

28. In considering the substance of the nature of the payment made, this Court considered in detail the various payments made to the member of the Wage Board as well as the number of meetings attended and the places at which the meetings were attended. This was not necessary to determine whether the particular member made a profit after the payments made to him but to see the effect of payments in general. Upon examination of the entire material, it was observed as under:-

> "The question has to be looked at in a realistic way. Merely because part of the payment made to the first respondent is called honorarium and part of the payment daily allowance, we cannot come to the conclusion that the daily allowance is sufficient to meet his daily expenses and the honorarium is a source of profit. A member of the Wage Board cannot expect to stay in Taj Hotel and have a few drinks and claim the expenditure incurred, which may come perhaps to Rs 150 to Rs 200 a day, for his personal expenses. In such a case it may well be held to give him a pecuniary gain. On the other hand he is not expected to live like a sanyasi and stay in a dharmshala and depend upon the hospitality of his friends and relatives or force himself upon them. Nobody with a knowledge of the expenditure likely to be incurred

by a person staying at a place away from his home could fail to realise how correct the assessment of the learned Judge is. We are satisfied that the payments made to the first respondent cannot be a source of profit unless he stays with some friends or relatives or stays in a dharmshala. The appellant has not satisfied the test or discharged the burden pointed out by this Court in Umrao Singh case. The law regarding the question whether a person holds an office of profit should be interpreted reasonably having regard to the circumstances of the case and the times with which one is concerned, as also the class of person whose case we are dealing with and not divorced from reality. We are thus satisfied that the first respondent did not hold an office of profit."

29. The expression `office or profit' was reconsidered in detail by this Court in the case of *Shibu Soren Vs. Dayanand Sahay*[9]. This Court, apart from reiterating the ratio of law in the aforesaid two cases i.e. K.B. Rohamare Vs. Shanker Rao Genuji Kolhe (Supra) and Shivamurthy Swami (Supra) observed as follows:-

> "27. With a view to determine whether the office concerned is an "office of profit", the court must, however, take a realistic view. Taking a broad or general view, ignoring essential details is not desirable nor is it permissible to take a narrow view by which technicality may overtake reality. It is a rule of interpretation of statutes that the statutory provisions are so construed as to avoid absurdity and to further rather than defeat or frustrate the object of the enactment.
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> 28. While interpreting statutory provisions, courts have to be mindful of the consequences of disqualifying a candidate for being chosen as, and for being, a Member of the legislature on the ground of his holding an office of profit under the State or the Central Government, at the relevant time. The court has to bear in mind that what is at stake is the right to contest an election and to be a Member of the legislature, indeed a very important right in any democratic set-up. "A practical view, not pedantic basket of tests" must, therefore, guide the courts to arrive at an appropriate conclusion. A ban on candidature must have a substantial and reasonable nexus with the object sought to be achieved, namely, elimination of or in any event reduction of possibility of misuse of the position which the legislator concerned holds or had held at the relevant time. The principle for debarring a holder of office of profit under the Government from being a Member of Parliament is that such person cannot exercise his functions independently of the executive of which he becomes a part by receiving "pecuniary gain". Under Article 102(1)(a), of course, Parliament has the jurisdiction to declare an "office" as not to disqualify its holder to be a Member of Parliament and likewise under Article 191(1)(a) the State Legislature has the jurisdiction to declare an "office" as not to disqualify its holder to be a Member of the State Legislatures. Moreover, apart from the office being an "office of profit", it must also be an office under the State or Central Government.

30. It was further observed that for determining of the core question each case has to be judged in the light of the relevant provisions of the statute and its own peculiar facts. This is to ensure that there should not be any conflict between the duties and interest of an elected member.

31. In view of the above, the conclusion reached by the High Court that receipt of Rs.900/- is not compensatory can not be accepted. It would be preposterous to accept, in this day and age, that a sum of Rs.900/- per month would be sufficient to cover the out of pocket expenses of a Lambardar.

32. In this case the High Court erred in recording a conclusion without insisting on the evidence on the basis of which such conclusion could have been recorded. The circular dated 30.4.2008 merely states :- "To All the Deputy Commissioners-cum- District Electoral Officers in the State. Memo No. SEC-2008/4365 Chandigarh, dated the 30.4.2008 Subject: General Elections to Panchayat Samitis and Zila Parishads – 2008 Clarification regarding contesting of election by Lambardars and Anganwari Workers....

> "Some of the Deputy Commissioners-cum- District Electoral Officers have raised the question whether the Lambardars and Anganwari workers are eligible to contest Panchayati Raj Institution elections. The answer to this question depends upon whether the aforesaid functionaries are holding "office of profit" under the State Government. The Hon'ble Supreme Court of India has laid down certain tests for determining the question whether a particular office is an office under the State Government or not: particularly in Shivamurthy Swami Inamdar Vs. Agadi Sanganna Andanaappa as follows:-
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> i) Whether the government makes the appointment;
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> ii) Whether the government has the right to remove or dismiss the holder;
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> iii) Whether the government pays remuneration;
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> iv) What the functions of the holder are and does he perform them for government; and
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> v) Does the government exercise any control over the performance of these functions. Therefore, the question whether a person is holding an office of profit under the Government of India or a State has to be decided by applying these tests to the facts and circumstances of each case. Applying these questions to the instant case, it is well established that both the above mentioned functionaries are appointed by the Government and the Government has the right to remove them. They are also paid remuneration. However, it has been said that the remuneration is of the nature of honorarium. Here, on "office of profit" the Hon'ble Supreme Court of India held in Ravanna Subanna Vs. Kaggeerappa that the word `profit' connotes the idea of

pecuniary gain. If there is really a gain, its quantum or amount would not be material but the amount of money receivable by a person in connection with the office he holds may be material in deciding whether the office really carried any profit. Further, it is also well established that functions performed by both Lambardar and Anganwari workers are for the government and the government also exercises control over the performance of these functions. A similar point has been decided by the Hon'ble Supreme Court in Ramappa Vs. Sangappa where the Hon'ble Supreme court observed that the appointment of Patels and Shanbhogs was made by the Government under the Mysore Village Offices Acts 1908 and though it may be under the statute it had no option but to appoint the heir to the office, if he fulfills the statutory requirements, but the office was held by them by reason of the appointment by the government and not simply because of hereditary right to it. They worked under the control and supervision of the Government, could be removed by the government and were paid by it.

Accordingly, the Commission is of the view that the Lambardar and Anganwari workers held "office of profit" and thus are ineligible to contest.
Sd/-
(A.K. Dubey)

State Election Commissioner, Pb." A perusal of the circular would clearly show that State Election Commission has failed to take note of the factual situation. The circular is based on a misinterpretation of the law laid down by this Court in the cases of Shivamurthy and Ravanna Subanna (supra). There is no material on the record to show that the receipt of Rs.900/- per month by the Lambardar would invariably lead to a saving. Even though the office of Lambardar is regarded as a mere relic in this day and age, it still carries with it certain important duties which are to be performed by the incumbent. Although purely `honourary' being a Lambardar gives the incumbent a certain status in the village. In some cases, the office of Lambardar has been in the same families for generations. For them, it becomes a matter of honour and prestige that the office remains in the family. Learned counsel for the appellant has rightly submitted that the office of Lambardar is a heritage office. Therefore, some families would cherish the office of Lambardar, even though the incumbent does not get any salary, emoluments or perquisites. In our opinion, the very basis of issuing the circular was non- existent and misconceived. On this very basis, the High Court has quashed the circular in relation to Anganwari workers. In our opinion, for the same reasons the circular could not be sustained qua the Lambardars also."

33. In view of the aforesaid conclusion, we need not consider the effect of Section 2(a) of the Punjab State Legislative (Prevention of disqualifications) Act, 1952, on Section 11(g) of the State Election Commission Act. By virtue of the aforesaid Act a Lambardar would be qualified to contest the elections for legislative assembly.

"This could be a stepping stone for becoming the Chief Minister of the State. Therefore, it would seem a little incongruous that a Lambardar would not be permitted to seek election to the Panchayat. The village level democracy is the bedrock of the Indian National Democracy. Being a member of Panchayat can be the beginning of a long career in public life. Therefore, the disqualification introduced though the impugned circular could prove disastrous to democracy at the grassroots level in Punjab. But we need not go into controversy, as we have already held that the office of a Lambardar would not be an `office of profit'."

34. In view of the above, the appeal is allowed. The impugned judgment of the High Court is set aside, in so far as it relates to Lambardars. The impugned circular dated 30.4.2008 is quashed and set aside qua the Lambardars also.

"Civil Appeal No. of 2010 @ Special Leave Petition (C) No.10948 of 2009:

1. Leave granted.

2. In view of the judgment in Civil Appeal No. ....of 2010 @ SLP (C) No. 7319 of 2009, this appeal becomes infructuous and is dismissed as such."

[1] *(2008) 11 SCC 413*
[2] *AIR 1958 SC 52*
[3] *(1971) 3 SCC 870*
[4] *(2009) 3 SCC 439*
[5] *1971 (3) SCC 870*
[6] *AIR 1954 SC 653*
[7] *1969 (1) SCR 421*
[8] *(1975) 1 SCC 252*
[9] *(2001) 7 SCC 425*