

(2012) 10 P&H CK 0218

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 18973 of 2011 (O and M)

Joginder Singh

APPELLANT

Vs

A.D.C. Amritsar and Others

RESPONDENT

Date of Decision : 16-10-2012

Acts Referred:

Citation : (2012) 10 P&H CK 0218

Hon'ble Judges : Ranjit Singh, J

Bench : Single Bench

Advocate : Ashok Giri, for the Appellant; B.B.S. Teji, Addl. A.G. Punjab for the State and Mr. Anil Chawla, Advocate for the Respondent No. 3, for the Respondent

Judgement

Ranjit Singh, J.

C.M. No. 14864 of 2012

Prayer is to place on record Annexure P-5. Allowed, subject to all just exceptions.

Application disposed of.

CWP No. 18973 of 2011

1. A new post of Chowkidar was created in the Village Shanna (Sarang Dev) Tehsil Ajnala, District Amritsar. Proclamation was conducted in the Village inviting applications for appointment to the post of Chowkidar. Three candidates including the petitioner submitted their applications and appeared before the SDM, Ajnala. After going through the record, the SDM Ajnala appointed petitioner as Chowkidar of Village on 29.07.2010. Since then petitioner claims to be performing the duties of Chowkidar with full dedication and sincerity without any complaint from any side. He is thus functioning for a year and half as Chowkidar.

2. Respondent No. 3 - Kashmir Singh has filed an appeal which he did not pursue and thus it was, accordingly, dismissed in default on 10.02.2011.

3. Respondent No. 3 has filed an affidavit stating that he was temporarily

working as Chowkidar for the past some time, although he was never appointed even as temporary Chowkidar. As per the petitioner respondent was never appointed even temporary Chowkidar by any competent authority. Respondent No. 1 after setting aside the order passed by SDM has appointed respondent No. 3 as Chowkidar on the basis of affidavit filed by other Chowkidar namely Shinda who is none else but a relative of respondent No. 3. As per the petitioner, there is no rule which prescribes that being elder in age is a disqualification for being appointed as Chowkidar. He has accordingly, approached this Court through the present writ petition.

4. While issuing notice of motion, this Court ordered that status quo be maintained with regard to the functioning of the post of Chowkidar.

5. Reply on behalf of respondents is filed and the case was also heard on 31.08.2012. On that day, counsel for the respondent prayed for time to place on record the material to show that the respondent had a working experience for 12 years as Chowkidar.

6. Though the respondents have not placed any material on record but an application has been filed by the petitioner to place on record Annexure P-5 which is an application addressed to Tehsildar, Tehsil Ajnala. Perusal of this application would show that on this application the Patwari has reported that Joginder Singh is a Chowkidar of the Village. He has been performing his duties with utmost responsibility and there is no complaint against him. On the other hand counsel for the respondent has placed before me a document which is stated to be an objection filed by the petitioner against the appointment of respondent. The counsel would make a reference to that part of the application where it is stated that Kashmir Singh son of Kehar Singh Village Shanna (Sarang Dev) has been working as a temporary Chowkidar and when the villagers approached him for any work he used to misbehave with them and was in the habit of using foul language. This application which is in Punjabi language is also kept on record.

7. During the course of arguments, it transpires that appointment of the petitioner was made by the SDM. Counsel for the petitioner was required to disclose the appointing authority of the Chowkidar. Reading of Rules 6, 7 and 8 of the Punjab Chaukidara Rules clearly shows that nomination to the post of village watchman shall be made by village headman. Rule 7 talks of making nomination and then Rule 8 provides that person so nominated after due enquiry into his age character and ability be appointed or rejected at the discretion of Deputy Commissioner or by some officer authorized by him. Accordingly, Deputy Commissioner is the appointing authority of Chowkidar. SDM could make the appointment in case this power had been so delegated to him by the Deputy Commissioner.

8. Both the counsels appearing in this case are not clear whether there was any nomination in respect of SDM or not. The appeal filed by the respondent has

been allowed by the ADC. In my view, the matter till date has not reached the Deputy Commissioner in any manner. It will be, therefore, appropriate to remand the case back to the Deputy Commissioner to consider the appointment of the petitioner in the light of the above legal position. It will be for the Deputy Commissioner to consider the recommendation and appoint any suitable person on the basis of material that the parties would place before him. The writ petition is, accordingly, disposed of.