

(1996) 12 SHI CK 0039
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 75 of 1990

Lachhman Dass

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 04-12-1996

Acts Referred:

Himachal Pradesh Land Revenue Act, 1954 — Section 29, 30
Punjab Chaukidara Rules, 1976 — Rule 11, 23, 24, 25, 26

Citation : (1997) 2 ShimLC 219

Hon'ble Judges : M. Srinivasan, C.J.; Lokeshwar Singh Panta, J

Bench : Division Bench

Advocate : Ravi Bakhsi, for the Appellant; Inder Singh, General for Respondents No. 1 and 2, for the Respondent

Final Decision : Dismissed

Judgement

M. Srinivasan, C.J.—This writ petition is by a person, who was appointed as village Chowkidar by the Sub-Divisional Officer (Civil), Tehsil Amb, District Una. The order of appointment made by the Sub-Divisional Officer was set aside on appeal by the Deputy Commissioner of Una. The aggrieved Petitioner has preferred this writ petition. An objection is taken by the Respondents that the matter will be governed by the provisions of the Administrative Tribunals Act and the remedy of the Petitioner is only to approach the Tribunal under that Act.

2. Learned Counsel for the Petitioner contends that the village Chowkidar post cannot be considered to be a civil post as he is not paid by the Government as such and that the salary is paid by collection of money from the villagers. This contention cannot be accepted.

3. The Supreme Court has considered the question whether the post of Mauzadar under the provisions of Assam Land and Revenue Regulation is a civil post. In State of Assam and Others Vs. Shri Kanak Chandra Dutta, the Supreme Court answered the question in the affirmative by holding that the civil post would only mean a post not concerned with defence outside the regular civil services and

when there is a relationship of master and servant between the State and the person holding the post, it is certainly a civil post.

4. In so far as the village Chowkidars are concerned, their appointment is governed by the provisions of the Rules framed u/s 29 of the Himachal Pradesh Land Revenue Act, 1953. The section reads that the State Government may make rules to regulate the appointment, duties, emoluments, punishment, suspension and removal of Kanungos and village Officers. Section 30 provides for imposition of village Officer's case by the State Government for the purpose of remunerating Nambardars in the territories and for defraying other expenditure directly connected with the supervision of those officers or with the performance of their duties.

5. The State Government has issued a notification on 13th September, 1965 vide No. GSR. 220/CA-4/1872/S. 39-A/65 adopting the Punjab Chowkidar Rules for the State of Himachal Pradesh. A perusal of the Rules shows clearly that the post of village Chowkidar, which is described as village watchman in these Rules is undoubtedly a Civil post. The appointment of village watchman is to be done by the Deputy Commissioner or a person to whom his powers are delegated. Rule 11 provides that the Deputy Commissioner or the officer duly authorised by him in that behalf may dismiss any village watchman or daffadar for any misconduct or neglect of duty. Rules 23 to 28 show that the village watchmen are also conferred with powers of arrest etc. on certain occasions just like Police Constables. Rule 33 provides that every village watchman shall receive remuneration half yearly of each harvest, in cash at the rate of Rs. 100 per month. Rule 41 shows that the village headmen at the time of paying the first instalment of land revenue for any harvest shall deposit Chaukidara collections in the Treasury alongwith the land revenue instalments. If such Chaukidara collections are not deposited the Tehsildar shall subject to the orders of the Deputy Commissioner take measures to enforce payment of the remuneration due and for this purpose, the Deputy Commissioner and Tehsildar shall have the same powers respectively as they now possess for the recovery of land revenue. If the collections are deposited, then the salary due to the village watchmen shall be paid therefrom. In the second part of Rule 41, it is stated that in any case of persistent neglect on the part of the village headman or headmen to deposit the Chaukidara collections due to the village watchman or watchmen with regularity, the Deputy Commissioner may direct that such remuneration be recovered as if it were arrears of land revenue due to Government and be disbursed to the watchman or watchmen. Rule 41A provides that no village watchman shall be liable to transfer from one village to Anr. . Rule 43 provides for removal from service for any wilful misconduct.

6. There is a notification issued by the Government on 27-1-1988 under Reference No. Rev. D.B (15) 3/80. According to the notification, the Governor of Himachal Pradesh was pleased to order the imposition of Chowkidara tax in all the Districts of Himachal Pradesh with immediate effect. Clause (2) says that the

amount of Chowkidara tax so imposed shall not exceed the amount of Rs. 1,200 per year per Chowkidar Circle and will be recoverable in two equal instalments from all occupants/owners of houses in the area concerned.

7. A perusal of the above Rules shows that the Government collects by way of tax or cess from the people concerned and pays the remuneration of the watchmen therefrom. In fact, the amount has to be deposited in the Treasury and it is the Tehsildar, who shall pay the remuneration of village Chowkidar or watchman.

8. In such circumstances, there can be no doubt whatever that the post of village Chowkidar is a civil post and the matter is governed by the provisions of the Administrative Tribunals Act. It is open to the Petitioner to approach the Tribunal with an appropriate application. This writ petition is dismissed. Interim order is vacated.