
(2011) 02 P&H CK 0057

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 18169 of 2009

Manohar Singh

APPELLANT

Vs

Commissioner, Jalandhar Division, Jalandhar and Others

RESPONDENT

Date of Decision : 01-02-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 419, 420, 467, 468, 471
Punjab Chaukidara Rules, 1976 — Rule 7, 8

Citation : (2011) 2 RCR(Civil) 281

Hon'ble Judges : Ajai Lamba, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Ajai Lamba, J.—This civil writ petition has been filed in challenge to order dated 24.8.2009 (Annexure P-3) passed by the Commissioner, Jalandhar Division, Jalandhar whereby appeal filed by respondent No. 4, Manjit Singh son of Joginder Singh, who was appointed as Chaukidar by Sub Divisional Magistrate Cum Collector, Baba Bakala, District Amritsar, has been set aside and the case has been remanded for re-adjudication.

2. It transpires that petitioner, Manohar Singh and respondent No. 4, Manjit Singh, both real brothers, were competing for the post of Chaukidar for Village & Tehsil Baba Bakala, District Amritsar.

3. Rules 7 and 8 of the Punjab Chaukidara Rules, 1976 provide as under :

7. The person or persons authorised to nominate to the office of village watchmen or daffadar shall within 15 days after being required by the Deputy Commissioner, or the officer duly authorised by him in that behalf so to do, nominate a proper person to the vacant post and communicate the nomination to the Deputy Commissioner.

8. The person so nominated shall, after due enquiry into his age, character and ability, be appointed or rejected at discretion by such Deputy Commissioner, or

by some officer authorised by him in that behalf.

4. Tehsildar, Baba Bakala, vide Order dated 11.8.2008 (Annexure P-1) considered that Manjit Singh was competing for the post of Lambardari and in that context, allegedly, forged a death certificate of Harijan Lambardar Jabar Singh. He was tried for commission of offence under Sections 420, 419, 467, 468, 471 IPC, however, was acquitted by the Sub Divisional Judicial Magistrate, Baba Bakala. Copies of complaint, forged death certificate allegedly prepared by Manjit Singh, original death certificate and chargesheet were produced before Tehsildar. The Tehsildar compared the comparative merit of the two persons and found a shadow on the character of respondent, Manjit Singh, and therefore, recommended the petitioner to be appointed as Chaukidar in place of the deceased Chaukidar.

5. Respondent No. 4, Manjit Singh carried an appeal before the Sub Divisional Magistrate exercising powers of Collector, Baba Bakala. The appeal has been dismissed vide order dated 23.10.2009 (Annexure P-2) while noticing that the petitioner is working as Clerk with an Advocate. Manjit Singh, respondent No. 4 was involved in a case for fraud and fabrication of record, and was challaned, however, subsequently acquitted. The petitioner accordingly was found to be non-controversial person without any disability for nomination as Chaukidar.

6. Respondent No. 4 approached the Commissioner, Jalandhar Division, Jalandhar, in challenge to orders, Annexure P-1 and P-2. Decision portion of order dated 24.8.2009 (Annexure P-3) passed by the Commissioner reads as under :-

6. I have considered the arguments advanced by the Id. counsel for the parties and have gone through the record received in the case and papers brought on the file. The orders passed by the Tehsildar and S.D.M. both are set aside. Let the competent court Collector/S.D.M appoint the chowkidar afresh after hearing eligible candidates. The case is remanded to the Collector, Baba Bakala with the above directions and the parties present are directed to appear before him on 23.9.2009.

7. Learned counsel for the petitioner has argued that if comparative merit is considered, petitioner certainly is a better candidate for being nominated and appointed as Chaukidar. Learned counsel further contends that impugned order (Annexure P-3) passed by the Commissioner is illegal, in so much as, no reasons have been assigned as to why orders of the appointing authority viz. Collector have been interfered with.

8. Learned counsel for respondent No. 4 has argued that Tehsildar, while considering the issue vide order Annexure P-1, did not take into account the fact that respondent had been acquitted. It has further been contended that on acquittal of the said respondent, there was no reason to ignore the candidature of the respondent.

9. I have considered the contentions of learned counsel.

10. On perusal of the entire record placed before me, I do not find that any disability in regard to age, character or ability of the petitioner can be traced for nominating and appointing the petitioner as Chaukidar. The orders however indicate that respondent No. 4 indeed was prosecuted in a criminal case with serious allegations indicating moral turpitude, although he was later acquitted.

11. Comparative merit of the candidates is required to be seen. Totality of facts and circumstances of the case given hereinabove indicates better candidature of petitioner and therefore, I find no fault with the orders passed by Tehsildar and Collector (Annexure P-1 and P-2). The Commissioner, while allowing the petition of the respondent has remanded the matter back to the Collector, Baba Bakala for fresh adjudication. The order of remand however does not specify the scope of remand. No reasons have been assigned as to under what circumstances, orders have been found illegal or without consideration of relevant facts.

12. In such circumstances, the order passed by the Commissioner is not sustainable in law. Order dated 24.8.2009 (Annexure P-3) is held not tenable in law being without relevant basis and therefore, is quashed.

13. The petition is allowed.