
(2001) 07 P&H CK 0099

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 8525 of 2000 (O and M) with CM. No's. 14935 and 16543 of 2001

Ravinder Singh Rana

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 04-07-2001

Acts Referred:

Constitution of India, 1950 — Article 226
Notaries Act, 1952 — Section 12, 15, 3, 8
Notaries Rules, 1956 — Rule 3, 4, 6, 7, 8

Citation : AIR 2001 P&H 335 : (2002) 1 ILR (P&H) 302 : (2001) 4 RCR(Civil) 265

Hon'ble Judges : Jawahar Lal Gupta, J; Ashutosh Mohunta, J

Bench : Division Bench

Advocate : Mr. J.R. Mittal, Mr. Lalit Sharma and Mr. H.S. Sirohi, for the Appellant; Mr. M.C. Berry, D.A.G. and Mr. Gurcharan Singh, for the Respondent

Final Decision : Dismissed

Judgement

Jawahar Lal Gupta, J.—Is the action of the Government in appointing respondent No. 4 as a Notary illegal ? This is the short question that arises in the present case. A few facts may be noticed.

2. The petitioner is an advocate. He had applied for the appointment as a Notary. Vide letter dated October 8, 1998, he was duly recommended for appointment by the Deputy Commissioner for one of the two available vacancies. Vide order dated January 20, 2000, the State Government had appointed Mr. Avtar Singh Dhanoa against one of the two vacancies. For the second vacancy, the Government had asked the Deputy Commissioner to reconsider the matter. It was also observed that the name of Ujagar Singh who had submitted the application may also be considered. A copy of this letter is at Annexure P.9 with the writ petition. On receipt of this letter, the Deputy Commissioner, Rupnagar had reiterated his recommendation for the appointment of the petitioner. However, the Government had vide its order dated May 24, 2000, directed that

Mrs. Harpal Kaur be appointed. A copy of the order is at Annexure P. 11. Aggrieved by the direction of the Government, the petitioner has approached this court through the present writ petition.

3. The petitioner alleges that the appointment of respondent No. 4 is illegal and contrary to the provisions of the Notaries Rules, 1956. He prays that the order dated May 24, 2000, a copy of which is at Annexure P. 11, be quashed and that the respondents be directed to appoint him as a Notary at Sub Division Kharar as a "reserved" candidate belonging to the category of Scheduled Castes.

4. In response to the notice of motion, two separate written statements have been filed. In the reply filed on behalf of the Government, it has been inter alia pointed out that the State of Punjab has allocated three posts of Notaries to the Kharar Sub Division. The instructions regarding reservation for Scheduled Castes etc. are not applicable in case of appointment of Notaries. It has been admitted that the Deputy Commissioner had recommended the petitioner's name. The Commissioner had forwarded the recommendation of the Deputy Commissioner to the State Government. He had also forwarded a complaint submitted by the Mrs. Baljit Kaur, Advocate alongwith the report of the enquiry conducted by the SDM, Kharar. The matter was considered under Rule 8. It was decided to appoint Mr. Avtar Singh Dhanoa for the first vacancy. Regarding the second vacancy, the Deputy Commissioner was asked to reconsider the matter. It has been further pointed out that the State Government has laid down a procedure vide its letter dated October 19, 1957. A copy of this letter has been produced as Annexure R.3 with the written statement. It has been inter alia provided that the Deputy Commissioner shall report to the Government through the Commissioner of the Division "after obtaining the comments of the District & Sessions Judge concerned". The District & Sessions Judge, Ropar has "recommended the name of Shri Avtar Singh Dhanoa, Advocate for (the) first post and that of Smt. Harpal Kaur, Advocate for the second post....." These recommendations "of the competent authority were considered by the Government under Rule 8....." It was found that "weightage given to the petitioner for getting a certificate for National Service Scheme" had no "relevancy to his profession or eligibility for" appointment as a Notary". The Government "after considering the comments of the District & Sessions Judge, Ropar and the recommendations of the Deputy Commissioner, Ropar found that the experience of respondent No. 4 is higher than the petitioner. The petitioner was not having his independent practice at Kharar. Therefore, respondent No. 4 was considered more meritorious for appointment as Notary Public and according to Rule 8.....the State Government has appointed her as Notary Public at Kharar". The respondents have reiterated that "the District & Sessions Judge had recommended the name of respondent No. 4. On enquiries.....it transpired that respondent No. 4 had more years of practice than the petitioner and secondly the petitioner was not having independent practice at Kharar. Considering the merits of the candidates, the Government decided to appoint respondent No. 4",

5. A separate reply has been filed by the fourth respondent. It has been pointed out by her that she possesses the qualifications of M.A. B.Ed and LL.B. She has been practising as an advocate at Civil Courts, Ropar since April 12, 1982. As against this, the petitioner on his own showing "is doing practice at Civil Courts, Kharar since the year 1995". She has also produced the certificates from different Presidents of Bar Association, Kharar as Annexures R4 to R8 "to show that the petitioner has not been practising at Civil Courts, Kharar". She has further stated that "the members of Bar Association, Kharar passed a resolution on 7.8.2000 under the Presidentship of Shri Anil Kaushal, a copy of which is at Annexure R9 in which it is confirmed that the petitioner never practised in Judicial and Revenue courts at Kharar.....nor he resides at Kharar....." In fact, the petitioner is a member of the High Court Bar Association at Chandigarh. Various other averments have also been made.

6. On the above premises, the respondents pray that the writ petition be dismissed.

7. Learned counsel for the parties have been heard.

8. On behalf of the petitioner, it has been pointed out by Mr. J.R. Mittal, Sr. Advocate that the Deputy Commissioner is the competent authority. His recommendation could not have been rejected. The Government had wrongly ignored the petitioner without assigning any reason. The recommendation of the District Judge was irrelevant.

9. The claim made on behalf of the petitioner has been controverted by Mr. M.C. Berry, Sr. DAG, who appeared for the State of Punjab and the other official respondents. Mr. Gurcharan Singh, counsel for the respondent No. 4 submitted that the orders passed by the Government are in conformity with the rules.

10. Initially, the Master of Faculties in England used to appoint Notaries in India for performing "recognised notarial functions". After independence, the Parliament had enacted the Notaries Act, 1952. By Section 3 of the Act, the Central Government was empowered to appoint Notaries for "the whole or any part of India". The State Governments were empowered to make appointments "for the whole or any part of the State". The appointments had to be made from amongst the "Legal practitioners or other persons who possess such qualifications as may be prescribed". The functions of the Notaries are enumerated in Section 8. Section 12 provides for the imposition of penalty on a person who falsely represents to be a Notary. Section 15 empowers the Central Government to make Rules by Notification in the Official Gazette.

11. In exercise of the power conferred by Section 15, the Notaries Rules, 1956 have been enacted. Rule 3 lays down the qualifications for appointment as a Notary. Rule 4 entitles a person to apply for appointment as a Notary. Rule 6 requires the competent authority to examine the application. Rule 7 lays down that the competent authority shall "after holding such inquiry as he thinks fit and after giving the applicant an opportunity of making his representation against the

objections, if any, received within the time fixed....make a report to the appropriate Government recommending either that the application may be allowed for the whole or any part of the area to which the application relates or that it may be rejected". It has been further provided that while making the recommendation, the competent authority shall have due regard to the matters enumerated in sub-clauses (a) to (e). One of the relevant factors is - "whether the applicant ordinarily resides in the area in which he proposes to practice as a Notary". Another matter which has to be taken into consideration in the case of a legal practitioner is the "extent of his practice". Rule 8 empowers the Government to consider and decide the matter.

12. In the present case, the petitioner had undoubtedly applied for appointment as a Notary. His case was duly recommended by the Deputy Commissioner. The case was then forwarded to the State Government. On receipt of the recommendation from the Deputy Commissioner, the matter was considered by the appropriate authority. After examination of the matter, the Government had selected respondent No. 4. Did it err in doing so ?

13. Mr. Mittal, counsel for the petitioner contended that under Rule 4, the recommendation made by the Deputy Commissioner could not have been rejected by the State Government.

14. The contention is misconceived. Reference to Rule 4 is wholly misplaced. In fact, the Deputy Commissioner makes a recommendation under Rule 7. The final decision has to be taken by the Government. In the very nature of things, the Deputy Commissioner makes a mere recommendation. The rules do not empower him to make an appointment. The power to appoint vests in the State Government. Thus, the contention that the recommendation made by the Deputy Commissioner is binding, cannot be sustained.

15. It was then contended that the Government has arbitrarily rejected the petitioner without assigning any reason. Thus, the appointment of respondent No. 4 by order dated May 24, 2000, is vitiated.

16. We are unable to accept even this contention. It deserves notice that all the applicants were advocates. The competing claims of the contenders had to be considered. It may not be appropriate for the Government to issue an order which may reflect adversely on one or the other applicant. However, it is clear from the papers before us that the comparative merits of all the candidates were duly considered. The facts as enumerated under the rules were kept in view. The extent of practice of the respective candidates at Kharar was taken into consideration. Thereafter, respondent No. 4, was selected. It may be mentioned that with regard to the petitioner, various Presidents of the Bar Association had pointed out that he was not practising at Kharar. It was even mentioned that he did not have a seat in the Court Complex. Still further, a letter, copy of which is at Annexure R2 with the written statement filed by the Government, had been sent by the members of the Bar. It had been pointed out that his name was

being unduly propped up by Mr. Jarnail Singh, General Assistant to the Deputy Commissioner. The Government was surely alive to the factual position. It is on consideration of the matter that the final decision had been taken. In the circumstances of the case, we are satisfied that the decision was just and fair. It is not correct to suggest that there were no reasons for the Government to arrive at the impugned decision.

17. It may be mentioned that in the communication dated May 10, 2000 (Annexure R.2), it has been pointed out that the petitioner is "neither practising lawyer of Kharar nor a member of Bar Association". It is alleged that his name had been wrongly recommended by the Deputy Commissioner. It has been specifically pointed out that Mr. Jarnail Singh, the General Assistant to the Deputy Commissioner, Ropar was "taking personal pains in favour of Mr. Ravinder Singh Rana (the petitioner) and recently got the concerned Branch under his own control to extend help to Mr. Rana". Objections were filed by the Advocates. A representation was given to the Deputy Commissioner, Ropar. It was not considered. On the contrary, a fax message recommending the name of the petitioner was sent to the Government on the same day by fax so as to get the matter decided immediately and to "avoid the other candidates". The government could not have ignored these facts.

18. Mr, Mittal contended that the Government had erred in taking consideration the recommendation of the District Judge.

19. Even this contention is untenable. The District Judge watches the performance of the advocates in the District. It is in view of this position that the Government has directed the Deputy Commissioners to obtain the views of the highest Judicial Officer of the District before forwarding the recommendation to the Government. In the present case, the views of the District Judge were available with the Government. Since the District Judge is in a better position than the others to judge the suitability or otherwise of a legal practitioner, the Government committed no illegality in taking his opinion into consideration.

20. No other point has been raised.

21. Before parting with the judgment, it may be mentioned that the petitioner's claim was duly considered. A person who has a much longer practice than the petitioner has been selected and appointed. Respondent No. 4 has averred that she has been practising at Kharar since the year 1982. As against this, the petitioner claims to have started practice at Kharar, in the year 1995. Even this claim has been disputed by the respondents. A perusal of the writ petition shows that the petitioner resides in Mohali. In the circumstances of the case, we are satisfied that there is no injustice which may call for interference in proceedings under Article 226 of the Constitution.

Resultantly, we find no merit in this petition. It is, consequently, dismissed. In the circumstances of the case, we make no order as to costs.

22. Petition dismissed.