

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

**CWP No.12707 of 2014
Date of decision:11.7.2016**

Pargat Singh

...Petitioner

Versus

Additional Deputy Commissioner, Sangrur and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

1. To be referred to the Reporters or not ?
2. Whether the judgment should be reported in the Digest ?

Present: Mr.A.S.Slar, Advocate for the petitioner.
Mr.Yatinder Sharma, Addl.A.G., Punjab.
Mr.Arn timer Sood, Advocate for respondent No.3.

RAMESHWAR SINGH MALIK, J. (Oral)

Feeling aggrieved against the order dated 31.1.2014 (Annexure P-2) passed by the Additional Deputy Commissioner, Sangrur, whereby he dismissed the appeal of the petitioner and upheld the order dated 20.12.2012 passed by Sub Divisional Magistrate, Sangrur (Annexure P-1), appointing respondent No.3 as Chowkidar, petitioner has approached this Court by way of instant writ petition under Articles 226/227 of the Constitution of India, seeking quashing of the impugned orders.

Notice of motion was issued and pursuant thereto, separate written statements have been filed. One written statement has been filed by way of short affidavit on behalf of respondents No.1 and 2 and another written statement has been filed by respondent No.3.

Learned counsel for the petitioner, while referring to Rule 6 of the Punjab Chowkidar Rules, 1965 ('Rules 1965' for short), reproduced in para 5 of the writ petition, submits that as many as four headmen

(Numberdars) of the village nominated the petitioner, whereas only one Numberdar nominated respondent No.3. He also places reliance on the report dated 7.11.2012 of the Tehsildar, who furnished the same after conducting enquiry about the antecedents of both the candidates for the post of Chowkidar, which fell vacant because of the death of Late Shri Joginder Singh Chowkidar. He concluded by submitting that once four Numberdars have nominated the petitioner and thereafter even in the enquiry conducted by Tehsildar, it was the petitioner whose name was recommended for appointment, respondents No.1 and 2 have exceeded their jurisdiction, while passing the impugned orders, whereby respondent No.3 was illegally appointed as Chowkidar. He prays for setting aside the impugned orders, by allowing the present writ petition.

Per contra, learned counsel for respondent No.3, while placing reliance on an order dated 18.5.2015 passed by this Court in **CWP No.9820 of 2015 (Sarwan Singh Vs. State of Punjab and others)** submits that discretion was given to the Deputy Commissioner or any officer authorized by him, who would be Sub-Divisional Magistrate, Sangrur in the present case. He submits that nomination of the petitioner by four Numberdars itself will not be a necessary factor for appointing the petitioner as Chowkidar. He further submits that since respondent No.3 was son of the deceased Chowkidar and had working experience to his credit, he was rightly appointed as Chowkidar. He prays for dismissal of the instant writ petition.

Supporting the contentions raised by learned counsel for respondent No.3, learned counsel for the State also prays for dismissal of the present writ petition.

Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that in view of the peculiar facts and circumstances of the case, impugned orders passed by respondents No. 1 and 2 cannot be upheld, the same having been found suffering from patent illegality and perversity. The instant writ petition deserves to be allowed.

Since the issue involved herein calls for interpretation of Rules 6 and 8 of the Rules 1965, it would be appropriate to reproduce both these Rules and the same read as under:-

“Rule 6

The nomination to the post of village Watchmen or of deffadar shall be made by the village headmen, and where there are more village headmen then one, the opinion of the majority in number (unless there is some special provision to the contrary in the village administration paper) shall prevail. Where a village watchman or daffadar is to be appointed for a beat comprising more than one village, the opinion of the majority in umber of the village headmen in such beat shall prevail.”

Rule 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 authorized by him in that behalf.”

It is a matter of record that petitioner was nominated by as many as four Numberdars (headmen) of the village. Respondent No.3 was

nominated by only one Numberdar. Thereafter enquiry was conducted by the Tehsildar and he submitted his report which reads as under:-

“In this way on perusal of facts and documents on file and on perusal of the statements of the respectable person and also from the perusal of the police report it is found that the Sewa Singh is the son of deceased chowkidar he has studied upto 5 class total 8 persons have recorded the statements in his favour. Out of them one is Sarpanch and member one Lambardar. Candidate Pargat Singh is also 5 class pass. Nine persons have got recorded their statements in his favour. Out of them 4 are Lambardas of the village. On perusal of the facts and documents on the file, I recommend the name of Pargat Singh for his appointment as chowkidar against the vacancy created by the death of earlier chowkidar Joginder Singh. The candidates are directed to appear before Sub Divisional Magistrate, Sangrur at 10.00 a.m. on 15.11.2012.”

A bare perusal of the above-said provisions of law as well as report furnished by Tehsildar would show that petitioner was much more meritorious candidate for the post of Chowkidar in comparison to respondent No.3. In fact the provisions contained in statutory rule were to prevail upon in favour of the petitioner. A bare reading of the impugned orders passed by respondents No.1 and 2 would show that neither Rule 6 nor Rule 8 of the Rules 1965 has been even referred in the impugned orders much less dealing with the same. There is no denying the fact that appointment was being made on the post of Chowkidar under the Rules 1965. Even if Rule 8 of the Rules 1965 gives discretion to the Deputy

Commissioner or some officer authorized by him in that behalf, said discretion has to be exercised judiciously. However, in the present case, respondents No.1 and 2 have exceeded their jurisdiction, while altogether ignoring Rule 6 of the Rules 1965, exercising their jurisdiction in most arbitrary manner. It is also not in dispute that respondent No.3 was neither having any hereditary claim for appointment as Chowkidar nor there was any disqualification pointed out in the petitioner.

Further, the order passed by this Court in **Sarwan Singh's** case (supra), relied upon by respondent No.3, clearly goes in favour of the petitioner. In the absence of any disqualification alleged against the petitioner, who was nominated by four Numberdars and also recommended by Tehsildar after conducting the enquiry, it was only the petitioner who could have been appointed as Chowkidar in the true spirit of the provisions contained in Rules 6 and 8 of the Rules 1965. Since respondents No.1 and 2 have miserably failed to appreciate the factual as well as legal aspect of the matter, while passing their respective impugned orders, the same cannot be sustained.

The above-said view taken by this Court also finds support from the judgments of this Court in **Major Singh Vs. Financial Commissioner, Cooperation, Punjab, Chandigarh and others 2009(3) RCR (Civil) 816, Mohinder Singh Vs. State of Haryana and others** (CWP No.6122 of 2014 decided on 20.11.2014), **Balkar Singh Vs. Sub Divisional Magistrate, Dhuri** and others (CWP No.10809 of 2002 decided on 26.11.2004) and **Sarwan Singh's** case (supra).

No other argument was raised.

Considering the peculiar facts and circumstances of the case

noted above, coupled with the reasons aforementioned, this Court is of the considered view that since the impugned orders passed by respondents No.1 and 2 have been found suffering from patent illegality, the same are liable to be set aside. Accordingly, the impugned orders dated 20.12.2012 (Annexure P-1) and 31.1.2014 (Annexure P-2) passed by respondents No.1 and 2, respectively, are hereby set aside. Sub Divisional Magistrate, Sangrur-respondent No.2 is directed to decide the case afresh by passing an appropriate order, strictly in accordance with law and in view of the observations made hereinabove at an early date and in any case within a period of two months from the date of receipt of a certified copy of this order.

Resultantly, with the above-said observations made and directions issued, the present writ petition stands allowed, however, with no order as to costs.

11.7.2016
mks

(RAMESHWAR SINGH MALIK)
JUDGE