

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Letters Patent Appeal No.1163 of 2015 (O&M)
Date of Decision: 24.3.2017

Sarwan Singh ..Appellant

versus

State of Punjab through Secretary, Department of Home Affairs
and Justice, Civil Secretariat, Chandigarh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Gurbhajneek Singh Samra, Advocate,
for the appellant.

Mr. Manoj Bajaj, Addl.Advocate General, Punjab
for respondent nos. 1 to 4.

Mr. Kunal Mulwani, Advocate, for respondent no.5.

RAMENDRA JAIN, J.

CM No.2462LPA of 2015

1. For the reasons set out in the application which is duly supported by an affidavit, the same is allowed. Consequently, delay of 04 days in filing the appeal is condoned.

Letters Patent Appeal No.1163 of 2015

2. By way of present Letters Patent Appeal under Clause X of the Letters Patent, the appellant has assailed the impugned judgment dated 18.5.2015 passed by the learned Single Judge dismissing Civil Writ Petition No.9820 of 2015 filed by the petitioner (appellant herein).

3. Put pithily, Kirpal Singh, a previous Chowkidar of village Kullriyan, Tehsil Budhlada, District Mansa, expired on 21.1.2014. After his demise, the post of Chowkidar fell vacant. The Assistant Collector II Grade-cum-Naib Tehsildar, Bareta, District Mansa (respondent no.4), invited applications for appointment to the post of Chowkidar through proclamation. The appellant himself, Chuhra Singh @ Chuhar Singh (respondent no.5) and one Ram Singh applied for the post of Chowkidar. The application moved by the appellant for the post of Chowkidar was recommended by the Lambardar, the Sarpanch and 08 Panch Members of the Gram Panchayat. On 17.7.2014 the Assistant Collector II Grade-cum-Naib Tehsildar, Bareta, District Mansa (respondent no.4) sought character reports of all these three applicants from the Station House Officer, Police Station Bareta (for short "the SHO"). The SHO submitted his status report dated 21.7.2014 (Annexure P-2) to respondent no.4. In the meanwhile, said Ram Singh withdrew his candidature in favour of the appellant recommending his name for the post of Chowkidar on the ground that he was well educated and young in age than the other applicants. Respondent no.4 recommended the name of Chuhra Singh @ Chuhar Singh (respondent no.5) for the post of Chowkidar to the Assistant Collector 1st Grade-cum-Sub Divisional Magistrate, Budhlada, District Mansa (respondent no.3). Accordingly, respondent no.3, vide order dated 30.12.2014 (Annexure P-3) appointed Chuhra Singh @ Chuhar Singh (respondent no.5) to the post of Chowkidar. Feeling dissatisfied, the appellant filed an appeal before the District Collector, Mansa (respondent no.2), which was dismissed vide order dated 25.3.2015 (Annexure P-5). The appellant challenged the orders passed by the revenue authorities by filing Civil Writ Petition No. 9820 of

2015, which too was dismissed by the learned Single Judge. It is against this order that the appellant approached this court by filing the instant Letters Patent Appeal.

4. Learned counsel for the appellant has vehemently contended that while appointing respondent no.5 to the post of Chowkidar, the authorities below had not assigned any reason ignoring the appellant for appointment to the post of Chowkidar, especially when his name was recommended by the Lambardar, Sarpanch and the Panch Members of the Gram Panchayat as also a good conduct report submitted by the SHO of Police Station, Bareta. Learned counsel for the appellant has further contended that the learned Single Judge lost sight of the fact that the authorities below had not exercised its discretion judiciously in the matter of appointment to the post of Chowkidar as also the fact that the learned Single Judge had totally overlooked the settled proposition of law as held in various judicial pronouncements by this court and rather committed an error in interpreting Rule 6 in the light of Rule 8 of the Punjab Chowkidara Rules, 1965 (hereinafter referred to as “the 1965 Rules”).

5. After giving our thoughtful considerations to the submissions made by the learned counsel for the parties, we find that the Letters Patent Appeal is bereft of any merit and the same deserves to be dismissed.

6. Undisputedly, Sarwan Singh (appellant), Chuhra Singh @ Chuhar Singh (respondent no.5) and one Ram Singh, who withdrew his candidature in favour of the appellant, were the candidates for the post of Chowkidar. On the basis of the recommendation made by the Assistant Collector Grade-II-cum-Naib Tehsildar, Bareta (respondent no.4), the Assistant Collector 1st Grade-cum-Sub Divisional Magistrate, Budhlada,

District Mansa (respondent no.3), vide order dated 30.12.2014 (Annexure P-3) appointed respondent no.5 as Chowkidar. The appeal filed by the appellant was dismissed vide order dated 25.3.2015 (Annexure P-5) passed by the District Collector, Mansa (respondent no.2) on account of lack of strong evidences by the appellant. Civil Writ Petition no.9820 of 2015 filed by the petitioner (appellant herein) was also dismissed vide order dated 18.5.2015 passed by the learned Single Judge. The contention of the learned counsel for the appellant that the authorities below have not assigned any reason while passing their respective orders, cannot be countenanced inasmuch as the learned appellate authority (District Collector, Mansa) has dealt with each and every aspect of the matter while deciding the appeal filed by the appellant in its correct perspective by passing order dated 25.3.2015 (Annexure P-5). Even certain allegations, viz., non-deposit of chowkidara amount with Lambardar Sarabjit Kaur and stolen of two bulls levelled against respondent no.5 were also dealt with effectively holding that that they were false as the then Sarpanch and other panchayat members of the village had given their respective statements in favour of respondent no.5. The finding recorded by the District Collector, Mansa, in the matter of appointment to the post of Chowkidar can not in any manner, be said to be perverse and against the settled principles of law.

7. The learned Single Judge has dealt with the eligibility criteria laid down in Rules 6 and 8 of the 1965 Rules with respect to appointment to the post of Chowkidar properly and effectively. Rule 6 of the 1965 Rules provides that a village headman/Lambardar shall have the power to nominate any watchman for the post and his opinion shall prevail, whereas Rule 8 thereof lays down that the “discretion” has been given to the Deputy

Commissioner or some officer authorised by him in that behalf to conduct an inquiry into his age, character and ability for the post of Chowkidar. It is no doubt true that Rule 8 of the Rules 1965 empowers the discretion to the Deputy Commissioner or any officer authorised by him, to exercise while deciding the candidature. A perusal of the orders passed by the revenue authorities clearly spell out that as per Rule 8 of the Rules 1965, the Deputy Commissioner got the enquiries of all the applicants conducted as to their age, character and ability through the Police Officer of Police Station Bareta. On the basis of the material available on the record, the appointing authority found respondent no.5 Chuhra Singh @ Chuhar Singh to be more meritorious than the appellant. The contention of the learned counsel for the appellant that the learned Single Judge did not consider this aspect of the matter that the petitioner was young in age as compared to respondent no.5 who is an old person as also an illiterate, is not, in our considered view, tenable, especially when the discretion exercised by the Deputy Commissioner has also to be considered on the touchstone of the judicial scrutiny where a comparative merit between the two candidates had to be adjudged. The District Collector, Mansa (respondent no.2) in its order dated 25.3.2015 (Annexure P-5) has observed that respondent no.5 was awarded with a certificate of appreciation by the Deputy Inspector General of Police in lieu of selfless services rendered by him by providing his assistance in the rescue operation to save the village from the floods as also in making of a Dam over Ghaggar river in the year 2010. That apart, more significantly, the choice of the Deputy Commissioner in selecting respondent no.5 on the basis of services rendered by respondent no.5 cannot be said to be arbitrary and illegal. In our considered opinion, the finding

recorded by the learned Single Judge that respondent no.5 is a better candidate than the appellant cannot be said to be unreasonable and is, therefore, upheld.

8. In view of the foregoing reasons recorded here-in-above, we do not find any irregularity or impropriety in the order dated 18.5.2015 passed by the learned Single Judge and as such, the same is hereby affirmed.

9. The Letters Patent Appeal is, accordingly, dismissed.

(RAMENDRA JAIN)
JUDGE

24.3.2017
VK

(AJAY KUMAR MITTAL)
JUDGE

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| 1. | Whether speaking/reasoned | Yes/No |
| 2. | Whether reportable | Yes/No |