

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

**CWP No.9614 of 2018
Date of Decision:29.10.2018**

Bhupinder Kumar ...Petitioner

Versus

Deputy Commissioner Patiala & others ...Respondents

CORAM: HON'BLE MR. JUSTICE G.S. SANDHAWALIA

Present: Mr. G.S.Nagra, Advocate
for the petitioner.

G.S. SANDHAWALIA, J. (ORAL)

Petitioner challenges the concurrent findings of the Sub-Divisional Magistrate (Annexure P-3) and the Deputy Commissioner (Annexure P-7) whereby the private-respondent No.3-Sukhbir Singh was appointed as Chowkidar.

The sole argument which has been sought to be raised by counsel for the petitioner is that keeping in view the Punjab Chowkidara Rules, 1965, the nomination should have been seen of the Village Headman and no such discussion has been made in the impugned orders, regarding the said factor.

A perusal of the orders impugned would go on to show that on account of the death of Bant Ram on 11.03.2017, the process of filling up of the post of Chowkidar for Village Pehar Kalan was taken up and munadi was done on 15.06.2017 and two applications were received, i.e., from the petitioner and private-respondent No.3, Sukhbir Singh. One Gurmail Singh had withdrawn in favour of the private-respondent.

Reliance is placed upon Annexure P-8, regarding 49 persons who had vouched for the petitioner's candidature including as many as 3 Lambardars of the Village, to substantiate the claim, as such, under the Chowkidara Rules.

It is, however, apparent that the said argument was never, as such, raised before the authorities below, at any point of time and it is not permissible, as such, for the first time, in the writ Court that an argument can be raised, since this Court is testing the orders of the authorities below on the basis of the material produced before it at the time of decision making process. The authorities below have considered the merits of both the candidates and the mantle of responsibility has fallen upon the private-respondent on account of his being younger in age as he is 25 years of age in comparison to the petitioner, who is 41 years old. In the educational qualifications also, there is no much difference between the two candidates as such, as the petitioner is 6th pass whereas the private-respondent is 5th pass. The name of private-respondent had been recommended both by the Naib Tehsildar and Tehsildar, which has been accepted by the Sub-Divisional Magistrate. The basic principle that the choice of the authority at grass-root level is to be respected as he is dealing with the candidates on daily basis and is in a better position to appreciate the character and ability of the candidates and it is not for the writ Court to go into the merits of the case and only the decision making process which was arrived at, has to be examined by it, that whether appropriate opportunity was given to all and nobody was shut-out by violating the principles of natural justice etc. and only on account of perversity, capriciousness or arbitrariness in the order, this Court would

interfere.

The Deputy Commissioner also, while examining the said order, has upheld it by noting that there is no case pending against the private-respondent and he also helps the Government employees and officers. The revenue authorities below had recommended him, he was having the experience of Chowkidari and he could also read and write Punjabi.

Accordingly, this Court is of the opinion that the present is not a fit case, as such, to exercise the extraordinary writ jurisdiction and call upon the other side, in any manner. Accordingly, finding no merit in the present writ petition, the same is dismissed in limine.

29.10.2018
pvd

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No