

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

LPA-1437-2016 (O&M)

Date of Decision: 1.11.2018

Charanjit Singh

...Appellant.

Versus

State of Punjab and others

...Respondents.

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL.**

PRESENT: Mr. C.L. Premy, Advocate for the appellant.

Mr. Mehardeep Singh, Additional Advocate General, Punjab.

Mr. Balwinder Singh Sehra, Advocate for respondent No.4.

Mr. Naginder Singh Vashist, Advocate for respondent No.6.

AJAY KUMAR MITTAL, J.

1. Challenge in this Letters Patent Appeal is to the order dated 2.6.2016 passed by the learned Single Judge whereby CWP-10294-2016 filed by the appellant was dismissed.

2. The facts necessary for adjudication of the present appeal as narrated therein may be noticed. Respondent No.4 published a public notice, Annexure P-1, in the newspaper, inviting the applications for the appointment of Sewadar-cum-Chowkidar. In response thereto, the appellant submitted his application dated 3.10.2015 (Annexure P-2) to respondent No.4. On 7.10.2015, during the selection process, respondent No.4 found four candidates ineligible out of total of seven candidates and one candidate had withdrawn his name, therefore, only two candidates remained eligible for the post of Sewadar-cum-Chowkidar, i.e. the appellant and respondent

P-5, respectively), respondent No.4 held respondent No.6 as more meritorious than the appellant and appointed him as Sewadar-cum-Chowkidar. According to the appellant, his claim was rejected on the ground that his father was a defaulter member of the society who took loan and had not repaid the same to the Society. A news item dated 10.10.2015 (Annexure P-6) was also published in the newspaper 'Daily Ajit' in this regard. The appellant moved an application to the higher authorities and on his application, respondent No.3 marked enquiry on which respondent No.5 submitted his report dated 30.10.2015 (Annexure P-7). On the application of the appellant, respondent No.2 had also given report dated 17.2.2016 (Annexure P-8) to respondent No.1. The appellant had also moved a representation dated 26.2.2016 (Annexure P-9) to respondent No.1 for the appointment to the post of Sewadar-cum-Chowkidar, but to no effect. Accordingly, the appellant filed CWP-10294-2016 and this Court vide order dated 2.6.2016, dismissed the said writ petition. Hence, the present Letters Patent Appeal.

3. We have heard learned counsel for the parties.

4. Rule 5(i) of the Recruitment Rules reads thus:-

“5. Method of Recruitment etc.

(i) The appointments to the service shall be made by the Committee on the recommendations of the Selection Committee consisting of the President, two other committee members of the society and the Assistant Registrar concerned or his nominee. This appointment can be made either on regular basis as per prescribed scale or on contractual basis on consolidated emoluments

not exceeding that fixed by the Deputy Commissioner of the District concerned for the concerned category. The appointment shall be made by inviting applications from the suitable candidates in the similarly situated Primary Cooperative Agriculture Service Societies in the District and in case suitable and sufficient candidates are not available, then the applications may be called from the open market.”

5. A perusal of the said Rule shows that the appointment shall be made by inviting applications from the suitable candidates in the similarly situated Primary Cooperative Agriculture Service Societies in the District and in case suitable and sufficient candidates are not available, then the applications may be called from the open market. 'Suitability' has not been defined and remains in the discretion of the employer and where the employer is of the opinion that the persons who are overqualified should not be appointed as Sewadar-cum-Chowkidar, no fault can be found with the selection.

6. In the present case, the claim of the appellant was rejected on the basis of the report dated 30.10.2015 (Annexure P-7) submitted by the Superintendent, Cooperative Societies to the Assistant Registrar, Cooperative Societies, Samrala on the grounds, firstly that the father of the appellant who is a member of the Society, had defaulted in the loan taken by him and owed money to the Society. Secondly, that the appellant was overqualified to hold the post of Sewadar-cum-Chowkidar and being overqualified, he was not classified as suitable for the job as it was felt that he would not serve for long on the said post.

7. The learned Single Judge had recorded that with the over-qualification, the appellant can find a suitable job compatible with his qualifications and cannot insist as a matter of right that he had a preferential claim on account of belonging to the same village where the Society operates and, therefore, he was the better choice than respondent No.6 who had been preferred and appointed. Further, it was recorded that the 'suitability' had not been defined in the said Rule and remains in the discretion of the employer and in case they feel that persons who are overqualified should not be appointed as Sewadar-cum-Chowkidar, their view could not be replaced by the writ Court to hold one person more suitable than the other. The appointment of respondent No.6 was made with the approval of respondent No.1. The writ was held not to be maintainable against respondent No.4 which is a private body. Merely because the decisions of respondent No.4 have to meet approval of the Registrar, Cooperative Societies, Punjab, it could not make those decisions, actions of the State or in public law domain amenable to judicial scrutiny in the remedy provided under Article 226 of the Constitution of India.

8. No illegality or perversity could be pointed out by the learned counsel for the appellant in the findings recorded by the learned Single Judge which may warrant interference by this Court. Accordingly, finding no merit in the appeal, the same is hereby dismissed.

(AJAY KUMAR MITTAL)
JUDGE

November 1, 2018
gbs

(MANJARI NEHRU KAUL)
JUDGE

Whether Speaking/Reasoned
Whether Reportable

Yes
Yes