IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

204 CWP No.5929 of 2017 (O&M)
Date of Decision : February 13, 2019

Raj Kumar

.... Petitioner

Vs.

State of Haryana and others

..... Respondent

CORAM : HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. S.S. Kharb, Advocate for the petitioner.

Mr. Manish Dadwal, AAG, Haryana.

Mr. Deepak Saini, Advocate for respondent No.5.

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AUGUSTINE GEORGE MASIH, J. (ORAL)

Civil Misc. No.2266 of 2019

Prayer in this application is for placing on record the documents i.e. Annexures P-9 & P-10.

Application is allowed as prayed for subject to all just exceptions.

Documents i.e. Annexures P-9 & P-10, are taken on record.

CWP No.5929 of 2017

The petitioner has approached this Court challenging the appointment of respondent No.5-Sahil s/o Sh. Noor Mohammad, primarily

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on the ground that on the last date of receipt of the applications i.e. 19.05.2016 for the post of Chowkidar of village Karkoli, tehsil Samalkha, District Panipat, the said respondent was less than 21 years of age.

2. Learned counsel for the petitioner contends that respondent No.5 could not have applied for the post as he was not eligible on the last date of receipt of the applications and thus, his candidature could not have been considered for appointment for the post of Chowkidar of the village. It is further contended that in pursuance to the applications called for appointment to the post of village Chowkidar, the petitioner applied for the post of Chowkidar. Other candidates have also applied including respondent No.5. *Munadi* was held in the village on 05.05.2016. In the said *munadi*, it was specifically stated that the applicant should apply on or before 19.05.2016 (Annexure P-9). Although in the affidavit dated 02.02.2019 (Annexure P-10), it has been stated by Sh. Chanderbhan, the person who conducted the *munadi,* that the candidate should have completed 21 years of age but the same does not find mention in the report of *munadi*. Petitioner's counsel, however, contends that when Rules 3 and 4 of *'The Haryana Chowkidara (Watchman) Rules, 2011'* (Annexure P-3) (hereinafter referred to as 2011 Rules) are taken into consideration, a person who is more than 21 years of age but less than 45 years of age could have applied. The date of birth of respondent No.5-Sahil, is 27.09.1995 and therefore, was less than 21 years of age as on 05.05.2016 i.e. the date of proclamation as well as on 19.05.2016 i.e. the last date of receipt of applications. He contends that although the date of consideration and appointment of the Chowkidar was 06.01.2017 by the Collector, Panipat, respondent No.5 could not be

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considered or appointed as he was not eligible to apply so his application could not have been accepted. He, accordingly, prays that the appointment of respondent No.5 be set aside.

3. On the other hand, it is the stand of the counsel for the State as well as the counsel for respondent No.5 that as per Rule 3 of the Chowkidara Rules, the eligibility has to be considered on the date of first appointment and obviously, the date of appointment is 06.01.2017 on which date, respondent No.5 was eligible as he was more than 21 years of age on the said date. It is, accordingly, submitted that the contention of the counsel for the petitioner cannot be accepted and deserves to be rejected.

4. I have considered the submissions made by the counsel for the parties and with their assistance have gone through the records of the case including the applicable statutory rules.

5. *The Haryana Chowkidara (Watchman) Rules, 2011* (Annexure P-3) were notified on 11.01.2013. Rules 3 and 4 thereof, would be relevant for the purpose of present case, which are reproduced hereinbelow:-

> *"**Eligibility criteria for appointment.***
>
> ***3.*** *While considering the first appointment of the village Watchman. The eligibility criteria shall be as follows:-*
>
> *(a) he should not be less than 21 years and not more than 45 years of age.*
>
> *(b) he should have passed at least the 8th class from a Government School or Government Recognized School.*
>
> *(c) he should be physically fit and posses a good moral character.*
>
> ***Procedure for appointment of Village Watchman***
>
> ***4.*** *(1) The Deputy Commissioner shall select a Village Watchman from eligible persons of the village after due proclamation in the village inviting applications from eligible persons and following due process. A report on antecedents shall*

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be obtained from the Superintendent of Police concerned prior to appointment.

(2) The appointment of Watchman shall be for a period of five years. Prescribed procedure shall be followed for making the fresh appointment. A person who has served as Village Watchman shall be eligible for re-appointment subject to prescribed procedure."

6. Rule 3 lays down the eligibility criteria for first appointment of a village Watchman, Sub-Rule (a) of this Rule 3 prescribes the age limit for the candidates, according to which, a village watchman should have completed 21 years but should be less than 45 years. Sub-Rule (b) prescribes the educational qualifications to be 8th class pass from a Government school or a Government recognized school while sub-Rule (c) deals with the physical fitness and moral character, according to which, he should be physically fit and should possess good moral character. A person who fulfills these three conditions, as provided under Rule 3 (a) (b) and (c), can only be considered for the first appointment of village watchman.

7. Rule 4 deals with the procedure for appointment of a village watchman, according to which, due proclamation has to be made in the village inviting applications from eligible persons by following due process. This makes it clear that only the eligible persons of the village, on proclamation carried out in the village, can apply for appointment. The date of eligibility has to be, therefore, determined prior to inviting the applications so that the persons can assess their eligibility for applying for the post. The mandate, therefore, has to be read as requiring fixing of a date of eligibility to be mentioned in the proclamation to be carried out in the village. For example, a person, on the date of proclamation, is less than 21 years of age, applies for the same and on or prior to the date of appointment

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attains the age of 21 years and thus, become eligible, whereas, another person who on the date of proclamation is 45 years of age, would be over age on the said date and therefore, ineligible. This can never be the intention of the framers of the Rules nor can it permit while making appointment to the public post. The language of these two Rules i.e. 3 and 4 when read in conjunction would mandate fixing a date for determining the eligibility to remove uncertainty, to avoid arbitrariness and discrimination in public appointments. So, it is mandated that the date for eligibility fixed by the Deputy Commissioner is mentioned in the proclamation. When seen in the context of language used in Rule 4 (1), the date of proclamation in the village inviting applications from eligible persons would be the date for determining the eligibility of the candidates in case no date is fixed by the appointing authority while ordering the proclamation inviting applications.

8. The stand of the counsel for the respondents that Rule 3 indicates the date of consideration for appointment of the village watchman to be the determinative date but the said contention of the counsel for the respondents cannot be accepted in the light of the language used in Rule 4 (1) and in the light of what has been explained above. What is prescribed in Rule 3 is the eligibility criteria to be followed for first appointment of the village watchman but does not indicate the date of eligibility.

9. Rule 3 when read in consonance with Rule 4 would make it clear that the Deputy Commissioner shall select the village Chowkidar from the eligible persons of the village subsequent to the proclamation in the village inviting applications from eligible persons. This leaves no manner of doubt that the applications can only be invited from the eligible persons

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and therefore, the eligibility of a candidate has to be seen and determined on the date as fixed by the appointing authority i.e. the Deputy Commissioner and in the absence of any date being fixed, the date of proclamation in the village.

10. It is not disputed that no date was fixed by the Deputy Commissioner for determination of the eligibility and therefore, the date of eligibility would be the date of proclamation. Admittedly, respondent No.5 was less than 21 years of age on 05.05.2016, the date of proclamation. If that be so, appointment of respondent No.5 cannot be said to be in consonance with the statutory rules governing the eligibility for appointment.

11. In view of the above, the appointment of respondent No.5 vide order dated 06.01.2017 (Annexure P-8) is hereby set aside.

12. Let the Deputy Commissioner, Panipat, fix a date of determining the eligibility for the applicants prior to ordering fresh *munadi* to be held in the village calling for fresh applications for appointment to the post of Chowkidar of village Karkoli, tehsil Samalkha, District Panipat, within a period of one month from today. Rest of the process be completed by the competent authority in accordance with law at the earliest culminating in appointment of the Watchman of the village within three months from today.

13. Copy of this order be forwarded to the Financial Commissioner-cum-Secretary, Government of Haryana, Home Department, Haryana-respondent No.1 for issuing appropriate instructions to the Deputy Commissioners and other concerned.

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14. Copy of this order be also given *dasti* under signatures of the Court Secretary, to the counsel for the State of Haryana to convey the same to the respondents for information and compliance.

(AUGUSTINE GEORGE MASIH)
JUDGE

13th February, 2019
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Whether speaking/reasoned? Yes
Whether reportable? Yes

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