

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

CWP No.24028 of 2021

DATE OF DECISION: December 07, 2021

JASMIT

..PETITIONER

VERSUS

STATE OF HARYANA AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Ramesh Goyat, Advocate, for the petitioner.

SUDHIR MITTAL, J.

The grand-father of the petitioner was the Chowkidar of Village Mado Haldri, Nandgarh, Lahoriwala and Hasanpur. He died on 25.03.2011. Revenue officials conducted munadi on 21.09.2011 inviting applications for the post that had been vacated. Respondent No.3 passed order dated 14.05.2012 appointing respondent No.4 as the Chowkidar. An appeal was filed against the said order by the petitioner which was allowed vide order dated 19.09.2012. The petitioner was appointed as Chowkidar. The appellate order was challenged by respondent No.4 by way of CWP No.22426 of 2012. This Court set aside the appellate order and remanded the case to the Appellate Court for deciding the appeal afresh. It was, however, directed that the petitioner would continue as the Chowkidar

during the pendency of the appeal. This order was challenged by way of LPA No.239 of 2014 which was dismissed vide order dated 27.05.2014. The Appellate Court decided the appeal vide order dated 17.12.2014 and dismissed the same. The petitioner preferred CWP No.2233 of 2015 which was allowed vide order dated 30.01.2019. The order of the Appellate Court was set aside and the case was remanded once again to the Appellate Court to consider the candidature of the applicants afresh with a direction to consider their suitability/eligibility in view of the Punjab Chaukidara Rules, 1965 (hereinafter referred to as the Rules). Vide impugned order dated 21.10.2021, second respondent has appointed respondent No.4 as the Chowkidar after considering the case under the provisions of the Rules. Rule 6 of the said Rules provides that the opinion of majority of the headmen shall prevail in the matter where there are more than one village headmen. The Appellate Court has held that at the time of institution of the case, there were two Lambardars in the village one out of whom had passed away. The other Lambardar had recommended the name of respondent No.4. The candidature of respondent No.4 had also been recommended by the lower revenue officials and he is more educated than the petitioner.

Learned counsel for the petitioner has argued that the Appellate Court should have considered the recommendations as on date of first consideration by the 3rd respondent i.e. Sub Divisional Officer (Civil) Bilaspur. The same having not been done and statement of Lambardar having been recorded again after remand vitiated the impugned order.

Further, experience gained during the pendency of the writ petition could not have been taken into consideration while passing the impugned order.

A perusal of order dated 30.01.2019 passed by this Court in CWP No.2233 of 2015 shows that the second respondent had been directed to decide the case of appointment of Chowkidar as per the Rules. There was no direction that candidature be considered on the basis of the record as was available on the date of first decision of the 3rd respondent. Thus, the argument raised by learned counsel for the petitioner cannot be accepted. Even on first principles, if a case is being decided afresh after remand, eligibility is to be seen as on date of first application but not suitability. Suitability would be considered as on date of the order being passed since the appointment is being made for the first time and in the *interregnum*, circumstances may have changed. If the changed circumstances are not considered an unsuitable candidate may get appointed. The argument regarding experience gained during the pendency of the writ petition is misconceived as no consideration of experience has prevailed with the second respondent.

In view of the above, the writ petition has no merit and is dismissed.

December 07, 2021
'Ankur Goyal'

(SUDHIR MITTAL)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

Yes