

108 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-5589-2021 (O/M)

Date of decision : 01.08.2024

Shiv Kumar

..... Petitioner

Versus

Deputy Commissioner, Hoshiarpur and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Naveen Batra, Advocate
for applicant-petitioner.

Mr. Navneet Singh, Senior DAG Punjab.

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HARSH BUNGER, J.

CM-11808-CWP-2024

1. This is an application filed under Section 151 CPC for preponing the date of hearing of main case.

2. Notice in applicaiton.

3. Mr. Navneet Singh, Senior DAG Punjab, accepts notice in application and submits that he has no objection if the instant application is allowed.

4. For the reasons mentioned in application and no objection from learned State counsel, the instant application is allowed and the main case is taken on board today itself for hearing.

5. Application is accordingly disposed of.

Main case

1. Petitioner (Shiv Kumar) has filed the instant civil writ petition under Articles 226/227 of Constitution of India, seeking a writ in the nature

of certiorari for setting aside the order dated 25.02.2021 (Annexure P-6), passed by respondent No. 2 (Sub Divisional Magistrate, Garhshankar, District Hoshiarpur).

2. Briefly, on demise of Shri Piara Singh, previous Lambardar of village Laksihan, Tehsil Garhshankar, District Hoshiarpur, proceedings to fill up the vacancy were initiated. It is the pleaded case of the petitioner that the concerned Naib Tehsildar, vide its letter No. 293 dated 02.11.2020 (Annexure P-1), directed the Halqa Patwari of village Laksihan, Tehsil Garhshankar, District Hoshiarpur, to conduct the proclamation (mustari munadi), in order to call the applications for the aforesaid vacancy of Lambardar. The petitioner claims to have applied for the said post, in pursuance to the proclamation, which according to the petitioner was conducted by Chowkidar in the village. It is stated that apart from the petitioner, 2 more candidates, namely, Gurmail Singh son of Duman Ram and Surinder Nath son of Dina Nath had also applied for the said vacancy, whose antecedents were got verified from the local police and thereafter, the file was sent to the Sub Divisional Magistrate, Garhshankar.

2.1 It transpires that on an earlier occasion, the petitioner approached this Court by way of filing a civil writ petition (CWP-2814-2021) with the plea that the process of appointment of Lambardar of village Laksihan, Tehsil Garhshankar, District Hoshiarpur, was not being finalized by respondent-State, accordingly, direction was sought that the records of the persons, who had applied for appointment as Lambardar of village Laksihan, Tehsil Garhshankar, District Hoshiarpur, be forwarded to appropriate authority for its consideration. The said writ petition came to be disposed of, vide order dated 09.02.2021

(Annexure P-5), passed by a coordinate Bench of this Court in CWP-2814-2021, in view of statement made by the learned State counsel that the records of the persons, who had applied for the vacant post of Lambardar of village Laksihan, Tehsil Garhshankar, District Hoshiarpur, has already been forwarded to the concerned Tehsildar and that the competent authority will take the required decision in the near future. In this view of the matter, the civil writ petition (CWP-2814-2021) was disposed of as not pressed.

2.2 Thereafter, it appears that all the candidates appeared before the Sub Divisional Magistrate, Garhshankar where one Harminder Singh submitted an application that no proclamation (munadi) had been conducted in the village and, therefore, he requested that proclamation (munadi) be conducted again and fresh applications be called. It further transpires that the Sub Divisional Magistrate, Garhshankar, vide impugned order dated 25.02.2021 (Annexure P-6), remanded the matter to the Tehsildar, Garhshankar, with a direction that proclamation (munadi) be conducted again in the village to fill up the vacant post of Lambardar. It was further ordered that the applications already received be also considered.

3. In the aforementioned circumstances, the petitioner has filed the instant civil writ petition before this Court, for the relief(s), as noticed above.

4. Learned counsel for petitioner, while reiterating the aforesaid facts, referred to Annexure P-3 and Annexure P-4, to submit that once proclamation (munadi) for filling up the vacancy of Lambardar of village Laksihan has already been carried out in the village, there was no occasion for the Sub Divisional Magistrate, Garhshankar, to order fresh proclamation

(munadi). It is further submitted that even otherwise, the Sub Divisional Magistrate, Garhshankar (respondent No. 2) was not competent to direct fresh proclamation (munadi). Accordingly, it is submitted that the impugned order dated 25.02.2021 (Annexure P-6) be set aside and appropriate direction be issued to the revenue authorities to consider and process the applications of the candidates, who had already applied in pursuance to the first proclamation (munadi) and finalize the matter as regards appointment of Lambardar of village Laksihan.

5. I have heard learned counsel for the parties and have also perused the paperbook with their able assistance.

6. It is apposite to refer to letter dated 02.11.2020 (Annexure P-1), issued by Naib Tehsildar, Mahilpur, to concerned Halqa Patwari for carrying out the proclamation (munadi) for filling up the vacancy of Lambardar of village Laksihan, the relevant extract thereof read as under :-

“From

Naib Tehsildar, Mahilpur.

To

Patwari Halqa Laksian

No. 293/reader dated 02.11.2020

Subject: In respect of conducting proclamation for calling the application in order to fill the post of Lambardar, which get vacant on death of general lambardar Sh. Piara Singh.

Reference: Office order no. R-2658/R-1 dated 09.09.2020 of Ld. Tehsildar, Garhshankar.

In reference to the aforementioned subject, it is written to you that General Nambardar Sh. Piara Singh of

village Laksihan has expired. In this regard, Ld. Sub Divisional Magistrate, Garhshankar has permitted to initiate the proceedings. Therefore, it is written to you that proclamation to be conducted in the village and notice be affixed on public places that interest persons can apply for the post with the documents in the office of undersigned till 17.11.2020. after the fixed given date, no document would be considered. In this regard, Rapat be registered and signature of village Nambardar/Sarpanch be obtained. Notice afte service be sent to this office.

Sd/- Naib Tehsildar, Mahilpur.”

6.1 A perusal of the aforesaid letter dated 02.11.2020 (Annexure P-1) clearly indicates that proclamation (munadi) was to be conducted in the village and notice was to be affixed on the public places, so that the interested persons can apply for the vacant post of Lambardar. A perusal of Annexure P-3 i.e. report dated 09.11.2020 shows that the proclamation (munadi) was done through Chowkidar Gian Chand and an entry in that regard is stated to have been made in the rapat rojnamcha, vide rapat No. 75 dated 09.11.2020. Annexure P-4 is the statement of Chowkidar Gian Chand, which reads as under :-

“ I, Gian Chand, Chowkidar of village Laksian and stated that in the Nambardari Case of village Laksian, the letter regarding proclamation is received, in this regard, I have made announcement through loud speaker in the village, the sign on the letter of mustri munadi/proclamation are mine, after proclamation, the notice is send back to concerned patwari, Halqa.”

Statement is heard and is correct.

Sd/- Gian Chand.”

6.2 From a perusal of the Report (Annexure P-3) as well as statement of Chowkidar Gian Chand (Annexure P-4), it is not forthcoming as to on which date the proclamation (munadi) was carried out in the village. Furthermore, as per letter dated 02.11.2020 (Annexure P-1) to the Halqa Patwari, apart from proclamation (munadi) in the village, even a notice was to be affixed on public places, calling for applications from desirous persons for appointment to the post of Lambardar of village Laksihan, however, no such notice is forthcoming. As per the statement of Chowkidar Gian Chand (Annexure P-4), it is stated that he had only made announcement through the loud speaker in the village and no further details as regards the date/time is mentioned therein.

6.3 From the aforementioned facts and circumstances, it is evident that no proper proclamation (munadi) was carried out in the village for calling up applications from desirous candidates for filling up the vacant post of Lambardar of village Laksihan, in the manner indicated in letter dated 02.11.2020 (Annexure P-1).

7. As regards the contention of petitioner that the Sub Divisional Magistrate, Garhshankar, was not competent to order fresh proclamation (munadi) for filling up the vacant post of Lambardar of village Laksihan, learned State counsel has submitted that the Sub Divisional Magistrate was competent to direct proclamation (munadi) as the powers of the Deputy Commissioner have been delegated to the concerned Sub Divisional Magistrate.

8. Be that as it may, since it has already been concluded that the proclamation (munadi) was not carried out in the manner as indicated in the

letter dated 02.11.2020 (Annexure P-1), therefore, proclamation (munadi) is required to be carried out afresh.

9. Accordingly, it is directed that fresh proclamation (munadi) for filling up the vacant post of Lambardar of village Laksihan, Tehsil Garhshankar, District Hoshiarpur, be carried out in the village. Let necessary order in this regard be passed by the learned District Collector, Hoshiarpur, within a period of two weeks from the date of receipt/production of copy of this order.

10. Disposed of accordingly.

11. Pending application (s), if any, shall also stand closed.

(HARSH BUNGER)
JUDGE

01.08.2024
sjks

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No