

RSA-195 of 1996 (O&M)

2024:PHHC:069669



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

RSA-195 of 1996 (O&M)

Reserved on: 09.05.2024

Pronounced on: 16.05.2024

Chaukidar Prem Lal

.....Appellant

Versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Argued by: -Mr. G.P. Vashisht, Advocate,
for the appellant.

Mr. Surya Kumar, AAG, Punjab.

NAMIT KUMAR, J.

1. Having remained unsuccessful before both the Courts below, plaintiff-appellant has preferred this regular second appeal impugning the judgment and decree dated 07.08.1993, passed by the Court of learned Additional Senior Sub Judge, Hoshiarpur, whereby suit of the plaintiff for declaration was dismissed as well as the judgment and decree dated 11.08.1995, passed by the Court of learned District Judge, Hoshiarpur, whereby appeal preferred by the appellant was also dismissed.

2. Parties to the *lis* are being referred to as per their status before the trial Court. Brief facts of the case are that plaintiff filed a suit for declaration pleading therein that he was serving as Chowkidar of Village Hariana Baron and vide order dated 02.07.1985 passed by

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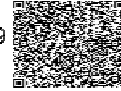


the Sub Divisional Officer (C), Hoshiarpur, he was dismissed from service. It was further pleaded that plaintiff was appointed as Chowkidar on 16.12.1980 by the Deputy Commissioner and whereas his services were terminated by the Sub Divisional Officer (C), Hoshiarpur, without holding any proper and valid enquiry and no show-cause notice was issued to him nor any charge-sheet was issued to the plaintiff. The defendants filed written statement wherein it was stated that the Village Panchayat complained against the plaintiff and District Development and Panchayat Officer also strongly recommended the complaint made by the Sarpanch and Lambardar of the Village. In pursuance to the said complaint, Circle Revenue Officer held enquiry and submitted report dated 29.04.1985; the plaintiff was heard on 02.07.1985 and thereafter impugned order was passed on 02.07.1985. Learned trial Court vide judgment and decree dated 07.08.1993 dismissed the suit of the plaintiff by returning the following finding on issue No.1, which was to the effect that as to whether order dated 02.07.1985 is illegal and void: -

“Issue No.1

6. In support of this issue, Prem Lal Plaintiff appeared in the witness box as PW1 and examined Darshan Singh PW2.

Prem Lal has stated that he was serving as Chowkidar of village Haryana Baron and was discharging his duties honestly. That the impugned order was passed without serving any notice on him. Similarly Darshan Singh P.W.2 has stated that the plaintiff discharged his duty diligently. It is not disputed that the plaintiff was appointed as Chowkidar of village Haryana Baron; Tehsil

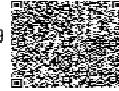


and District Hoshiarpur by the Deputy Commissioner, Hoshiarpur, vide order, dated 16.12.80 and the photostat copy of the order has also been placed on the file. Services of the plaintiff were terminated by the Sub Divisional Officer (C). vide order dated 2.7.85. The learned counsel for the plaintiff vehemently argued that the plaintiff was appointed as a Chowkidar by the Deputy Commissioner, Hoshiarpur and therefore, his services were to be terminated by the said authority and not by the Sub Divisional Officer (C) Hoshiarpur, and therefore, the impugned order is illegal and void. This contention of the learned counsel is devoid of any force.

Rule 11 of the Punjab Chowkidara Rules reads as follows:-

“11. The Deputy Commissioner, or the officer duly authorised by him in that behalf, may dismiss any village watchmen or daffadar for any misconduct or neglect of duty (or physical unfitness for the performance of his duties).”

Thus according to this rule the Deputy Commissioner or the Officer duly authorised by him may dismiss any village watchman. Copy of the order No.918-21/Reader dated 28.4.84 passed by the Deputy Commissioner, Hoshiarpur, has been placed on the file showing that the Deputy Commissioner authorised all the Sub Divisional Officers (C) in the District to exercise the powers of appointment and dismissal of Chowkidars under Rule 7 and 11 of the Punjab Chowkidara Rules. Thus according to this order the Sub Divisional Officer (C), Hoshiarpur, was authorised to pass the order regarding the appointment and dismissal of Chowkidars in Hoshiarpur Sub Division and therefore, the Sub Divisional Officer, Hoshiarpur was competent to dismiss the plaintiff.



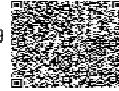
Being so, it cannot be held that the impugned order, dated 2.7.85 has been passed without any authority. It is clearly mentioned in the order that the plaintiff was heard in person and therefore, it cannot be said that no opportunity of hearing was afforded to the plaintiff before passing of the order. So far as the question of issuing show cause notice or issuing charge sheet to the plaintiff is concerned, no such provision has been made under Punjab Chowkidara Rules and therefore, it cannot be said that it was necessary for issuing a charge sheet to the plaintiff before passing the impugned order.

In the result, this issue is decided against the plaintiff.”

3. The said judgment and decree dated 07.08.1993 was challenged by the plaintiff before the lower appellate Court by way of appeal, which was also dismissed by the learned District Judge, Hoshiarpur, vide judgment and decree dated 11.08.1995 by returning the following finding: -

“8. The learned counsel on behalf of the appellant has argued that the plaintiff was appointed by the Deputy Commissioner, Hoshiarpur and the Sub-Divisional Officer(d) Hoshiarpur, who was an authority subordinate to him was not competent to dismiss the plaintiff and the impugned order, thus, liable to be set aside. However, I do not find any force in this contention of the learned counsel for the appellant. The plaintiff is not a civil servant and provisions of Article 311 of the Constitution of India are not applicable in his case. The provisions of Punjab Chaukidara Rules govern the service conditions of the plaintiff. Rule 11 of the said Rules clearly provides that the Deputy Commissioner or the officer duly authorised by him in that behalf may dismiss any village watchman or

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Daffadar for any misconduct or neglect of duty or physical unfitness. The Deputy Commissioner, Hoshiarpur, as a is evident from the order, dated 22.8.1994 reproduced below had delegated the powers vested in him to all the Sub-Divisional Officers (Civil) to exercise the powers of appointment and dismissal of Chaukidara in their respective sub-divisions:

"In exercise of the powers vested in me under Rules 7 and 11 of the Punjab Chaukidara Rules, I, S.R.Bungar, IAS, Deputy Commissioner, Hoshiarpur hereby authorize all the S.D.Os (C) in the District to exercise powers of appointment and dismissal of Chaukidara of their respective sub-divisions."

*Sd/-
Deputy Commissioner,
Hoshiarpur.*

9. That being so, the Sub-Divisional Officer (C) Hoshiarpur was competent to dismiss the plaintiff from the post of village Chaukidar and the contention of the learned counsel has, thus, simply to be repealed.

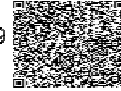
10. No other point has been urged before me and it is obvious from the impugned order that the same had only been passed after giving a personal hearing to the delinquent and the principles of natural justice in the instant case had also, thus, not been violated. I have, thus, no reason to differ with the finding of the learned trial court on the issue No.1.

11. Resultantly, the appeal fails and is dismissed leaving the parties to bear their own costs."

4. Learned counsel for the appellant has argued that plaintiff-appellant was appointed by the Deputy Commissioner, however, his services were terminated by the Sub Divisional Officer (C), Hoshiapur,

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vide order dated 02.07.1985 and being subordinate to the Deputy Commissioner, he has no authority to dismiss the appellant from service. Further contention raised by learned counsel for the appellant is that the appellant has been dismissed from service without issuing any charge-sheet and holding enquiry and, therefore, order of dismissal of the appellant is bad in law.

5. *Per contra*, learned State counsel has stated that the judgment and decree passed by the Courts below are legally sustainable in the eyes of law as the order of dismissal has been passed by the competent authority after following the principles of natural justice.

6. I have heard learned counsel for the parties and perused the record.

7. So far as the issue regarding delegation of power by the Deputy Commissioner to the subordinate is concerned, the said contention of the appellant has already been considered by both the Courts below and it has been held that as per Rule 11 of the Punjab Chowkidar Rules, notified vide notification dated 13.09.1965, the Deputy Commissioner, or the officer duly authorised by him in that behalf, may dismiss any Village Watchman or Daffadar for any misconduct or neglect of duty or physical unfitness for the performance of his duties. Since in the present case, Sub Divisional Officer (Civil), Hoshiarpur, was duly authorised by the Deputy Commissioner, therefore, passing of the order of dismissal of the plaintiff-appellant by the Sub Divisional Officer (C) cannot be faulted with.



8. So far as dismissal of the appellant from service without issuing any charge-sheet is concerned, it is apt to make reference to relevant provisions of the Rules of 1965. Rules 6 and 8 of the Rules deals with the appointment of the Village Chowkidar and the same read as under: -

“6. The nomination to the post of village watchman or of Daffadar shall be made by the village headman, and where there are more village headmen than one, the opinion of the majority in number (unless there is some special provision to the contrary in the village administration paper) shall prevail. Where a village watchman or daffadar is to be appointed for a beat comprising more than one village, the opinion of the majority in number of the village headmen in such beat shall prevail.

x x x x x

8. The person so nominated shall, after due enquiry into his age, Character and ability, be appointed or rejected at discretion by such Deputy Commissioner, or by some officer authorised by him in that behalf.”

9. Village Chowkidars are paid remuneration for discharging their duties which is incorporated in Rules 33 and 34 of the Rules, which read as under: -

“33. Subject to the provision hereinafter contained, every village watchman shall receive remuneration in cash at the rate of not less than five rupees per mensem or remuneration in grain not less than equivalent to five rupees per mensem or remuneration partly in grain and partly in cash not less than equivalent to five rupees per mensem in all to be paid half yearly or at each harvest. An extra remuneration to be fixed by the Deputy



Commissioner, not exceeding five rupees per mensem, shall be paid to each daffadar.

34. Provided that, with the sanction of the Commissioner, the Deputy Commissioner may enhance the remuneration of any village watchman upto a maximum of Rupees twenty per mensem in cash or its equivalent in grain;

Provided also that whenever the remuneration has been fixed in whole or in part in cash, whether at the time of settlement or otherwise, it shall, at any time, be competent to the village community and the village watchman by mutual agreement, subject to the approval of the Deputy Commissioner, to commute such cash remuneration into remuneration in grain; but where such commutation has taken place, the Deputy Commissioner may, for any sufficient reason, direct that remuneration in cash shall be reverted to.”

10. Further, as to whether the Village Chowkidar is a Government servant and is entitled for the pay at par with the Chowkidars working in other Government departments came up for consideration before this Court in case titled as ***Pendu Chowkidar Union Punjab (Regd.) and others v. State of Punjab and others, 2004(4) S.C.T. 649***, wherein it has been held as under: -

“12. True it is that the village chowkidars in strict-sensu are not Government servants. The posts held by them are not “civil posts” nor their emoluments are drawn from the consolidated fund of the State. The conditions of their service are also not governed under any Legislative enactment and/or the Service Rules framed under Article 309 of the Constitution of India. Similarly, the mode and manner of their recruitment is also not consistent with the philosophy of Article 16 of the Constitution of India. In



view of this, it is not possible for this Court to declare them “government servants/employees”.

11. In this view of the matter, no fault can be found in the action of the respondents in dismissing the appellant from service on the basis of recommendations made by the Village Panchayat, which was duly enquired into by Circle Revenue Officer who submitted report dated 29.04.1985; the plaintiff was heard on 02.07.1985 and thereafter impugned order was passed. Substantial compliance of the principles of natural justice has been made.

12. Concurrent findings have been recorded by both the Courts below and learned counsel for the appellant has failed to show that the same are perverse or illegal or based on misreading, non-reading or mis-appreciation of the material evidence on record.

13. No other point has been urged.

14. No question of law, muchless substantial question of law has been raised or arises for consideration in the present appeal.

15. In view of the above, present appeal is dismissed.

16. Pending application(s), if any, stand disposed of accordingly.

16.05.2024
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No