

110 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-17837-2024 (O/M)

Date of decision : 13.08.2024

Karambir

..... Petitioner

Versus

Commissioner, Ambala Division, District Ambala and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Karan Bhardwaj, Advocate
for the petitioner.

Ms. Upasana Dhawan, AAG Haryana.

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HARSH BUNGER, J.

1. Petitioner (Karambir) 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 11.02.2020 (Annexure P-1), passed by learned Collector, District Ambala, Haryana (in short 'the Collector'), whereby respondent No. 4 (Joginder Pal) has been appointed as Chowkidar of village Landa, Tehsil, Barara, District Ambala.

1.1 A further prayer has been made for setting aside the order dated 16.04.2024 (Annexure P-4), passed by learned Commissioner, Ambala Division, Ambala (in short 'the Divisional Commissioner'), whereby the appeal filed by the petitioner against order dated 11.02.2020 (Annexure P-1), has been dismissed.

2. Briefly, on demise of previous Chowkidar, namely, Chitradin of village Landa, proceedings were initiated for filling up the aforesaid

vacancy of Chowkidar and mustri munadi (proclamation) was conducted in the village, whereby applications from the desirous persons to fill up the aforesaid vacancy were called. It transpires that initially, the concerned Naib Tehsildar as well as the Sub Divisional Officer, Barara recommended the name of one Akbar Ali for appointment as Chowkidar and forwarded the case file to the learned Collector, however, the said person, namely, Akbar Ali, did not appear before the learned Collector, consequently, the learned Collector directed the Sub Divisional Officer, Barara to effect fresh munadi (proclamation), which was concededly effected on 24.01.2017. In pursuance to the munadi (proclamation) effected on 24.01.2017, three applications (including one submitted by the petitioner and other submitted by respondent No. 4) were received. It is not disputed that the petitioner (Karambir) as well as respondent No. 4 (Joginder Pal) submitted their respective applications on 15.05.2017, whereupon their antecedents were got verified from the local police, which were found to be correct. The third candidate, namely, Suresh Kumar, did not come present, accordingly, he was proceeded against ex-parte.

2.1 The learned Collector, vide order dated 11.02.2020 (Annexure P-1) appointed respondent No. 4 (Joginder Pal) as Chowkidar of village Landa.

2.2 Being aggrieved against the aforesaid order dated 11.02.2020 (Annexure P-1), the present petitioner preferred an appeal before the learned Divisional Commissioner, which was dismissed, vide order dated 16.04.2024 (Annexure P-4).

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 submits that the learned Collector as well as the learned Divisional Commissioner has erred in law and facts in appointing respondent No. 4 (Joginder Pal) as Chowkidar of village Landa, despite the fact that prior to passing of the order dated 11.02.2020 (Annexure P-1) by the learned Collector, the State of Haryana had brought about an amendment i.e. 'The Haryana Chowkidara (Watchman) Amendment Rules, 2018' (in short 'Rules of 2018'), vide Notification dated 13.09.2018, whereunder it was prescribed that a candidate applying for post of Chowkidar, must have passed 10th class and it is stated that the said amendment comes into effect from the date of publication of the said notification i.e. 13.09.2018. It is contended that since respondent No. 4 (Joginder Pal) was only 8th class pass, therefore, he was not eligible for being appointed as Chowkidar in terms of aforesaid amendment and he has been wrongly appointed as Chowkidar, vide the impugned orders. Accordingly, prayer has been made for setting aside the impugned orders.

5. At this stage, learned State counsel has appeared in pursuance to the advance copy of petition having been served upon respondent-State. It is submitted that the proceedings for filling up the vacancy of Chowkidar upon demise of previous Chowkidar-Chitradin were initially initiated in the year 2014, however, the learned Collector had directed to conduct fresh munadi (proclamation), which was effected on 24.01.2017 and in pursuance to the said munadi (proclamation), petitioner as well as respondent No. 4

had submitted their respective applications on 15.05.2017. It is stated that since the proceedings for filling up the vacancy were initiated prior to the amendment of the rules vide notification dated 13.09.2018, therefore, the rules containing eligibility conditions, as applicable on the date of effecting the munadi (proclamation) i.e. 24.01.2017, are to be seen. It is stated that on the date of conducting munadi (proclamation) i.e. on 24.01.2017, the requisite educational qualification for the post of Chowkidar was only 8th class pass. Accordingly, it is submitted that there is no merit in the writ petition and prayer for dismissal of the instant civil writ petition has been made.

6 I have heard learned counsel for the parties and have also perused the paper book with their able assistance.

7. The issue sought to be raised in the instant civil writ petition is as to whether the date of consideration for appointment of the village watchman (chowkidar) is to be taken as the determinative date as regards the eligibility of candidates is concerned or some other date.

8. The aforesaid issue is no more res-integra and the same already stands considered and decided by this Court in the case of ***Raj Kumar Versus State of Haryana***, 2019(2) RCR (Civil) 865, wherein it was held as under:-

“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 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... ”

8.1 In the aforesaid case of **Raj Kumar (supra)**, it transpires that on fresh proceedings, the aforesaid Raj Kumar was appointed as Chowkidar, vide order dated 12.02.2020, however, vide an order dated 09.12.2022, passed by the Deputy Commissioner, Panipat; he (Raj Kumar) was removed from the post of village chowkidar of village Karkoli, whereupon Raj Kumar preferred a writ petition (CWP-29190-2022) before this Court, wherein the following order dated 19.12.2022, was passed:-

“The petitioner was appointed as Chowkidar vide order dated 12.02.2020. He has been dismissed from the said post vide order dated 09.12.2022 on the ground that he does not fulfil the educational qualifications prescribed vide Notification dated 13.09.2018. Thus, the present writ petition has been filed.

Learned counsel for the petitioner has submitted that the process for appointment of Chowkidar was initiated on 05.05.2016. One Sahil was appointed as such but his appointment was set aside by this Court vide order dated 13.02.2019 passed in CWP No.5929-2017. Thereafter, the petitioner was appointed on 12.02.2020. Since the process of appointment started in the year 2016, the notification of the year 2018 was not applicable. Thus, the impugned order is illegal and deserves to be set aside.

The petitioner does not dispute that he does not fulfil the educational qualification of 10th class pass as prescribed vide Notification dated 13.09.2018. His appointment came to be made in the year 2020 i.e. after the notification dated 13.09.2018 came into force. Merely, because the initial process of appointment started in 2016, it cannot be said that a subsequent change in the educational qualification prescribed was not applicable. Educational qualification is to be seen as

on the date of appointment and thus, the submission made by learned counsel for the petitioner cannot be accepted.

The writ petition has no merit and is dismissed...”

8.2 The aforesaid Raj Kumar challenged the above extracted order dated 19.12.2022 by filing an intra court appeal (LPA-69-2023), which came to be allowed by a Division Bench of this Court, vide order dated 13.04.2023, by holding as under:-

“The Writ Petition had been filed by the appellant herein challenging the order dt. 09.12.2022 passed by the Deputy Commissioner, Panipat removing him from the post of village chowkidar of village Karkoli.

The said order of removal had been passed against the appellant by the said official on the ground that he has not passed 10th Class as prescribed by the amendment to Haryana Chowkidara (Watchman) Rules, 2013 notified on 13.09.2018.

The learned Single Judge had upheld the said order on the ground that the appointment of the appellant had been made on 12.02.2020, after the said notification had come into force, and therefore, the order of removal passed against the appellant did not warrant any interference. He also opined that merely because initial process of appointment started in the year 2016, it cannot be said that a subsequent change in the educational qualification prescribed was not applicable, and the educational qualification is to be seen as on the date of appointment.

Challenging the said order, this Letters Patent Appeal is filed.

Admittedly, when the post of Chowkidar had fallen vacant on account of death of the existing chowkidar on 24.10.2014, process for filling up the said vacancy

was started in the year 2016 and munadi was conducted on 05.05.2016 for the appointment of new chowkidar. The last date fixed was 19.05.2016 and appellant along with 4 other persons applied for the said post and one Sahil was appointed as chowkidar.

The appellant had filed CWP-5929-2017 challenging the appointment of Sahil on the ground that the said individual had not completed the age of 21 years as per the applicable Rules for being appointed as chowkidar in the said village.

The said Writ Petition was allowed on 13.02.2019 and the appointment of Sahil was set aside by this Court observing that the Deputy Commissioner, Panipat “should fix a date for determining the eligibility for the applicants prior to ordering fresh munadi in the village qua for fresh applications”.

Obviously, the intention of this Court, when it passed the said order, was that candidates like the appellant who had previously applied would also be considered to fill the said vacancy.

A fresh munadi was issued on 01.04.2019 and a fresh application was then taken from the appellant bearing dt.25.04.2019 and the appellant was appointed on 12.02.2020.

It appears that the appellant filed an application seeking release of honorarium and dress allowance etc. before the BDPO Samlakha since the same was being withheld and was not being released in spite of letters dt.27.01.2021 and 30.11.2021 submitted by him.

So he had filed CWP-17899-2022 and the same came to be disposed of on 12.12.2022 treating it as infructuous because of release of honorarium in the meantime.

It is unfortunate that the respondents, after releasing the honorarium and dress allowance etc. to the appellant, chose to then take note of the fact that he did not possess a pass in 10th class prescribed under the 2018 Regulations and removed him from the said post vide the impugned order dt.09.12.2022, 2 years 10 months after he was appointed on 12.02.2020.

In our considered opinion, since the appellant had also made an application in the year 2016 along with Sahil and others, pursuant to the order passed by the learned Single Judge in CWP-5929-2017 vide order dt. 13.02.2019, he should have been appointed for the post of chowkidar and there was no necessity to conduct a fresh munadi and take a fresh application from him and then appoint him on that basis on 12.02.2020. His appointment therefore should be taken as an appointment having been made pursuant to the process of appointment initiated in the year 2016. Therefore, the notification of the year 2018 amending the educational qualification has no application to him.

The learned Single Judge had erred in not noticing these facts and proceeding on the assumption that the change in educational qualification would continue to apply because of the date of the appointment order issued to the appellant.

Accordingly, this Letters Patent Appeal is allowed and the order dt.19.12.2022 passed in CWP-29190-2022 is set aside and the said Writ Petition is allowed.

The respondents are directed to reinstate the appellant with all consequential benefits within 6 weeks from the date of receipt of copy of this order... ”

8.3 A perusal of the judgment rendered in the case of **Raj Kumar**

(supra), leaves no manner of doubt that 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. Further, in terms of the observations made by the Hon'ble Division Bench of this Court in the above referred LPA-69-2023, since the appointment has been made pursuant to the process of appointment initiated in the year 2017, therefore, the notification of the year 2018 amending the educational qualification has no application.

9. No other argument has been raised.
10. Keeping in view the aforementioned facts and circumstances, I do not find any merit in the present writ petition, resultantly, the same is dismissed.
11. All pending application (s), if any, shall also stand closed.

(HARSH BUNGER)
JUDGE

13.08.2024
sjks

Whether speaking/reasoned : Yes / No
Whether reportable : Yes / No