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

CWP-23999-2021

Date of Decision: 06.05.2024

Zakir Hussain

..... Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr.Deepak Goyal, Advocate, for the petitioner.

Ms. Upasana Dhawan, Assistant Advocate General, Haryana.

Mr. Y.S.Rathore, Advocate,

Mrs. Sudha Singh, Advocate and

Mr. Yuvraj Rathore, Advocate for
respondent No.4.**Rajesh Bhardwaj, J.**

1. Prayer in the present petition is for setting aside the order dated 12.10.2021 (Annexure P-5) passed by the Commissioner, Karnal Division, Karnal and to appoint the petitioner as Chowkidar. Further prayer has been made to stay the operation of the impugned order dated 12.10.2021.

2. Adumbrated facts of the case are that on superannuation of earlier Chowkidar, namely, Mohammad Ismail, of village Sheikhpura, Tehsil and District Karnal, post of Chowkidar fell vacant and thus, process for the appointment of new Chowkidar was initiated. Proclamation was made in the village for inviting applications. In pursuance to the same, four applications were received including the petitioner (Zakir Hussain son of Mohammad Ismail) and respondent No.4 (Dilshad son of Jani). Their character verifications were got conducted from the concerned Police

Station. Finally three candidates, namely, Jakir Hussain son of Ismail, Jakir



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Hussain son of Jani and Dilshad son of Jani remained in fray. On the evacuation of their inter-se merits, Tehsildar recommended the name of the petitioner Zakir Hussain son of Ismail for the appointment of Chowkidar to the SDO (Civil) Karnal on 10.06.2019. However, only two candidates, i.e. the petitioner and respondent No.4 appeared before the Collector on 16.05.2020. On appreciation of their inter-se merits, respondent No.4 Dilshad was found to be 25 years of age, 12th pass by qualification and he was also not found to be in illegal possession of the Panchayat/Government property. On the other hand, petitioner, Jakir Husain son of Ismail was found to be 41 years of age and studied till 10th class and he was the son of the earlier Chowkidar, who superannuated. He was also found to be working as a Peon on temporary basis for the last 4-5 years. However, from the evaluation of the report submitted by the Police, respondent No.4 was found to have been involved in FIR No.932 dated 11.10.2016 registered under Sections 148, 149, 324, 326, 302, 506 IPC at Police Station Sadar Karnal. Hence, learned Collector on evaluation of the inter-se merits and demerits of both the candidates, finding the petitioner to be more meritorious and suitable candidate, appointed him as Chowkidar of the village vide order dated 21.09.2020 (Annexure P-1). Aggrieved by the same, respondent No.4 filed an appeal before the Divisional Commissioner, Karnal Division, Karnal. Learned Divisional Commissioner after hearing both the sides, set aside the order passed by the Collector and appointed respondent No.4 as Chowkidar of village vide his order dated 12.10.2021 (Annexure P-5). Hence, aggrieved by the same, the petitioner is before this Court by way of filing the present petition.



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3. Learned counsel for the petitioner has vehemently contended that on perusal of the inter-se merits of both the petitioner and respondent No.4, it is evident that though respondent No.4 was younger and more qualified than the petitioner, however, the petitioner has the experience of work of Chowkidar of more than four years. He has submitted that thus, the petitioner fulfills the criteria for the post of Chowkidar as per Rule 5 Sub Rule 4(2) of the Haryana Chowkidara (Chowkidar) Rules, 2011. He submits that learned Collector finding the petitioner suitable and more meritorious had rightly appointed him as Chowkidar of the village, however, in the appeal filed by respondent No.4, the Commissioner by mis-reading the evidence on record, has illegally set aside the well-reasoned order passed by the Collector. He further submits that the petitioner had deposited money in several welfare and small saving schemes and has good reputation in the village, whereas, respondent No.4 has not good moral character as he has faced criminal prosecution in an FIR No.932 dated 11.10.2016 registered under Sections 148, 149, 324, 326, 302, 506 IPC at Police Station Sadar Karnal. However, this fact was totally overlooked by the Commissioner while setting aside the well-reasoned order passed by the Collector. He further submits that this is an admitted fact that respondent No.4 was involved in heinous offence even though he was acquitted by the trial Court, but still stigma remains on his character and thus, the impugned order passed by the Commissioner, is totally unsustainable in the eyes of law and thus, deserves to be set aside.

4. Per contra, learned counsel for respondent No.4 has opposed the submissions made by counsel for the petitioner. He has submitted that



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on the comparison of the inter-se merits of both the candidates, it is apparent that respondent No.4 was younger in age and more qualified. He submits that respondent No.4 was falsely implicated in the FIR as mentioned above, but he was acquitted by the trial Court vide its order dated 25.05.2017. He further submits that before the appointment of respondent No.4, he already stood acquitted. Thus, being more meritorious, learned Commissioner has rightly set aside the perverse order passed by the Collector. He submits that there being no perversity in the impugned order, the present petition deserves to be dismissed.

5. After hearing learned counsel for the parties and perusing the record, it is apparent that on the superannuation of the earlier Chowkidar, post of Chowkidar fell vacant in the village and thus, process for the appointment of Chowkidar was initiated. Proclamation was made in the village and in pursuance to the same, four applications were received. Respondent No.4 was found to be involved in criminal case. Learned Collector on overall evaluation of merits and demerits of both the candidates found respondent No.4 to be involved in a criminal case and thus, finding the petitioner to be more meritorious appointed him as Chowkidar of the village. However, in the appeal filed by respondent No.4 before learned Commissioner, he set aside the order passed by the Collector on the ground that respondent No.4 was younger in age and more qualified. However, there is no whisper in the order passed by the Collector regarding the antecedents of respondent No.4 having faced criminal prosecution for the heinous offence like Section 302 IPC. Even though respondent No.4 was acquitted by the trial Court in the same, but he could not have been

considered as most meritorious and suitable candidate for the post in comparison to the petitioner, who had an impeccable record. Learned Commissioner gave no finding regarding the same. Simply because respondent No.4 was younger in age and more qualified, is not sufficient for the appointment when this is an admitted fact that he was involved in a criminal case.

6. The Court finds the view taken by the Commissioner to be totally perverse in setting aside the well-reasoned order passed by the Collector. Thus, the Court has no hesitation in holding the impugned order dated 12.10.2021 passed by the Commissioner, to be illegal and arbitrary and hence, the same is set aside and the order of Collector is restored.

7. The petition stands allowed.

06.05.2024

sharmila

(RAJESH BHARDWAJ)

JUDGE

Whether Speaking/Reasoned	:	Yes/No
Whether Reportable	:	Yes/No