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

**CWP No.28031 of 2022
Date of Decision: 20.02.2024**

Kuldip Singh

..... Petitioner

Versus

**Deputy Commissioner exercising the powers of Collector
S.A.S. Nagar, Mohali and another**

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. S. S. Siao, Advocate for
for the petitioner.

Mr. Navneet Singh, Sr. DAG, Punjab.

Mr. Ashok Giri, Advocate
for respondent No.2.

RAJESH BHARDWAJ, J. (ORAL)

Present writ petition has been filed for quashing the orders dated 03.08.2022 (Annexure P-4) passed by the Deputy Commissioner exercising the powers of the Collector accepting the appeal of respondent No.2-Rajinder Singh against the orders dated 27.07.2021 (Annexure P-3) passed by the Sub Divisional Magistrate, Kharar appointing the petitioner as Chowkidar of village Sil, Tehsil Kharar, SAS Nagar, Mohali. Further prayer has been made for staying the operation of impugned order dated 03.08.2022 (Annexure P-4) during the pendency of the present petition.

It has been submitted by learned counsel for the petitioner that on the death of earlier chowkidar, namely, Hardy Singh on 31.08.2019, the post of chowkidar fell vacant in village Sil, Tehsil Kharar, District SAS Nagar. He submits that on account of the same, applications were invited from the interested candidates of the village on 16.03.2021. He submits that in pursuance to the same, 05 applications were received and finally 02 candidates i.e. the petitioner, namely, Kuldip Singh and respondent No.2, namely, Rajinder Singh remained in fray. The case was referred to the Tehsildar, Kharar by the Naib Tehsildar, Kharar recommending the name of Rajinder Singh i.e. respondent No.2 but Tehsildar, Kharar recommended the name of Kuldip Singh i.e. the petitioner for the post of village Chowkidar on 15.04.2021. He has submitted that the Sub Divisional Magistrate, Kharar appointed Kuldip Singh as the village chowkidar finding him more suitable for the post vide his order dated 27.07.2021. Being aggrieved by the same, respondent No.2 filed an appeal before the Deputy Commissioner exercising the powers of Collector, SAS Nagar, who accepted the same vide his order dated 03.08.2022 and thus, set aside the order passed by the Sub Divisional Magistrate, Kharar. He has submitted that the impugned order passed by the Deputy Commissioner exercising the power of Collector is illegal, arbitrary and without jurisdiction and thus, deserves to be set aside. He has submitted that Sub Divisional Magistrate had appointed the petitioner as the village chowkidar on the recommendation of Tehsildar, Kharar. He submits that the petitioner is always available in the village and is serving since long. He submits that respondent No.2 is not available in the village as he is working

in Chandigarh University Gharuan which is about 10 km away from the village. He submits that the petitioner remained Panch of the village and thus, he earns good reputation in the village. However, the Deputy Commissioner exercising the powers of Collector without considering the merits of petitioner has illegally set aside the order passed by the Sub Divisional Magistrate. He submits that the impugned order being unsustainable in the eyes of law deserves to be set aside.

Per contra, learned counsel for respondent No.2 has opposed the submissions made by learned counsel for the petitioner. He has submitted that on comparison of the *inter se* merits and demerits of both the candidates i.e. the petitioner and respondent No.2, respondent No.2 was more meritorious and suitable but his merit was blatantly ignored by the Sub Divisional Magistrate in his order dated 27.07.2021 while appointing the petitioner as chowkidar of the village. However in the appeal filed, the learned Deputy Commissioner exercising the powers of Collector had rightly set aside the illegal order passed by the Sub Divisional Magistrate and thus, appointed respondent No.2 as chowkidar of the village. He has submitted that contention of the petitioner regarding the non availability of respondent No.2 in the village is without any evidence on record and the same is not sustainable in the eyes of law.

Learned counsel for the State has opposed the submissions made by learned counsel for the petitioner. He has submitted that as per Rule 42 of the Punjab Chokidara Rules, 1965, the Deputy Commissioner exercising the powers of Collector had the jurisdiction to adjudicate the

appeal filed against the order passed by the Sub Divisional Magistrate. He has submitted that as per the provisions of Rule 42 of the Punjab Chokidara Rules, *all orders by delegating the authority shall be appealable to the Deputy Commissioner or to such authority as the Deputy Commissioner may specify*. He has submitted that respondent No.2 was found to be more meritorious and suitable and thus, the appeal has been rightly accepted by the Deputy Commissioner. He has submitted that there being no infirmity in the impugned order passed, the petition being devoid of any merit deserves to be dismissed.

Heard.

On hearing learned counsel for the parties and perusing the record, as enumerated from the facts and circumstances of the case that on the death of earlier chowkidar, the applications were invited for the appointment of new chowkidar in the village. Though five applications were received, however finally two candidates remained in the fray. The *inter se* merits of both the candidates were found to be as follows:

Sr. No.	Name of the candidate	Father's name	Age	Educational Qualifications	Remarks
1.	Rajinder Singh	Surinder Singh	39 years	12 th pass	Character is good as per the report of the police.
2.	Kuldip Singh	Naranjan Singh	60 years	7 th pass	As per the police report, a case No.229, dated 09.09.2010 was registered against this candidate, under Sections 323, 452, 34 IPC in P.S. Kharar, but vide its decision dated 28.02.2017 the learned Court of Ms. Ankita Sharma, PCS, JMJC acquitted Kuldip Singh of the charge.

On the comparison of *inter se* merits of both the candidates, it is apparent that the petitioner was 60 years of age and 7th class pass by qualification. Besides this, he faced criminal prosecution in case for the offences punishable under Sections 323, 452, 34 IPC registered at police station Kharar. However, he was acquitted by the learned JMIC vide order dated 28.02.2017. Respondent No.2 was found to be 39 years of age and 12th class pass by qualification. His character antecedents were found to be good as per the police report. Thus, it is evident that respondent No.2 was much younger than the petitioner and more qualified than him. Besides this, on verification his character was found to be good. The contention raised by learned counsel for the petitioner that the Collector had no jurisdiction to entertain the appeal is also without any force as in accordance with Rule 42 of the Punjab Chokidara Rules, the Collector had the jurisdiction to adjudicate the appeal filed. The contention of the counsel for the petitioner regarding non availability of respondent No.2 in he village is without any evidence on record and thus same is rejected.

In the over all facts and circumstances of the case, it is apparent that on evaluation of the *inter se* merits of both the candidates, respondent No.2 was found to be more meritorious and suitable. Thus, there being no infirmity in the order passed by the Deputy Commissioner exercising the powers of Collector dated 03.08.2022, the present petition being devoid of any merit is hereby dismissed.

20.02.2024

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(RAJESH BHARDWAJ)
JUDGE

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

