

201 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-37573-2019 (O/M)

Date of decision : 15.10.2024

Gajbir Singh

..... Petitioner(s)

Versus

Commissioner, Rothak Division, Rohtak and others Respondent(s)

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Sushil Sheoran, Advocate
for the petitioner(s).

Mr Rajneesh Chadwal, AAG Haryana.

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HARSH BUNGER, J. (ORAL)

1. Petitioner (Gajbir Singh) has filed the instant civil writ petition under Articles 226/227 of Constitution of India, inter alia, seeking a writ in the nature of certiorari for setting aside the order dated 15.10.2019 (Annexure P-2), passed by learned Commissioner, Rohtak Division, Rohtak (in short 'Divisional Commissioner'). Further prayer has been made for restoring the order dated 14.08.2019 (Annexure P-1), passed by learned Collector, Charkhi Dadri (in short 'Collector') whereby petitioner was appointed as Chowkidar of village Dadhi Chillar, Tehsil and District Charkhi Dadri.

2. Briefly, on resignation of Shri Rajbir Singh, previous chowkidar of village Dadhi Chillar, Tehsil and District Charkhi Dadri, proceedings were instituted for filling up the said vacancy, wherein the last date for submission of application was stated to be 11.03.2015. It appears that the petitioner did not apply for the aforesaid vacancy within

the stipulated period, however, according to the petitioner, his application was accepted upon the orders of the Collector, although, no such order has been attached in the writ petition.

2.1 Be that as it may, there were two candidates in the fray for the aforesaid vacancy i.e. the petitioner and respondent No. 3 (Veekay son of Zile Singh). The learned Collector, vide order dated 14.08.2019 (Annexure P-1), appointed petitioner as the chowkidar.

2.2 Respondent No. 3 challenged the order dated 14.08.2019 by filing an appeal before the learned Divisional Commissioner, which was allowed, vide order dated 15.10.2019 (Annexure P-2), whereby the entire process of selection has been held to be defective and the matter was remanded to the learned Collector with the direction to fill up the post after making fresh munadi.

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

4. Learned counsel for petitioner submits that the impugned order dated 15.10.2019 (Annexure P-2) is without jurisdiction inasmuch as that under the Haryana Chowkidara (Watchman) Rules, 2011 (in short '2011 Rules'), there is no provision for filing of appeal/revision against an order of appointment of Chowkidar, passed by the Collector. It is further submitted that the petitioner was not served in the appeal filed by respondent No. 3 and the order dated 15.10.2019 has been passed without affording him of any opportunity of hearing. It is next submitted that even otherwise, the petitioner is more meritorious than respondent No. 3, therefore, he was rightly appointed as the Chowkidar by learned

Collector. With the aforesaid submissions, it is prayed that the writ petition be allowed by setting aside the impugned order.

5. Per contra, learned State counsel has opposed the submissions made on behalf of the petitioner by submitting that as regards the issue of jurisdiction is concerned, the same stands decided by this Court in ***Dharamender Versus State of Haryana and others, 2022 (3) RCR (Civil) 691***. It is further submitted that since the proceedings for filling up the vacancy of Chowkidar were initiated in 2015, therefore, the provisions of Haryana Chowkidara (Watchman) Rules, 2013 (in short '2013 Rules') are applicable wherein an amendment was carried out, vide Haryana Government Notification dated 28.12.2022 whereby Rule 7(A) has been inserted in the 2013 Rules, clearly providing for a remedy of appeal against an order passed by the Deputy Commissioner. It is next submitted that the petitioner was served in the appeal, filed by respondent No. 3, however, he chose not to appear before the learned Divisional Commissioner, whereupon the appellate authority examined the matter and came to the conclusion that the process of selection was defective and accordingly, the matter has been remanded to the learned Collector with a direction to fill up the post after making fresh munadi. It is also submitted that no prejudice has been caused to the petitioner as he would be entitled to apply for the post afresh. With the aforesaid submissions, prayer for dismissal of the instant civil writ petition has been made.

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

7. In the present case, apparently, the petitioner was appointed as the Chowkidar by the learned Collector, primarily on the ground that he is more educated than respondent No. 3 and ten persons had given statement in his favour for appointing him as a Chowkidar and also that the lower revenue officers had recommended his name for the vacancy of Chowkidar.

7.1 On an appeal filed by respondent No. 3, the Collector's was set aside by learned Divisional Commissioner, vide order dated 15.10.2019 (Annexure P-2) by observing as under :-

“ After perusal of documents available on the file and grounds of appeal and hearing oral argument of learned counsel of appellant, I came to the conclusion that respondent has been found guilty of unexplained behaviour in the initial stage of his appointment. He has not appeared in this court despite having received the information.

More so, it is clear from the documents available on the file that despite completion of process of Munadi, application of respondent has been received beyond the stipulated period and no plausible explanation is forthcoming from the perusal of the order of lower court. Consequently process of selection is defective.

Therefore, this case is remanded back to learned Collector cum Deputy Commissioner, Charkhi Dadri with the direction to fill up the post after making fresh Munadi.

Hence, it is ordered that Collector cum Deputy Commissioner, Charkhi Dadri shall make fresh Munadi again in the village for filling up the post of Chowkidar, and for doing so, advertisement be published in the local papers of national level newspaper like Danik Jagran, Danik Bhaskar, Danik Tribune etc., so that no question can be raised regarding Munadi. More so this advertisement be

also uploaded on the official website of District Administration. One certified copy of this order be sent to Collector Charkhi Dadri for compliance. File after compliance be sent to record room.”

7.2 Now, the petitioner has challenged the order dated 15.10.2019, primarily on the ground that the learned Divisional Commissioner had no jurisdiction to entertain or hear the appeal in terms of 2011 Rules.

7.3 It is noticeable that the State of Haryana had framed the Haryana Chowkidara (Watchman) Rules; which were notified vide Notification No. 13/4/96-2HC, dated 11.01.2013; wherein the title of the Rules read as Haryana Chowkidara (Watchman) Rules, 2011.

7.4 It is apposite to state here that the Haryana Government vide Notification dated 01.04.2016 issued a corrigendum for reading the year 2011 as 2013. The relevant extract thereof reads as under :-

“
*HARYANA GOVERNMENT
HOME DEPARTMENT
CORRIGENDUM
The 1st April, 2016*

No. 13/4/96-2HC.- In the Haryana Government, Home Department, Notification No. 13/4/96-2HC, dated the 11th January, 2013 published in the Haryana Government Gazette (Extraordinary), dated the 11th January, 2013 in its authorised English translation, in the existing short title for “2011” read “2013”.”

7.5 As regards, the contention of the petitioner that learned Divisional Commissioner had no jurisdiction to hear the appeal, it is observed that the said issue is no more res integra, in view of the judgment rendered by a coordinate Bench of this Court in the case of ***Dharamender*** (supra), wherein it was held as under :-

“ This case relates to appointment of Chowkidar in village Kanhori. The Collector appointed respondent No.6 vide order dated 07.09.2021 and the writ petition has been preferred against the said order.

2. Learned counsel for the petitioner was asked to explain, why, an appeal could not be filed under the Punjab Land Revenue Act, 1887 (hereinafter referred to as the Act) as Section 13 thereof provides an appeal against any order passed by a revenue official. The Collector is a revenue official.

3. Learned counsel for the petitioner has relied upon a judgment dated 09.11.1970 passed in CWP-2806-1970 titled as *Badlu Vs. the State of Haryana and others* to argue that appeal is a creature of the statute and if, statute does not provide therefore, the same cannot be filed.

4. It is a settled proposition of law that an appeal can only be filed, if, the statutes provide for it. In this case, even though, the relevant Chowkidara Rules do not provide for an appeal, an appeal can still be filed under Section 13 of the Act as the Collector, who has passed the impugned order is a revenue official too. The judgment *Badlu (supra)* only reiterates the settled position that an appeal lies only when the statutes provide for it. It does not consider the aspect of maintainability of an appeal under the general law i.e. the Act.

5. In view of above, the writ petition is not maintainable and is accordingly, dismissed. The petitioner may, however, file an appeal against the impugned order and in case, he does so within two weeks from today, delay in filing the same will be condoned.”

8. That apart, the Haryana Government, vide Notification dated 28.12.2022, brought about an amendment in the 2013 Rules by inserting Rule 7(A) therein, whereby a remedy of appeal has been

provided. The relevant extracts of the notification dated 28.12.2022 reads as under :-

*“ HARYANA GOVERNMENT
DEVELOPMENT AND PANCHAYATS DEPARTMENT
Notification
The 28th December 2022
No. S.O. SS/P.A.IV/1872/S.39/2022.- In exercise of the
powers conferred under section 39-A of the Haryana Laws
Act, 1872 (Punjab Act IV of 1872), the Governor of
Haryana hereby makes the following rules further to amend
the Haryana Chowkidara (Watchman) Rules, 2013, namely-*

*1. These rules may be called the Haryana Chowkidara
(Watchman) Amendment Rules, 2022.*

*2. In the Haryana Chowkidara (Watchman) Rules, 2013
(hereinafter called the said rules), after rule 7, the following
rule shall be inserted, namely-*

*“7(A) Appeal against order of Deputy
Commissioner.- A person aggrieved by an order
passed by the Deputy Commissioner under rule 7
may within a period of Thirty days from the date of
such order, prefer an appeal to the Commissioner.
The Commissioner may after hearing the appeal,
confirm, vary or reverse the order. The decision of
the Commissioner shall be final.”*

*3. In the said rules, in rule 12, for sub-rule (1), the
following sub-rule shall be substituted, namely -*

*“(1) Every Village Watchman shall receive per
month an honorarium as fixed and notified by the
Government from time to time alongwith Employee
Provident Funds benefits which shall be governed
by provisions of the Employee Provident Funds and
Miscellaneous Provisions Act, 1952 (Central Act 19
of 1952)”*

*ANIL MALIK
Additional Chief Secretary to Government, Haryana,
Development and Panchayats Department”*

9. In this view of the matter, it cannot be held that the order passed by learned Divisional Commissioner suffers from any jurisdictional error.

10. As regards the contention of the petitioner that he has not been served or he was not afforded opportunity of hearing by learned Divisional Commissioner, it is observed that the petitioner has not referred to any material to indicate that he was not served in accordance with law. Learned Divisional Commissioner has clearly recorded in his order that the petitioner was summoned, however, despite receiving the information, neither he nor his counsel appeared. In my considered view, in the absence of any material indicating defective service or no service as per law, mere bald assertion on the part of the petitioner that he was not served or was not afforded opportunity of hearing, cannot be accepted.

11. In view of the above discussion, I find no merit in this writ petition, accordingly, the same is dismissed.

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

(HARSH BUNGER)
JUDGE

15.10.2024

sjks

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No