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(2013) 02 P&H CK 0048

High Court Of Punjab And Haryana At Chandigarh

Case No: CWP No. 2692 of 2013

Jaswant Singh	APPELLANT
Vs	
State of Punjab and Others	RESPONDENT

Date of Decision: Feb. 8, 2013

Citation: (2013) 3 SCT 292

Hon'ble Judges: Rajiv Narain Raina, J

Bench: Single Bench

Advocate: G.S. Dhindsa, for the Appellant;

Judgement

Rajiv Narain Raina, J.

There is a Sikh Shrine under the control of an Endowment Board created by the Maharaja of Patiala known as the Dharam Arth Burj Baba Ala Singh, Kila Andrun, Patiala (for short "the Dharam Arth"). It appears that the Punjab Government in the Cultural Affairs Department issued Memo No. 1/6/91/4TC/4531 dated 2.12.1992 recognising the tradition of appointing Rehrasia Sahib at the Dharam Arth on the recommendation of Captain Amrinder Singh, of the Patiala royal family referred to in the State correspondence appended to this petition as "His Highness the Maharaja of Patiala". Captain Amrinder Singh has been impleaded as the 4th respondent in the writ petition. The petitioner claims that he is well aware of the customs of Sikh Religion and its Maryada. He claims that he is middle standard pass (Class VIII) and belongs to a family that follows Sikh religion. He avers that he made an application on 21.9.2009 to the 2nd respondent-Director Cultural Affairs Archives, and Museum Department, for consideration on his request and affording him an opportunity to serve on the post of Rehrasia, then lying vacant at the Dharam Arth. The department forwarded the application to His Highness the Maharaja of Patiala for his comments and recommendation through letter dated 7.1.2010 (P-2) in recognition of old custom and tradition posited in the 4th respondent. The post of Rehrasia Sahib carries a pay scale of Rs. 4900-10680+1650 on basic pay of Rs. 4900 + 1650 = 6,550 including other allowances payable from time to time.

2. The complaint of the petitioner is that without considering his application, a recommendation was made on 14.5.2010 by the 4th respondent to the Government to appoint Ranjit Singh-respondent No. 3 as Rehrasia Sahib. The recommendation was accepted and the Government appointed the 3rd respondent to the post by letter of appointment dated 23.7.2010 (P-4). Ranjit Singh joined the post and is serving.

3. Aggrieved by the appointment of the 3rd respondent, the petitioner pleads that he made a representation to the Secretary, Cultural Affairs, Archives and Museum Department, Punjab, Chandigarh on 23.8.2010 (P-5) and thereafter served a legal notice dated 7.9.2010 (P-6) on the State Government. Since no action was taken on the representation, the petitioner approached this Court by filing CWP No. 738 of 2011 which was disposed of on 29.8.2011 by the learned Single Judge of this Court by passing the following order:-

The petitioner seeks quashing of the order dated 23.7.2010 (Annexure P-4) passed by the Director, Cultural Affairs, Archive and Museum Department, Punjab, appointing respondent No. 3 as Rehrasia in a Gurudwara.

The court on 17.1.2011 granted time to learned counsel for the petitioner to place on record the relevant rules which govern the appointment/service in the Gurudwara. The same, however, have not been placed on record despite opportunities.

In these circumstances when the controversy cannot be resolved for want of the relevant material on record, I deem it appropriate to dispose of this writ petition liberty to the petitioner to submit a representation against the appointment of respondent No. 3 to the State Government. If any such representation is submitted by the petitioner, the same shall be considered and disposed of in accordance with law within a period of six months from the date of its receipt.

Ordered accordingly.

Dasti.

4. It is seen from the above order that this Court by an interim order in the aforesaid writ petition passed on 17.1.2011 had granted time to the learned counsel for the petitioner to place on record the relevant rules governing appointment to the post of Rehrasia Sahib at the Dharam Arth/Gurudwara Sahib and despite several opportunities no rule was produced. In those circumstances, finding lack of material on record to decide the case on merits, directions were issued that the petitioner''s representation against the appointment of the 3rd respondent be decided within six months. The period specified in the order dated 29.8.2011 elapsed. No action taken on it was forthcoming. The petitioner, therefore, filed COCP No. 1788 of 2012 alleging contempt of the orders of this Court. The contempt petition was disposed of on 3.9.2012 by passing the following order:-

The order, non-compliance of which has been alleged by the petitioner required the respondents to consider the claim of the petitioner and pass a speaking order thereon which has since been done resulting in the passing of an order Annexure R-1 which is adverse to the petitioner.

In view of the aforesaid the rule against the respondents is discharged.

However, the petitioner is at liberty to avail himself of any other remedy available to him under the law.

5. Thereafter as well, no action was taken on the representation and legal notice which has led to filing of the present petition.

6. In the present petition as well, the rules of service governing the post of Rehrasia have not been produced. The petitioner claims that his father who is blind is working as Raagi in the Dharam Arth for the last 30 years.

7. The petitioner has impleaded the 3rd respondent, but has not in his prayer clause challenged the appointment order dated 23.7.2010 (P-4). His claim is that a mandamus be issued to Captain Amrinder Singh-4th respondent to consider the case of the petitioner for appointment as Rehrasia. He claims that the origin of his right to seek mandamus lies in the liberty granted to him by this Court and points to the direction for consideration of his representation against the appointment of the 3rd respondent made to the State Government. He claims that there has been inaction on the part of the 4th respondent in considering his application. The petitioner has not placed the Memo dated 2.12.1992 on the record of this case to enlighten this Court with respect to customs and rituals and whether it casts any statutory obligation on the Maharaja of Patiala-respondent No. 4 to exercise his discretion in making recommendation in a particular manner. Once the petitioner admits that the matter lies in the realm of tradition and old custom of the Patiala royal family, recommendation of the 4th respondent can only be viewed as his personal subjective satisfaction as he is traditionally the best judge as to who should hold the post. Non-production of service rules and the Memo dated 2.12.1992 may lead to a reasonable inference that the recommendations of "His Highness the Maharaja of Patiala" would remain binding on the Government, Such recommendation is not based on exercise of statutory power, but on custom and tradition of which alone, the 4th respondent would remain the final arbiter. In the totality of circumstances presented, I do not think that a Mandamus can be issued to the 4th respondent commanding him to do or to forbear from doing anything with respect to the Dharam Arth. A writ of certiorari cannot be issued by this Court to the State Government to undo the appointment of the 3rd respondent in absence of challenge to the recommendation and appointment of Ranjit Singh or to disturb that appointment made on 23.7.2010. The orders of this Court reproduced supra cannot be perceived as creating any actionable right in the petitioner for a decree or order as prayed for in this petition. This petition must consequently fail.

8. Learned counsel for the petitioner, after arguing at length, finally submitted that he may be permitted to withdraw the petition with liberty to avail his alternative remedies. This Court rejects the request of the learned counsel on the following counts:-

(i) Despite indication in the order of the learned Single Judge dated 29.8.2011 (P-7), no rules governing the post of Rehrasia have been produced in this third round of litigation;

(ii) The Memo dated 2.12.1992 has not been produced on record for this Court to examine its scope;

(iii) There is no challenge to the appointment of the 3rd respondent; the petitioner only prays that he should replace him by a directive of this Court;

(iv) There is not even a prayer for issuance of writ of certiorari to the State Government to quash the appointment order of the 3rd respondent;

(v) The recommendation of the 4th respondent is admittedly based on custom and tradition and is not governed by statute;

(vi)The recommendation of the 4th respondent is a matter of subjective satisfaction of a recommendatory authority in terms of his family tradition and dominion over the Dharam Arth shared with the State Government, although the salary of the post is chargeable to the State exchequer;

(vii) The writ petition is misconceived, mis-directed and not maintainable against the 4th respondent;

(viii) The appointment of the 3rd respondent was made as long back as on 23.7.2010 and is not open to be disturbed on any ground taken in this petition;

(ix) Neither arbitrariness nor bias has been alleged in the recommendation made by the 4th respondent in favour of the 3rd respondent;

(x) The credentials of the 3rd respondent vis a vis the petitioner have not been pleaded to demonstrate that the petitioner is more meritorious and deserving of the honour.

9. For the foregoing reasons, this writ petition being without merit is dismissed. The request for withdrawal of the petition with liberty to avail other legal remedies will lead to further waste of court time and stem another round of unnecessary litigation. Writs are not meant to be issued against disappointment. However, given that the father of the petitioner, a blind Raagi has been serving the Dharam Arth for the last 30 years, it would always remain open to the petitioner to seek an audience with the 4th respondent to express his anguish, which I have no doubt would be dealt with by his Secretariat having regard to the finest traditions of affording meaningful audience to a "faryadi" to give vent to his complaint.