

IN THE COURT OF DIVISIONAL COMMISSIONER, JAMMU

Present: Dr. Pawan Kotwal, IAS

File No.
Appeal

Date of Institution
28-02-2015

Date of Decision.
27-12-2016

Mohd Rafiq Khan
S/o Jamal Din R/o Village Dreari, Tehsil Manjakote District Rajouri

(Petitioner)

V/S

1. Mohd Sabar S/o Sh. Ahmed Din
R/o Village Dreari, Tehsil Manjakote District Rajouri
2. Deputy Commissioner, Rajouri
3. Assistant Commissioner, Rajouri
4. Tehsildar, Rajouri
5. Naib- Tehsildar, Manjakote, Rajouri
6. Station House Officer, Police station,
7. Manjakote, Rajouri
8. Patwari Halqa, Dreari, Manjakote, Rajouri

(Respondents)

In the Matter of:

Appeal against the order No.61-65/WBN dated 05-09-2014 and also order No. Accts/ 654-56 dated 14-01-2015 passed by respondent No.4 and 2 respectively, whereby the respondent No.1 illegally, arbitrarily, malafidely and for political consideration was firstly temporarily appointed as Lamberdar of Village Dreari, Tehsil Manjakote District Rajouri and thereafter confirmed as Lamberdar of the said village.

Prayer for setting aside both the aforementioned orders dated 05-09-2014 and 14-01-2015 with a further prayer to direct the respondents 2 to 7 to allow the appellant to perform his duties as Lamberdar of Village Dreari, Tehsil Manjakote District Rajouri pursuant to order No. 103-07/ WBN dated 31-08-2012 passed by respondent No. 3.

ORDER

1. The present appeal has been filed on the following grounds :-

- (i) That as per the procedure as envisaged under Lambardari Act and rules framed there under, the appellant was appointed as Lambardar of Village Dreari, Tehsil Manjakote District Rajouri. As per the provisions of Rule 14 of Lambardari Rules, 1980 there is a provision in Rule 14(4) that the appointment to vacant post of Lambardar shall be made by the concerned Revenue Officer subject to confirmation by the Collector but there is no provision in Lambardari Act and rules framed there under to appoint a Lambardar temporarily in place of already appointed temporarily Lambardar. When the appellant is performing his duties to the entire satisfaction of the

local inhabitants of Village Dreari, Tehsil Manjakote District Rajouri and also to the entire satisfaction of the respondents especially respondent No.2 and 4 there is no occasion for the respondents 2 and 4 to appoint another temporary Lambardar in place of the appellant. The said action of the respondents 2 and 4 in addition to being illegal, arbitrary is also in violation of the Lambardari Rules, therefore both the orders dated 05-09-2014 and 14-01-2015 are required to be set aside and appropriate directions are required to be issued to the respondents to allow the appellant to perform his duties as Lambardar of Village Dreari, Tehsil Manjakote District Rajouri in pursuance of a valid order passed by respondent No.4 dated 31-08-2012.

- (ii) That after the passing of order impugned dated 05-09-2014, a resolution dated 11-01-2015 was passed by all the local inhabitants including the local Sarpanch of Village Dreari, Tehsil Manjakote District Rajouri, whereby it was specifically mentioned that the respondent No. 1 was engaged as Lambardar against the wishes of the local people. It was also mentioned in the said resolution that the respondents 2 and 4 had kept the orders impugned close to their chest and the local inhabitants were not taken into confidence before appointing respondent No.1 as Lambardar of Village Dreari, Tehsil Manjakote District Rajouri and in view of this the orders impugned dated 05-09-2014 and 14-01-2015 are required to be set aside and appropriate directions are required to be issued to the respondents to allow the appellant to perform his duties as Lambardar of Village Dreari, Tehsil Manjakote District Rajouri in pursuance of a valid order passed by respondent No. 4 dated 31-08-2012.
- (iii) That the respondent No.4 by taking cryptic and vague grounds into consideration had tried to justify the appointment of respondent No.1 which are nowhere legal in nature as already mentioned above that the local inhabitants are fully satisfied with the working of the appellant and only for extraneous/political considerations the respondent No.1 was appointed as Lambardar of Village Dreari, Tehsil Manjakote District Rajouri and in view of this the orders impugned dated 05-09-2014 and 14-01-2015 are required to be set aside and appropriate directions are required to be issued to the respondents to allow the appellant to perform his duties as Lambardar of Village Dreari, Tehsil Manjakote District Rajouri in pursuance of a valid order passed by respondent No. 4 dated 31-08-2012.
- (iv) That it is provided in the Lambardari Rules, 1980 that a general election of Lambardar shall be held in accordance with the Rules within such time and within such areas as may be prescribed by the Revenue Minister by a Notification in Govt. Gazettee and till such election is held the existing Lambardar appointed shall continue. As per the provisions of Rule 14(4) the appellant stood already appointed as Lambardar of Village Dreari, Tehsil Manjakote District Rajouri and there is no occasion for the respondents 2 and 4 to appoint another temporary Lambardar in place of the appellant. The only legal option available with the official respondents to go for the general election but malafidely and by abusing the official position orders impugned were passed by throwing the provision of Lambardari Act and rules framed there under to winds, therefore, the orders impugned dated 05-09-2014 and

14-01-2015 are required to be set aside and appropriate directions are required to be issued to the respondents to allow the appellant to perform his duties as Lambardar of Village Dreari, Tehsil Manjakote District Rajouri in pursuance of a valid order passed by respondent No.4 dated 31-08-2012.

2. Counsel for respondent has filed objections as well as written arguments wherein it is submitted that :
 - a. That the ground (a) of the appeal is misconceived, hence denied. The appointment and confirmation of the answering respondent merits to be upheld.
 - b. That the averments made in ground (b) of the appeal are incorrect and misconceived hence the same deserves no consideration. It is further submitted that there is no resolution in favour of the appellant.
 - c. That the grounds made in sub-para (c) of the appeal are misconceived, hence denied to the extent the same adversely affects the answering respondent.
 - d. That the averments made in ground (d) of the appeal are misconceived as such it deserves no consideration in the peculiar facts and circumstances. The appeal of the appellant is devoid of any merit and is misconceived hence merits to be dismissed and order of the answering respondent merits to be upheld.
3. The case came up for hearing. Appellant along with counsel present. Nobody appeared from other side. Counsel for appellant is heard and objection of respondent are gone through. The contention between the parties is with regard to appointment of Lambardar of Village Dreari Manjakote Rajouri.
4. It has been found that on the death of Khadim Hussain in Jan 2012 then Lambardar, The post of Lambardar of Village Derari Manjakote fell vacant.
5. The appellant herein filed an application before Tehsildar Rajouri for his appointment as Lambardar & after considering his qualification Tehsildar Rajouri appointed the appellant / Applicant as temporary Lamberdar Vide No.103 -07 /WBN dated 31-08-2012 subject to confirmation by collector.
6. Further it has been found the order impugned of Tehsildar Rajouri dated 05-09-2014 that in compliance to order of Deputy Commissioner Rajouri No. Coll / Ref/ 460 dated 01-12-2012 of conducting of fresh enquiry for appointment of a suitable person Tehsildar initiated the process of appointment of Lambardar.
7. It is to be mentioned that the report of Patwari as mentioned in order of Tehsildar dated 05-09-2014 that Mohd Rafiq Khan who is about 75 years of age cannot perform the duties of Lambardar and at present is residing at Rajouri town has been made a ground for rejection of his application which is not tenable.
8. It has not been understood that when Mohd Rafiq Khan was performing duties of Lambardar being appointed on temporary basis then how did the post became vacant and when election was not possible due to migration of nomadic persons to upper reaches (Dokes) the appointment of another candidate as Lambardar without dismissal of present Lambardar is not as per law & thus not sustainable

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9. It may be noted that there appears to be no confirmation / rejection order passed by Deputy Commissioner Rajouri with regard to the temporary appointment of appellant herein as Lambardar by Tehsildar Rajouri vide order dated 31-08-2012.
10. Moreover the grounds taken to remove appellant herein from the post of Lambardar are not as per Lambardari Act and rules there under and as such are not sustainable in the eyes of law.
11. In view of the above fact & circumstances it is held that the appellant has succeeded in making out a case & the orders under challenge deserve to be set aside.

Thus the appeal having merit is allowed & the orders of Tehsildar Rajouri & Deputy Commissioner Rajouri Dated 05-09-2014 & 14-01-2015 respectively are set aside.

A copy of this order be sent to Tehsildar & Deputy Commissioner Rajouri for information & necessary action.

Stay issued is hereby vacated. The case file be consigned to records after due completion.

Announced

24-12-2016.



(Dr. Pawan Kotwal) IAS,
Divisional Commissioner,
Jammu.

framed there under the