
(1989) 12 P&H CK 0048

In the Punjab And Haryana At Chandigarh

Case No : C.M. No. 11005 of 1989 and C.W.P. No. 8054 of 1989

Amrik Singh and Another

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 20-12-1989

Acts Referred:

Constitution of India, 1950 — Article 14

Punjab Revenue Patwaris (Class III) Service Rules, 1966 — Rule 10

Citation : (1990) 97 PLR 240

Hon'ble Judges : G.R. Majithia, J

Bench : Single Bench

Advocate : Anil Malhotra, for the Appellant; H.S. Bedi, A.G. and Charu Tuli and A.K. Chopra, for Respondent Nos. 4 to 7, 9 to 23 and 25, for the Respondent

Judgement

G.R. Majithia, J.—The petitioners have impugned the selection of respondents Nos 4 to 25 as revenue Patwaris in this writ petition. Reference to a few relevant facts is necessary to adjudicate upon the point in dispute.

2. The petitioners along with others were selected as Patwari candidates and were undergoing training at the State Patwar Training School, Jalandhar. The conditions of service of revenue Patwaris are governed by the Punjab Revenue Patwaris Class-III-Service Rules, 1966, for short the Rules. The selection of the Petitioners as revenue Patwaris was challenged in Civil Writ Petition No. 7209 of 1987 and a Division Bench of this Court in Letters Patent Appeal No. 748 of 1987 upheld the selection. Respondents Nos 4 to 25 were working as Canal/ Irrigation Patwaris. They have been appointed as revenue Patwaris by transfer which is not permissible under the Rules. Their selection has prejudicially affected the petitioners.

3. Respondents Nos. 1 and 2 in their joint written statement denied the allegations made in the petition and stated that the petitioners on completion of the course and practical training in December, 1990 will be considered for posting as Patwaris in January, 1991. The appointment by transfer of respondents Nos 4

to 25 were justified under the Rules. The respondents Nos. 4 to 7, 9 to 23 and 25 also filed written statement and justified the appointment under the Rules.

4. Learned counsel for the writ petitioners referred me to the Rules to high light his submission that appointment by transfer of an employee working in the Irrigation Department as revenue Patwari is not warranted by the Rules, The terms and conditions of service of the revenue Patwaris and of their recruitment are regulated by the Rules by those of the Patwaris (Irrigation Branch) by the Punjab Public Works Department (Irrigation Branch) Patwaris State Service Class-III Rules, 1955 The Patwaris working in the Irrigation Department will not be deemed to be in the service of the State Government.

5. Clause (h) of Rule 2 of the Rules defines the term "Patwari" and it means a revenue Patwari-including Assistant Patwari. "Service" means the Punjab Revenue Patwaris Class-III Service. Rule 8 relates to the qualifications for appointment and Rule 10 relates to method for appointment It will be useful to reproduce this Rule in extenso.

"10. Method of appointment :-(I) Appointment to the Service shall be made : -

(a) in the case of Patwaris :

(i) by promotion from amongst the Assistant Patwaris : or

(ii) by direct appointment from amongst the accepted Pat wan candidates; or

(iii) by transfer of an official already in the service of the State Government; and

(iv) by absorption of the retrenched or likely to be retrenched officials of the Punjab Consolidation Department. (No. G. S. R.. 5-P.A. 1.7/87/S 28/Amd (I)/71, dated 7th January, 1971.

(b) in the case of Assistant Patwaris by direct appointment from amongst the accepted Patwaris candidates.

(2) When any vacancy arises, the appointing authority shall determine the method in which the same shall be filled in.

(3) All promotions shall be made by selection on the basis of seniority-cum-merit and seniority alone shall not give any right to appointment.

6. Clause (iii) of Rule 10 provides for appointment by transfer of an officer already in the service of the State Government. The Patwaris working in the Irrigation Department whose conditions of service and recruitment are governed by the Punjab Public Works Department (Irrigation Branch) Patwaris State Service Class-III Rules, 1955, are the employees of State Government and they can be appointed as revenue Patwaris by transfer as provided in Clause (iii) of Rule 10. too narrow and rigid construct/on cannot be placed upon this Clause. It cannot apply to only those employees whose services are regulated by the Rules. The appointment by transfer is a well recognised method adopted and approved in the Government service. Merely because the service condition and recruitment

of Patwaris working in Canal/Irrigation Department and revenue are regulated by different set of rules, will not deprive the Patwaris working in the Irrigation Department for recruitment as revenue Patwaris. Thus, I hold that the appointment by transfer of Irrigation Patwaris as Revenue Patwaris is fully justified under the Rules.

7. However, on perusal of the file I found that the appointment of respondents Nos. 4 to 25 as revenue Patwaris is wholly irregular and arbitrary and cannot be upheld. An application was submitted by an individual respondent and it was forwarded to the Collector of the District and appointment letter was issued to him. The appointing authority under the Rules did not invite applications from eligible candidates for appointment as revenue Patwaris. As observed earlier, appointment by transfer of employees already in service of State Government as revenue Patwaris is permissible under the Rules, but the appointment ought to have been made Consistent with the principles of natural justice and fair play. All the employees similarly situated should have been allowed to submit their applications. They should have been allowed to compete inter se and after the selection they should have been offered the appointment.

8. In the present case, applications were not invited for appointment by transfer from officials already working in the service of the State Government. All the employees similarly situated had a right to apply for the post and for consideration of their claim for appointment. The competent authority under the Rules after prescribing the necessary qualifications for recruitment ought to have issued advertisement inviting applications for the post and after considering the individual merits of the applicants, the requisite vacancies could have been filled. The well recognised method of recruitment in Government service was by-passed for reasons which are not available from the record and the course adopted by the appointing authority in offering appointment to respondents Nos. 4 to 25 on the basis of recommendation made by their immediate superior officers cannot be countenanced.

9. Article 14 of Constitution of India embodies guarantee against arbitrariness in State action and ensures fairness and equality of treatment. In *E.P. Royappa Vs. State of Tamil Nadu and Another*, the Apex Court observed thus:-

"From a positive point of view, equality, is antithetic to arbitrariness. In fact, equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary it is implicit in it that it is unequal both according to political logic and constitutional law and is, therefore, violative of Article 14 and if it affects any matter relating to public employment, it is also violative of Art 16. Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment."

This proposition was affirmed and explained by the Constitution Bench of the Supreme Court in *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and*

Others, . wherein it held as under :--

"That it must, therefore, now be taken to be well settled that what Article 14 strikes at is arbitrariness because any action that is arbitrary must necessarily involve negation of equality. The Court made it explicit that where an act is arbitrary it is implicit in it that it is unequal both according to political logic and constitutional law, and is, therefore, violative of Article 14."

10. Consequently, on a correct interpretation of Clause (iii) of Rule 10 of the Rules, I hold that the, appointing authority is competent to select and appoint by transfer of officials in the service of the State Government as revenue Patwaris, but the method followed in offering the appointment suffers from arbitrariness and is thus held void. The competent authority will exercise its power to appoint Patwaris by transfer of officials working under the State Government subject to constitutional limitation of Article 14 of the Constitution. It could not act arbitrarily in selecting persons against the posts of Patwaris without laying down criteria and guide lines for making selection. The persons similarly situated cannot be discriminated. The writ petition is disposed of accordingly.