

(2015) 12 RAJ CK 0013

In the Rajasthan High Court

Case No : SB Civil Writ Petition No. 16422/2015

Ayyub Ali and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 01-12-2015

Acts Referred:

Citation : (2015) 12 RAJ CK 0013

Hon'ble Judges : M.N. Bhandari, J.

Bench : Single Bench

Advocate : R.N. Mathur, Sr. Advocate and R.P. Saini, for the Appellant

Final Decision : Dismissed

Judgement

M.N. Bhandari, J.—By this writ petition, a challenge is made to the order dated 1.10.2015. By the aforesaid order, a decision has been taken to make promotion on the post of Inspector, Land Records by removing the ban imposed earlier.

2. Learned counsel submits that petitioners are in second round of litigation. The writ petition bearing No. 10099/2014, Banwari Lal versus State of Rajasthan, was disposed of by this court vide order dated 8.10.2014. The petitioners were directed to make representation to the Principal Secretary to the Government, Revenue Department for issuance of necessary directions/instructions for deferment of promotion till the decision is taken for amendment in the Rules. The decision to amend the Rajasthan Land Revenue (Land Records) Rules, 1957 was taken by the government looking to the fact that no provision for determination of seniority of the post of Patwari exist. After undertaking exercise at the level of the government and the Board of Revenue, draft was prepared for amendment in the rules. The rules have not yet been amended in regard to determination of seniority on the post of Patwari though some other provisions have been amended vide Notification dated 26.5.2015. Taking into consideration the proposal of amendment in the rules, a decision was taken by the Board of Revenue not to hold DPC till the rules are amended. It was in the light of the

order of the Department of Personnel referred in the letter dated 16.6.2015 at annexure-16. As per the order dated 16.6.2015, DPC is not to take place till completion of process of amendment in the rules but, ignoring the aforesaid, now, Board of Revenue has proposed to make promotion on the post of Inspector (Land Records).

3. Learned counsel has referred certain rules to show that no provision exist for determination of seniority for the post of Patwari and in absence of it, promotion to the post of Inspector, Land Records cannot be undertaken with proper consideration of the candidature of the eligible candidates. Rule 301 of the Rules of 1957 provides for promotion on the post of Inspector, Land Records based on interlaced seniority at the level of the Division. It is submitted that appointment on the post of Patwaries are made by the Collector after their selection at the level of the Board of Revenue. Rule 9 of the Rajasthan Land Revenue (Land Records) Rules, 1957 provides for transfer of Patwaries from one place to another. In case of a transfer on the request of the Patwari, he loses his seniority and is placed at the bottom of the seniority of the district concerned where he sought transfer. The aforesaid provision cannot have any effect while giving effect to the Rule 301 of the Rules. The promotion to the post of Inspector, Land Records is to be made by preparing interlaced seniority of the district concerned and there the date of appointment should be material for determination of seniority without placing any candidate at the bottom pursuant to rule 9 of the Rules of 1957. Such a method has been adopted by Udaipur Division as is coming out from the order dated 23.6.2015 at annexure-19. It is admitted by the Division concerned that even if transfer is made at the request, for the purpose of promotion, such a Patwari is not debarred and is not placed at the bottom of the seniority of the district concerned. The practice aforesaid has been applied by Udaipur Division since long and is by taking correct interpretation of rule 301 thus, if, at all, respondents cannot wait till amendment in the Rules, as proposed, they should adopt method for determination of seniority and for promotion, as has been applied by Udaipur Division. If this court comes to the conclusion that the practice adopted at Udaipur Division is not proper, then keeping in mind the circular of the Department of Personnel dated 4.6.2008, having tenor of the regulation, no DPC should be permitted till amendment in the rules. In view of above, order dated 1.10.2015 may be quashed with a further direction to the non-petitioners to give effect to the proposed amendment in the rules for determination of seniority of the Patwaries and till then, no promotion should be made.

4. It is lastly contended that at the time of appointment, rule 9 was not existing. In view of above, even if petitioners sought transfer at their own, they could not have been given bottom seniority in reference to rule 9 of the Rules of 1957 even if their transfer was subsequent to amendment in the rules.

5. I have considered submissions of learned counsel and perused the record.

6. The petitioners are governed by the Rules of 1957. The appointments to the

petitioners were given by the Collector and the fact aforesaid is not disputed. The selection was however made at the level of the Board of Revenue. After appointment and much subsequent to the amendment in rule 9 of the Rules, petitioners sought and transferred. As a consequence of rule 9 of the Rules of 1957, petitioners were assigned bottom seniority in the district where they were transferred at their own request. Petitioners did not challenge assignment of the seniority position at the bottom pursuant to rule 9 of the Rules. As per rule 301, promotion to the next post is to be made at the Division level based on interlaced seniority of the Patwaries serving in the district cadre in which they belong. As per rule 301 of the Rules of 1957, all the Patwaries in the district concerned would be considered for promotion based on interlaced seniority and, therein, it would be irrespective of the district cadre to which they belong. By the application of interlaced seniority, seniority list of the districts would be called and would be arranged by making it interlace. The government, under its wisdom, took a decision to make amendment in the rules. The correspondence between the government and the Board of Revenue is available on record. The government finally made notification for amendment in the rules on 26.5.2015. Therein, many rules were amended which includes Rule 301 also. Taking into consideration the aforesaid, Board of Revenue passed the order to carry out exercise for promotion. The challenge to the said order has been made mainly on the ground that it is against the circular issued by the Government. The Board of Revenue took a decision not to make promotion till the amendment in the rules is carried out. Therein, reference of the circular of the government dated 4.6.2008 has been given.

7. It is submitted that the circular of the government is to be considered as a regulation and in that circumstance, Board of Revenue should not have passed order in contravention of the circular of the government. It is for the reason that amendments in the rules are still under consideration.

8. I have considered the argument aforesaid and find that letter dated 16.6.2015 was issued imposing ban on promotion till amendments in the Rules of 1957 are carried out. A reference of the circular of the DOP has been given but it cannot be considered to be a regulation, as submitted by learned counsel. The order dated 16.6.2015 is nothing but a decision taken by the Board of Revenue and the ban imposed therein has been withdrawn vide impugned letter dated 1.10.2015. It may be looking to the fact that whatever amendment was to be carried out, it has been done the notification dated 26.5.2015 amending various rules of the Rules of 1957. The perusal of notification reveals that at item No. 19, rule 301 was partly amended thus it is not that the amendments are not carried. The rules have been amended by the non-petitioners to the extent they thought it proper thus amendment in the rules have already been made. In the light of the aforesaid, if the non-petitioners are intending to carry out the exercise for promotion, it cannot be held to be illegal.

9. The other argument raised by learned counsel is in reference to rule 9 of the

Rules of 1957. If rule 4 is read with rule 9 of the Rules, it becomes clear that appointments of the Patwaries are at the district level. As per rule 9 of the Rules, if any Patwari seeks transfer from one district to another, he would lose his seniority and be placed at the bottom of seniority. The implication of the aforesaid is nothing but shows seniority at the district level. One would lose seniority at the district level only when it is maintained at that level and not otherwise. The petitioners are those who sought transfer at their own thus, they were given bottom seniority at the transferred place. In view of the aforesaid, I do not find that there exist any ambiguity in the Rules for determination of seniority of Patwaries. Rule 4, 9 and 301 of the Rules of 1957 are reproduced hereunder-

"4. Appointments.--(a) A Patwari shall be appointed to each circle.

(b) Only such persons who have obtained Patwari School Certificate shall be eligible for appointment as Patwaries, Additional Patwaries or Assistant Office Kanungo:

Provided that they are not below 18 years and above 31 years of age on the date of appointment. In the case of candidate belonging to Scheduled Caste/Scheduled Tribe the upper age limit shall be relaxed by five years:

Provided further that-

(i) a person who has worked as Patwari under State Government for not less than 15 years and whose confidential reports are found to be satisfactory and who has appeared to the Patwari examination and failed and who is above forty five years of age, may be exempted from passing the patwari examination by the Collector:

(ii) a person who has obtained Patwari Training School Certificate shall be deemed to be within the age limit even though he has crossed the upper age limit on the date of appointment as Patwari but was within age limit at the time of his selection and admission to Patwari Training School:

(iii) a person appointed as Patwari prior to the first January 1971 by the Appointing Authority in accordance with these rules except that he had passed the middle school examination, but not the High School/Secondary examination at the time of his appointment he shall be deemed to have been regularly appointed as a patwari from the date on which he passed the patwari school examination or from the date on which he completes 15 years of service on the post of patwari, whichever is earlier:

(iv) a person selected for patwari training by the Colonisation Commissioner and obtained training in the Patwari Training School and declared successful by the Secretary (Land Records) Board of Revenue shall be deemed to be a trained Patwari.]

(c) Collector or Colonisation Commissioner] shall send requisition for the trained

patwaries to the Secretary (Land Records), Board of Revenue. The Board shall select candidates for training and make available trained patwaries to Collectors.

(d) On allotment by the Board, the appointment of Patwaries" Additional patwaries and Assistant Office Kanungo shall be made by Collector or Colonisation Commissioner. Collector or Colonisation Commissioner shall intimate about all appointments of patwaries to the Secretary (Land Records) Board of Revenue.

(e) No Patwari shall be posted to a circle which includes his home village or in which he or his nearest relations hold some immovable property land for cultivation.

(f)(i) Except as otherwise provided in sub-clause (ii), the service of a temporary Government servant shall be liable to termination at any time by a notice in writing given either by the Patwari to the appointing authority or by the appointing authority to the Patwari. The period of such notice shall be one month unless otherwise agreed to by the appointing authority and by the Patwari:

Provided that service of such Patwari may be terminated forthwith by payment to him or a sum equivalent to the amount of his pay for the period of notice or as the case may be for the period by which such notice falls short of the month or by any longer period. The payment of allowances shall be subject to the condition under which such allowances are admissible.

(ii) The service of a temporary Patwari:

(a) Who has been in continuous Government service for more than three years:

Provided that termination of service consequent on reduction of posts in a cadre under the appointing authority shall take place in order of juniority.

4A. Character.-

The character of a candidate for direct recruitment to the service, must be such as to qualify him for employment in the service. He must produce a certificate of good character from the Principal/Academic Officer of the University, College or School in which he was last educated and two such certificates written not more than six months prior to the date of application, from two responsible persons not connected with his college or University and not related to him.

Note. - (1) A conviction by a Court of Law need not of itself involve the refusal of a certificate of good character. The circumstances of the conviction should be taken into account and if they involve no moral turpitude or association with crimes of violence or with a movement which has as its object the over-throw by violent means of Government as by law established, the mere conviction need not be regarded as a disqualification.

(2) Ex-prisoners who by their disciplined life while in prison and by their subsequent good conduct have proved to be completely reformed, should not be

discriminated against on grounds of their previous conviction for purposes of employment in the service. Those who are convicted of offences not involving moral turpitude shall be deemed to have been completely reformed on the production of a report to that effect from the Superintendent, after care Home or if there are no such Homes in a particular District, from Superintendent of police of that district. Those convicted of offences involving moral turpitude shall be required to produce a certificate from the Superintendent, after care Home, endorsed by the Inspector General of Prisons to the effect that they are suitable for employment as they have proved to be completely reformed by their disciplined life while in prisons and by their subsequent good conduct in an After Care Home.

9. Transfers.-

(i) The Collector may transfer a Patwari from one circle or tehsil to another in his own district; but no transfer of a Patwari from one district to another shall be made without the sanction of the Member, Land Records, Board of Revenue. Transfers from one division to another will be sanctioned by the Board of Revenue. The Sub-divisional Officers are also empowered to transfer a Patwari from one circle to another in the same tehsil or to another tehsil in their sub-division on sufficient grounds.

Provided that if a Patwari is transferred out of the district on his own request he shall rank junior to existing Patwaris of that district.

(ii) Transfers of Patwaris should not be made unless the officer has satisfied himself that such transfer are necessary in the interest of efficiency of work or to fill up vacancy created by long leave, resignation, dismissal, suspension or transfer of a Patwari. The Patwari going on transfer shall have to complete all his record and clear all his work in arrear before handing over charge to his successor. The Tehsildar may, with the approval of the Sub-Divisional Officer, get the incomplete record completed by employing extra staff and paying such staff by deducting the required amount from the salary of the negligent Patwari. The unsatisfactory work or conduct of a Patwari should not be a ground for his transfer but for penal action.

301. Submission of applications.--(1) For the purpose of selection of candidates by promotion as provided in sub-r. (i) of R. 284, the Divisional Commissioner shall prepare an interlaced seniority list of all the Patwaris of the Revenue and Land Records Departments serving in the Division irrespective of the district cadre to which they belong.

(2) Such number of the Patwaris shall be considered for the preparation of the interlaced seniority list as are within the zone of consideration for promotion on the post of Inspector, Land Records the selection of candidates for promotion shall be made by a committee consisting of the following:

1. Divisional Commissioner, Chairman

2. District Collector of the Divisional Headquarter Member

3. Additional Divisional Commissioner Member-Secretary]

Explanation. - The "zone of consideration" for the purpose of this rule shall mean five times the number of existing and anticipated vacancies in the cadre of Inspector, Land Records to be filled by promotion in the course of the calendar year.

(3) On the basis of the interlaced seniority list so prepared the 21[Divisional Commissioner] shall select persons on the basis of seniority-cum-merit.

(4) Candidates so selected will be admitted to the Kanungo Training School for training:

Provided that the Patwaris who attain the age of 45 years on the 1st day of January next following the year of selection shall be exempted from the training and shall be eligible for appointment as Kanungo or Inspector, Land Records without such training."

10. The perusal of the rule 4 shows that after selection by the Board of Revenue, appointment on the post of Patwari would be made by the Collector at district level. Rule 9 of the Rules provides for bottom seniority in case of transfer of the employee at his own request. Rule 301 of the Rules provides for promotion of the Patwaries by arranging their seniority interlaced irrespective of their district cadre. It is at the divisional level. The outcome of the three provisions, referred to above, is that seniority of the Patwaries is maintained at the district level. In case of transfer at their own request, they would be assigned bottom seniority in the district where they are transferred. In case of promotion, seniority of the Patwari would be taken in the manner provided under rule 301 of the Rules. If a division is consisting of 5 districts, seniority of Patwaries of those districts would be arranged interlace. It would be irrespective of the district cadre because if the seniority is to be arranged in order of appointment then it cannot be interlace as, therein, the district cadre has to be taken into consideration. In view of above, neither there is any ambiguity in the rules for determination of seniority nor for consideration of the candidature for the purpose of promotion. The amendments in the rules were carried out to the extent it was required and therein rule 301 of the Rules has also been amended. In the light of the discussion made above, I do not find that even second argument can be accepted.

11. The third argument is in reference to the information received from Udaipur Division vide letter dated 23.6.2015 at annexure-19. The information given by Udaipur Division for arranging seniority of Patwaries is contrary the Rules of 1957. When rule 9 provides for bottom seniority in case of transfer at the request of the employee concerned, then how it can be ignored, is not explained. The authorities are under an obligation to adhere the Rules and not to act contrary. If Udaipur Division has taken actions in violation of the Rules, it cannot be generalised, otherwise it would amount perpetuation of illegality. I am unable

to accept the argument of learned counsel that arrangement of seniority in Udaipur Division is based on correct interpretation of the Rules of 1957. In my opinion, Udaipur Division has not taken proper interpretation of the Rules. In view of above, a direction cannot be issued for general application of the method adopted by Udaipur Division even if they are doing it for past few years. In the light of the discussion made above, the third argument raised by learned counsel cannot be accepted.

12. The last argument of the learned counsel is in reference to the date of appointment order. It is submitted that rule 9 was amended subsequent to their appointment thus even if petitioners sought transfer at their own, rule 9 of the Rules should not have been applied.

13. It is admitted that transfer was sought by the petitioners herein subsequent to the amendment in the Rules. When rule 9 was operational then it cannot be nullified only on the ground that petitioners were appointed earlier to the amendment in the Rules. An amendment in the Rules cannot take vested right of the employee, which does not exist herein. The view aforesaid is supported by the judgment of the Hon'ble Supreme Court in the case of Dr. Ramulu and another, etc. Vs. Dr. S. Suryaprakash Rao and others, . Therein, amendments in the Rules were made to change the qualification for promotion. It was urged that at the time of appointment, the qualification existing under the rules was possessed by the employee concerned. It was subsequently changed making petitioners to be ineligible by providing higher qualification thus, his right was taken away by the retrospective application of the rule. The Supreme Court held that right would vest only when promotion is, in fact, given. The person, eligible for promotion, has no vested right of the promotional post. The right vests only after actual promotion. It was thus held that if the petitioner is not in possession of the requisite qualification, as amended, he would be ineligible. The same analogy applies herein also. The petitioners sought transfers at their own after amendment in the Rules thus they were placed at the bottom of the seniority, as a consequence thereof. If the transfer would have been made prior to the amendment in the Rules, a right may be created in their favour. The facts available on record show the position otherwise. In view of above, even the last ground raised by learned counsel cannot be accepted.

14. In view of the discussion made above, I do not find any merit in this writ petition. Hence, it is dismissed.