

**(1983) 08 SHI CK 0003**

**In the High Court Of Himachal Pradesh**

**Case No : Civil Writ Petition No. 211 of 1983**

Brij Bala

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

**Date of Decision : 22-08-1983**

**Acts Referred:**

Constitution of India, 1950 — Article 14, 15, 16

Foreign Service (Conduct and Discipline) Rules, 1961 — Rule 18(4), 8(2)

**Citation : (1983) 12 ILR HP 376**

**Hon'ble Judges : V.D. Misra, C.J;H.S. Thakur, J**

**Bench : Division Bench**

**Advocate : Kamlesh Sharma, for the Appellant; P.N. Nag, General, for the Respondent**

## **Judgement**

V.D. Misra, C.J.—The Petitioner is a Harijan girl. She wrote a letter to this Court complaining that she had been denied the training as a Patwari on the ground of sex. The letter was treated as a writ petition. Since she was not in a position to engage any lawyer, Miss Kamlesh Sharma, Advocate, offered to look after the interests of the Petitioner and assist the Court.

2. It appears that the Petitioner wrote a letter to the Hon"ble Revenue Minister on 18-3-1983 expressing a desire to get the Patwar training. This letter seems to have been passed on to Shri Dhani Ram, Director Land Records. On 27th May, 1983 Shri Dhani Ram wrote a letter to the Petitioner. The relevant part of the letter reads:

"She is hereby informed that there is no provision in the Land Records Manual under which a girl can be imparted Patwar training and recruited as a Patwari, as the field duties of a Patwari are not congenial to girls. The Patwari has to safeguard the public record like a chowkidar in a Patwarkhana which is generally in a lonely place and is frequently visited by litigants. As such it is not possible to accede to her request."

3. The State has filed a return based on the affidavit of Shri Dhani Ram, Director of Land Records. It is stated that the Petitioner's application was received in his office "with the direction that the same be considered and necessary action as may be deemed fit taken under intimation to the Government and to the applicant. Accordingly, the case was examined by the undersigned and it was found that as the job of a Patwari entails arduous and hazardous duties even at odd hours like conducting of spot Girdawari, demarcation, being stationed at far flung area in a village, residing in the Patwarkhana, at times located at a distance from village abadi and looking after the safety of the public revenue record in the Patwar khana, where the litigant public pay frequent visits even at odd hours for obtaining copies of revenue records and certificates etc. On this account, the applicant was informed by this office letter No. R-6. 6-3 (LR) 82-5371, dated 27-5-1982, that since the duties were hazardous and not congenial to the temperament of girls, it was not possible to accede to her request. This, however, happens to be a personal opinion of the undersigned. The recruitment rules of Patwari candidates do not provide any bar for the recruitment of girls" (emphasis supplied). It is further stated that if any vacancy of Patwari candidate arises in the District of the applicant and if she gets her name registered with the Employment Exchange and the same is sponsored by the District Employment Exchange, the District Collector would consider her for selection along with other candidates.

4. Evidently the Director of Land Records has his own views about the employment of women as Patwaris. It appears that he is not conscious that our Constitution has prohibited discrimination on the ground of sex. He does not seem to have realised that there has been a great advancement and the woman have demonstrated their ability to perform various taxing and hazardous duties which were till now thought to be the exclusive preserve of men. Women are very capably manning the posts in all walks of life in this country though their number still is very insignificant. All this is due to the prejudice of men that women are not as capable as they are. It is, therefore, going to take some more time before men overcome this prejudice. Sooner we get over this prejudice the better it will be for the country. And that is the only way to ensure that Articles 14, 15 and 16 of the Constitution are not breached.

5. In *Miss C.B. Muthamma v. Union of India and Ors.* AIR 1979 S.C 1868, the Petitioner, a senior member of the Indian Foreign Service, complained of a hostile discrimination against women and challenged the validity of Rule 8(2) of the Indian Foreign Service (Conduct and Discipline) Rules, 1961 requiring a woman member of the Service to obtain permission of the Government in writing before her marriage is solemnised and empowering the Government to require her to resign if the Government was satisfied that her family and domestic commitments were likely to come in the way of the due and efficient discharge of her duties as a member of the Service. While considering the ambit of Articles 14 and 16 of the Constitution, Krishna Iyer, J., speaking for the Court, had this to say:

"At the first blush this rule is in defiance of Article 16. If a married man has a right, a married woman, other thing being equal, stands on no worse footing. This misogynous posture is a hangover of the masculine culture of manacled the weaker sex for getting how our struggle for national freedom was also a battle against woman's thralldom. Freedom is indivisible, so is Justice. That our founding faith enshrined in Arts. 14 and 16 should have been tragically ignored vis-a-vis half of India's humanity, viz., our women, is a sad reflection on the distance between Constitution in the book and Law in action. And if the Executive as the surrogate of Parliament, makes rules in the teeth of Part III, especially when high political office, even diplomatic assignment has been filled by women, the inference of die-hard allergy to gender parity is inevitable.

"We do not mean to universalise or dogmatise that men and women are equal in all occupations and all situations and do not exclude the need to pragmatise where the requirements of particular employment, the sensitivities of sex or the peculiarities of societal sectors or the handicaps of either sex may compel selectivity. But save where the differentiation is demonstrable, the rule of equality must govern. This creed of our Constitution has at last told on our governmental mentation, perhaps partly pressured by the pendency of this very writ petition. In the counter affidavit, it is stated that Rule 18(4) (referred to earlier) has been deleted on November 12, 1973. And, likewise, the Central Government's affidavit avers that Rule 8(2) is on its way to oblivion since its deletion is being gazetted. Better late than never. At any rate, we are relieved of the need to scrutinise or strike down these rules."

6. As the Government has already conceded in their return that there could be no discrimination on the question of sex, we need hardly pass any direction. The Petitioner can get herself registered with the Employment Exchange in her district for the Patwar training. We have no doubt that the District Employment Exchange would sponsor her name to the District Collector for selection alongwith other candidates according to rules. The petition thus stands disposed of. The Petitioner be sent a copy of this judgment free.