

(2012) 11 UK CK 0007

In the Uttarakhand High Court

Case No : W. Petition No. 666 of 2011 (SS)

Devendra Singh Rawat and Others

APPELLANT

Vs

State of Uttarakhand and Others

RESPONDENT

Date of Decision : 08-11-2012

Acts Referred:

Citation : (2013) LabIC 223

Hon'ble Judges : V.K. Bist, J

Bench : Single Bench

Advocate : Manoj Tewari, Alok Mehra, Anil K. Bisht and B.S. Negi, for the Appellant; A.S. Rawat, Add. A.G. and Ashish Joshi, for the Respondent

Final Decision : Allowed

Judgement

V.K. Bist, J.—Heard learned counsel for the parties and perused the record. Supplementary counter-affidavit filed on behalf of respondent No. 1 in the Court today is taken on record. Along with the supplementary counter-affidavit the respondent No. 1 has annexed a chart showing the vacancies of Patwari (Revenue Sub-Inspector). As per the chart, there are 320 posts of Patwari (Revenue Sub-Inspectors) vacant in various districts of the State.

2. Since controversy involved in these petitions is identical, hence all the petitions are being decided by a common judgment. Writ Petition No. 666 of 2011 shall be the leading case.

3. In the year 1995-96, the District Magistrate, Dehradun prepared a list of candidates for being sent for Patwari/Lekhpal training to the Special Patwari Training Institute, Almora (Patwari Training Institute, Almora). It is not disputed that excess number of candidates were sent for the training. The petitioners, along with others trainees, underwent Patwari/Lekhpal training for one year and were declared successful in the examination, which was held upon completion of the training programme. Some of the candidates failed in the training and they completed their training in the year 1996-97.

4. It is contended by the learned Senior Advocate for the petitioners that majority of candidates, who completed Patwari/Lekhpal training, along with the petitioners in the year 1996-97, had been given regular appointment as Patwari/Lekhpal in different districts of State of Uttarakhand. It is also contended that while making these appointments, neither performance of a candidate, during training period, was considered nor the seniority of candidate was given any weightage.

5. On 9.7.2001, the Principal Secretary, Revenue Department, Govt. of Uttarakhand issued one D.O. letter to the District Magistrate, Chamoli informing that the Patwari trained candidates from District Dehradun are available for appointment in other districts and they may be appointed in District Chamoli as well. In view of this communication, many other candidates who completed their Patwari/Lekhpal training in the year 1995-96 and 1996-97 were given appointment in other Districts i.e. Uttarkashi, Chamoli, Pauri Garhwal, Bageshwar, Tehri and Rudrapur.

6. Learned Senior Advocate for the petitioners submitted that since the candidates, who were low in merit, were given appointment in District Dehradun as well as in other districts also, the petitioners are also entitled for the appointment. He further submitted that there are more than 300 vacancies available in other districts and in view of the letter written by the Principal Secretary, Revenue Department dated 9.7.2001, the petitioners should be given appointment in District Dehradun as well as in other districts, provided the District Magistrates of other districts are willing to accept those candidates. Learned Senior Advocate appearing for the petitioners also submitted that once certificate of Patwari/Lekhpal training has been issued by the competent authority and has not been cancelled by any authority, the eligibility of the petitioners for appointment on the post of Patwari/Lekhpal cannot be taken away, inasmuch as, right to be considered for appointment is their fundamental right and any denial of the legitimate right is to pass test strict scrutiny. Learned Senior Advocate appearing for the petitioners submitted that, in fact, while making appointment no performance of the candidates was considered and all those appointments were made, by adopting pick and choose policy. He also submitted that now all those candidates have been confirmed in the service on the post of Patwari/Lekhpal. Submission of learned Senior Advocate for the petitioners is that the action on the part of the respondents by declining appointment to the petitioners and providing appointment to those candidates, who were low in merit, is discriminatory, arbitrary and illegal.

7. Mr. Avtar Singh Rawat, learned Addl. Advocate General for the State, on the other hand, submitted that selection of the petitioners and other candidates was illegal in view of the fact that the names of 91 candidates were recommended and they were sent for Patwari/Lekhpal training against 7 available vacancies of Patwari/Lekhpal in District Dehradun. He submitted that the post of Patwari/Lekhpal is a district cadre, whose appointing authority is District Magistrate of

the respective district. It is submitted that District Magistrate, Dehradun committed illegality in sending 91 candidates for Patwari/Lekhpal training, against 7 existing vacancies on that date, therefore by sending their names, is itself illegal and only 7 candidates should have been sent for Patwari/Lekhpal training and should have been appointed.

8. Learned Addl. Advocate General further submitted that the Commissioner, Saharanpur, conducted an inquiry in the matter in which it was found that even some of the candidates, including some of the petitioners, did not furnish any application form for sending them for Patwari/Lekhpal training. He also submitted that the candidates, who were sent for Patwari/Lekhpal training and then appointed, are close relatives of Peshkar of District Magistrate and many other are the close relatives of the other authorities, therefore their training and appointment in itself is illegal. It is submitted that several letters were written to the Commissioner, Saharanpur for returning the record pertaining to selected candidates, however the same was not returned and it is still lying with the Commissioner, Saharanpur.

9. Learned Addl. Advocate General lastly submitted that some of the candidates, who completed their Patwari/Lekhpal training in the year 1995-96 and 1996-97 were given appointment in compliance of orders of the High Court and they are working in different districts of the State.

10. I have considered the rival submissions advanced by the learned counsel for the parties.

11. Rules framed regarding appointment of Patwari/Lekhpal provide that the post of Patwari/Lekhpal is District cadre post. Rules further provide that the District Magistrate is the appointing authority. In each District, applications from the aspirants of Patwari/Lekhpal training are invited by the respective District Magistrate, for sending them in order to undertake Patwari/Lekhpal training. In District Dehradun, it appears that in pursuant to some advertisement, after scrutiny of the educational certificates and other documents submitted along with application by the candidate, a list was prepared and thereafter persons were sent for Patwari/Lekhpal training. Thus, the District Magistrate committed manifest error and illegality in sending excess candidates for Patwari/Lekhpal training than the available vacancies of Patwari/Lekhpal, but since all 91 candidates were sent for training and have completed their training, all of them have legitimate expectation to get appointment on the post of Patwari/Lekhpal. It has also not been denied by the State counsel that junior persons were given appointment by ignoring the merit list.

12. The respondents have not only committed manifest error by sending excess candidates for Patwari/Lekhpal training, in my firm view, they further committed illegality by appointing those candidates in different districts, ignoring the fact that post is district cadre post. Every District Magistrate is required to advertise for undertaking Patwari/Lekhpal training and invite applications from the

aspirants in each district and after completing due selection process, the District Magistrate is required to prepare final selection list and only thereafter, to send them for Patwari/Lekhpal training against the available vacancy in that very district. Since many candidates have been given appointment in excess to the available vacancies in District Dehradun and some of them have been given appointment in other districts, I am not inclined to interfere in their selection, since they are working for last several years in various districts and have now been confirmed, inasmuch as, they are not party in the writ petitions. I am also not passing any adverse order against them. But, considering the fact that petitioners candidates were higher in merit, I direct the District Magistrate, Dehradun to give appointment to the petitioners against the existing vacancies, which are available in District Dehradun, in accordance with law. It is made clear that no appointment shall be given against the future vacancies and those vacancies shall be filled by inviting application, as per relevant service Rules.

13. I am surprised to note that after creation of State of Uttarakhand, no steps have been taken by the District Magistrate of all the districts, except in District Pauri Garhwal, for filling up the vacancies cropped up for the post of Patwari/Lekhpal. In such state of affairs, request the Secretary, Revenue, Govt. of Uttarakhand to look into the matter, but at the same time, I direct the respondents authorities to initiate process for recruitment for filling up the vacancies of Patwaris (Revenue Sub-Inspectors) and complete the whole exercise before 30th June, 2013, as per relevant service Rules.

14. The writ petitions are allowed accordingly.

15. It is clarified that though, I found irregularities in the recruitment process initiated in the year 1995-96 and 1996-97, but considering the fact that selected candidates have completed many years in service, no order has been passed by me against them. But, it is further clarified that this order shall not be treated as precedent. Let certified copy of this order be also placed in the connected writ petitions.