

(2024) 05 SHI CK 0020

In the High Court Of Himachal Pradesh

Case No : Latter Patent Appeals No. 43 Of 2024

Gagandeep Kaur

APPELLANT

Vs

State Of Himachal Pradesh & Others

RESPONDENT

Date of Decision : 14-05-2024

Acts Referred:

Recruitment And Promotion Rules, 2009 — Rule 15, 15(5)

Citation : (2024) 05 SHI CK 0020

Hon'ble Judges : M.S. Ramachandra Rao, CJ; Jyotsna Rewal Dua, J

Bench : Division Bench

Advocate : Dr. Lalit K. Sharma, Anup Rattan, Rakesh Dhaulta, Sidharth Jalta, Sunil Mohan

Final Decision : Dismissed

Judgement

M.S. Ramachandra Rao, CJ

1. In this Letters Patent Appeal, order dt. 21.08.2023 passed by the learned Single Judge in CWP no.8433 of 2022 is challenged by the appellant herein.

2. The appellant was respondent no.4 in the Writ petition.

3. The respondent nos.4 to 15 had filed the said Writ petition impleading the appellant and other respondent nos.16 to 23 challenging a Final Seniority List dt. 24.02.2021 in the cadre of Patwaris of District Una in Kangra district whereby the appellant and respondent nos.16 to 23 had been shown as seniors to respondent nos.4 to 15.

The background facts

4. It is not in dispute that the service conditions of the appellant and the private respondents are governed by the Recruitment and Promotion Rules, 2009 for the post of Patwari (Mohal), Class-III (Non-Gazetted) in the Department of Revenue, notified by the State Government on 10.08.2009, since all these parties belong to the cadre of Patwaris (Mohal) in District Una.

5. As per Rule 15 of the 2009 Rules referred to above, seniority in the cadre of Patwaris is to be fixed in accordance with their merit determined on the basis of Patwaris Examination and Practical Training, which was to be held after they successfully complete the Patwaris Training, whose duration is of 18 months.
6. An advertisement had been issued in September, 2013, inviting applications from eligible candidates for participation in selection by direct recruitment for post of Patwari (Mohal).
7. An examination to select the candidates was held on 08.12.2013 for 74 posts of Patwaris in District Una.
8. The result was declared in February, 2014, and 72 candidates including the appellant and all the respondents qualified the written examination and were called for interviews.
9. Admittedly the selected candidates had to undergo Patwari training as laid down in the Land records Manual thereafter.
10. An office order Annexure P-1 was issued on 13.02.2014 in which 57 persons including respondent nos.4 to 15 were sent for training. They completed their 18 months duration training and thereafter, appeared in the Patwaris Examination held in August, 2015. They were then offered appointments as Patwaris (Mohal) on 30.10.2015 on contract basis.
11. The appellant and respondent nos.16 to 23 were given an office order on 30.06.2014 and asked to undergo Patwari Training. Their 18 months training was to conclude in December, 2015. Notwithstanding the same, they were allowed to appear in the Patwari Examination held in August, 2015, alongwith respondent nos.4 to 15.
12. After completion of their Patwari Training in December, 2015, the appellant and respondent nos.16 to 23 were offered appointments as Patwaris on 18.01.2016.
13. Vide Annexure P-3 dt. 01.04.2019, the services of the appellant and all the respondents were regularized, but respondent nos.4 to 15 were shown in higher place than the appellant and respondent nos.16 to 23.
14. The 2nd respondent issued a Tentative Seniority List on 07.11.2020 of the Patwaris of District Una as on 01.01.2020, but in that Tentative Seniority List, the appellant and respondent nos.16 to 23 were shown as seniors to respondent nos.4 to 15.
15. The respondent no.4 filed objections thereto on 23.11.2020, which were rejected.
16. Service appeal filed before the Divisional Commissioner, Kangra at Dharamshala, was also dismissed in July, 2022.
17. Therefore, the respondent nos.4 to 15 filed CWP no.8433 of 2022.

18. They contended that they have a better claim for seniority over the appellant and respondent nos.16 to 23, since they had acquired eligibility as qualified Patwari candidates prior in time to the appellant and respondent nos.16 to 23, and their dates of appointment was also prior in time.

19. The appellant and respondent nos.16 to 23 contested the Writ petition contending that they had qualified alongwith respondent nos.4 to

15 in the Patwari examination held in August, 2015 and had secured higher merit, and so, they were rightly placed as seniors to them in the seniority list.

The judgment of the learned Single Judge

20. The learned Single Judge noted the different stages of selection in Para-8 of the judgment as per Rule 15 of the 2009 Rules .

21. He noted that the requisite period of Patwaris Training is 18 months.

22. He took note of sub-Rule (5) of Rule 15, which stated as under:-

"(5). On the completion of training, the candidate shall have to qualify the Patwari examination by such standard and syllabus as may be prescribed by Financial Commissioner (Revenue) from time to time."

23. He held that according to the above sub Rule, only on completion of training, can a candidate be permitted to appear in the Patwari Examination and qualify therein. Since the appellant and respondent nos.16 to 23 commenced their training in June, 2014 and would complete their 18 months training only in December, 2015, they would have become eligible to appear in the Patwari Examination only thereafter. Therefore they could not have been allowed to sit for the said examination held in August, 2015.

24. He noted that respondent nos.16 to 23 had already qualified in the examination conducted by the Director of Land Records, Himachal Pradesh, in August, 2015 and they had already completed the Patwaris Training by the date of their appearance in the examination.

25. He also noted that the Director of the Land Records, Himachal Pradesh, had addressed a communication dt. 05.10.2015 submitting the result of the examination held in August, 2015 in which both the appellant and the private respondents participated and had made a request to the 2nd respondent to appoint them on contract basis after completion of codal formalities. In that communication it was stated that candidates who had not completed their Patwaris Training by then, like the appellant and respondents no.16 to 23, were to be appointed only after the completion of the Patwari Training.

26. The learned Single Judge also recorded that though all the private respondents, including the appellant, had qualified in the Examination of Patwaris Training together in February, 2014, when called for interviews, the appellant and respondent nos.16 to 23 abstained from appearing in the interviews for the

reasons best known to them and so, they could not be sent for training alongwith respondent nos.4 to 15, and that was why the start of their training period had got delayed by four months.

27. The learned Single Judge therefore held that for the said reason the appellant and respondent nos.16 to 23 cannot plead that the delay in start of their training was for the reasons beyond their control since they themselves did not appear for the interviews when called.

28. He held that the completion of the entire period of training was sine qua non for the appellant and respondents no.16 to 23 for becoming eligible to sit for the Patwari Examination.

29. He also noted that there was no rule which permitted the appellant and respondents no.16 to 23 to appear in the exam before completion of the training.

30. He therefore concluded that the appellant and respondent nos.16 to 23 were not eligible to appear in and qualify the Patwari Examination for want of completion of the requisite training period. He held that respondent nos.4 to 15, respondent no.16 to 23 and the appellant, cannot, therefore, be said to have achieved the requisite qualification of pass in the Patwaris Examination at the same time; and the rule which requires seniority to be maintained on the basis of merit in the said examination, will apply only inter-se candidates who had achieved the requisite qualification at the same time; but since the respondent nos.4 to 15 had achieved such qualification prior in time than the appellant and respondent nos.16 to 23, they were entitled to be placed above the appellant and respondent nos.16 to 23 in the Seniority List.

31. He therefore allowed the Writ petition and quashed the Final Seniority List dt. 24.02.2021 and the order dt. July, 2022, passed by the Divisional Commissioner, Kangra at Dharamshala in the Service Appeal filed by respondent nos.4 to 15.

32. He directed respondent nos.1 to 3 to recast and reframe the Seniority List of Patwaris (Mohal) of District Una as maintained on 01.01.2020 on the basis of his order and to hold the DPC for further promotional posts on the basis of such reframed Seniority List.

The present Appeal

33. Challenging the same, this Letters Patent Appeal is filed by the appellant.

34. Counsel for the appellant contended that the judgment of the learned Single Judge is erroneous and that the learned Single Judge erred in proceeding on the presumption that the appellant and respondent nos.16 to 23 had abstained from appearing in the interviews held for all the private parties in February, 2014 without there being any pleading on the part of respondent nos.4 to 15 in that regard.

35. This contention though appears to be correct, yet it does not help the appellant and respondent nos.16 to 23. Assuming for the sake of argument that

they were not responsible for the delay in the issuance of the proceeding to undergo Patwaris Training on 30.06.2014, they ought to have complained in 2014 itself that respondent nos.4 to 15 had been sent for training on 13.02.2014, and that they should have been sent for training alongwith respondent nos.4 to 15 and not later to them.

36. At this point of time, when more than 10 years have elapsed after the said event, it is not open to the appellant and the respondent nos.16 to 23 to contend that they were deliberately sent for training four months late by the authorities and they should not be made to suffer for the said reason.

37. Once it is not in dispute that respondent nos.4 to 15 had been sent for training on 13.02.2014, as part of a batch of 57 candidates for 18 months duration training and it concluded on 16.08.2015, while the appellant and the proforma respondent Nos. 16-23 were sent for training on 30.06.2014, which training would end only in December, 2015, the onus is on the latter to explain how they could have appeared for the Patwaris Examination in August, 2015 even before the completion of their training contrary to sub-Rule (5) of Rule 15 of the 2009 Rules.

38. No satisfactory explanation is coming-forth from the counsel for the appellant in that regard.

39. Once the Rule makes it clear that training would be for 18 months and only on completion of training, a candidate can appear in the Patwari Examination, the appellant and respondent nos.16 to 23, in our opinion, had been wrongly permitted to appear for the Patwaris Examination in August, 2015, even while they were undergoing Patwaris Training. On the basis of such incorrect decision taken by respondent nos.1 to 3, they cannot claim any seniority over respondent nos.4 to 15.

40. The learned Single Judge has rightly held that the principle about fixation of inter-se seniority on the basis of merit in the Patwari Examination would apply provided all the candidates had given the written examination after being eligible to sit for the examination at the same time.

41. Since the appellant and respondent nos.16 to 23 were not eligible to sit for the said examination in August, 2015, they cannot claim on the basis of the merit secured by them in the said examination that they have to be placed higher-up in the seniority over respondent nos.4 to 15.

42. We therefore do not find any merit in the appeal. It is accordingly dismissed. No costs.

43. Pending miscellaneous application(s), if any, shall also stand disposed of.