

(1989) 02 P&H CK 0121

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 748 of 1987

Gurpreet Singh and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 28-02-1989

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 16(2)
Punjab Revenue Patwaris (Class III) Service Rules, 1966 — Rule 2, 7, 9

Citation : (1989) 2 ILR (P&H) 336

Hon'ble Judges : V. Ramaswami, C.J;G.R. Majithia, J

Bench : Division Bench

Advocate : Gurcharan Singh, for the Appellant; K.P. Bhandari, A.G., Ravi Kapur and A.S. Sandhu, for Private Respondents, for the Respondent

Final Decision : Dismissed

Judgement

G.R. Majithia, J.—This judgment will dispose of Letters Patent Appeals Nos. 748 and 1586 of 1987, Civil Writ Petitions No. 3667, 7209, 7607 and 8074 of 1987 as common questions of fact and law are involved in them.

2. We have alluded to the facts as given in Civil Writ Petition No. P64 of 1987 in which Letters Patent Appeal No. 748 of 1987 has been filed. The Respondent--State of Punjab issued an advertisement which was published in the daily "Indian Express" dated October 15, 1983, wherein 421 vacancies for Patwari candidates were advertised. A number of persons who were eligible for appointment applied for being selected as Patwari candidate. Regular appointments in response to that advertisement could not be made due to non-functioning of the Punjab Subordinate Services Selection Board (for short "the Board") ad hoc appointments to the posts of patwaris were made. This ad hoc recruitment was challenged in CWP No. 2374 of 1985 Gurjit Singh and Ors. v. State of Punjab, and the same was set aside. This Court issued the following directions:

In the light of the above discussion, while not quashing the appointments of the persons who have been appointed in place of the Petitioners on ad hoc basis, I

direct the State Government to make appointments of Patwaris throughout the State on regular basis in accordance with the Rules within a period of six months from today. It is needless for me to say that to implement this direction the State Government would be obliged to constitute the Subordinate Services Selection Board at the earliest. I do not choose to disturb or upset the ad hoc arrangement that has been resorted to till the expiry of the said period of six months.

There is no dispute that these appointments are regulated by the Punjab Revenue Patwaris Class III Service Rules, 1966 (for short "the Rules"). Vide notification dated August 26, 1986, the State of Punjab amended the 1966 Rules and in Rule 2, Clause (a) to the Rules, the following clause was substituted:

2. (a): "Board" means the Subordinate Services Selection Board, Punjab or any other authority authorised by the Government to make recruitment to the Service.

The State of Punjab did not constitute the Board. Departmental Selection Committees were constituted in each district for making the selection. These Committees called for interview the candidates who had applied for the post of Patwari and also those who were registered with the Employment Exchange. The writ Petitioners and the selected candidates who have been arranged as Respondents in the writ petitions were called for the interview. Selection of the selected candidates was assailed on the ground that the selection was wholly arbitrary as it was made on the basis of interview alone, no criterion was adopted while making the selection, the marks allotted for the interview were not subdivided under various heads, such as personality, educational qualifications, extra-curricular activities and aptitudes. The selection was made on district-wise basis. The selection could only be made by the Board and not by the Departmental Selection Committees. The State of Punjab controverted the pleas of the writ-Petitioners and, inter alia, pleaded that the work relating to recruitment of Class III and Class IV employees was entrusted to the Departmental Selection Committees by amending the statutory Rules and this was done in view of the mandate issued by this Court in C.W.P. No. 2374 of 1985. The Departmental Selection Committee made selection strictly in accordance with the Rules governing the services. The criteria prescribed in Rule 7 of the Rules was also kept in view. These Committees interviewed the candidates on different dates. The Petitioners levelled allegations of mala fides against the Chairman of the Selection Committee for inviting those candidates for interview, who had not submitted their applications in response to the original advertisement and that the Financial Commissioner, Revenue, Punjab, in his D.O letter No. 17/85/85-CH-III/14026, dated September 16, 1986, has specifically observed that the Departmental Selection Committee should not solicit fresh candidates from the Employment Exchange or through public advertisement since the number of the applications pending with the Board were quite large. The direction was not adhered to. The selection list prepared by the Selection Committee was also assailed on the ground that the candidates mentioned at Sr.

Nos. 188 and 189 were subsequently added by making changes in the final selection list. The constitution of the Selection Committee was also challenged on the ground that the criterion of the constitution of the Selection Committee was provided in Circular No. 12/30/86-1 GE/5139, dated 15th April, 1980. In the circular letter, it was specifically provided that Departmental Selection Committee at district level will consist of four members including its Chairman and three members of an appropriate level including one belonging to Scheduled Castes and Ex-Serviceman, both Government officials. Initially, it consisted of Shri S, K. Sinha, Collector, Patiala, as Chairman, Piara Singh, District Revenue Officer (member), District Sainik Welfare Officer (member) and District Social Welfare Officer (member). The Chairman of its own appointed Shri Sant Singh as member in place of Shri Piara Singh, who was originally nominated as a member. The allegations were controverted by the Collector. In his written statement, he submitted that the interview letters were issued to 1211 candidates, out of which 821 candidates appeared for interview before the Departmental Selection Committee and 189 candidates were selected. The re-constitution of the Committee was necessitated because Piara Singh, who was working as the District Revenue Officer and was the member of the Committee was transferred as Land Acquisition Collector and his successor who joined on the post of the District Revenue Officer, Patiala, automatically became the member of the Committee. The members constituting the Committees were by virtue of their office.

3. Before we advert to the basic proposition canvassed at the Bar, we would like to deal with some objections raised in the replication by the writ-Petitioners in C.W.P. No. 7209 of 1987. It was pleaded therein that no appointment letters were issued to the selected candidates since the despatch register does not indicate the issuance of such letters, the selection list was tampered with and that the selection list contained the names of 190 candidates instead of 189 as is alleged to have been selected and also that the candidates belonging to other districts were considered and selected by the Departmental Selection Committee constituted for District Patiala. These objections are not tenable. No fresh pleas can be taken in the replication because the State has no opportunity to controvert. If any new fact was to be pleaded, the same ought to have been done by seeking amendment of the writ petition. However, for our satisfaction, we summoned the original record and found that only 189 candidates were selected. It is absolutely wrong that the selection list contained the names of 190 candidates as alleged and there was no addition made in the final selection list. The appointment letters were correctly issued to the selected candidates. There is no provision in the Rules that the candidates belonging to other districts could not be considered for selection by the Departmental Selection Committee constituted for district Patiala. The Collector in his written statement has categorically stated that there was no direction from the State Government that the selection of Patwari candidates was to be made only from the original Applicants who had submitted applications to the Board pursuant to the

advertisement referred to above. In order to give opportunity to the deserving candidates belonging to the families of persons killed in terrorist action in the State, or members of the families who lost their bread-earners in riots in Delhi and other places in India between October 31, 1984 to November 7, 1984, surplus employees/disabled ex-Servicemen, members of the families of deceased Government employees, members of the families of the Defence Service Personnel killed or severely disabled/physically handicapped persons were permitted to submit their applications. Three hundred sixty-two candidates belonging to these categories submitted their applications which were considered along with the applications received from the Board. (We do not find that the Departmental Selection Committee travelled beyond its jurisdiction in inviting applications from the categories of persons referred to above. In fact, they acted very fairly and afforded an opportunity to the deserving candidates and permitted them to compete along with other candidates.)

4. The conduct of the writ petitions in Civil Writ Petition No. 7209 of 1987 deserves to be condemned. They made reckless allegations against the Chairman of the Selection Committee. The allegations of mala fide are often more easily made than proved. In the instant case, we have found that the writ petitions attributed motives to the Selection Committee which were wholly without any basis. They made fishing enquiries by getting the record summoned and after examining it, drawing their inferences which was irreducible.

5. It was strenuously contended that the selection of the Patwaris should have been made at State level and not on district-wise basis. The Collectors of the respective districts should not have made appointments by considering the claim of the candidates of that particular district and in support of their submissions relied upon Naresh Kumar Joshi and Ors. v. The State of Punjab and Ors. 1981 P.L.R. 630 . In that case, the challenge was made to the selection of Patwari candidates on the ground that the authorities had made the selection on district-wise basis and not as State level basis. The learned Judge quashed the selection by relying upon two Supreme Court judgments reported as Minor P. Rajendran Vs. State of Madras and Others, and Minor A. Peeriakaruppan and Sobha Joseph Vs. State of Tamil Nadu and Others, and came to the conclusion that the Selection Committee while selecting the candidates from a particular district did not consider the merits of the candidates from other districts. In both these cases, what was mainly objected to was that the selection would have to be made on the basis either of the place of birth or residence and the candidate was confined to the medical college at or nearest to such a place. Such a basis for selection was held to have no reasonable nexus with the object of the rules, namely, to select the most meritorious amongst the candidates to have the advantage of such education. The two Supreme Court judgments which were the basis of arriving at the above conclusion came up for consideration before the apex Court in D.N. Chanchala Ors. Vs. The State of Mysore and Others, , where it was held thus:

As is well-known, different universities have different standards in the examinations held by them. A preference to one attached to one university in its own institutions for post-graduate or technical training is not uncommon. Rules giving such a preference are to be found in various universities. Such a system for that reason alone is not to be condemned as discriminatory, particularly when admission to such a university by passing a qualifying examination held by it is not precluded by any restrictive qualifications, such as birth or residence, or any other similar restrictions. In our view, it is not possible to equate the present basis for selection with those which were held invalid in the aforesaid two decisions. Further, the Government which bears the financial burden of running the Government colleges is entitled to lay down criteria for admission in its own colleges and to decide the sources from which admission would be made, provided of course, such classification is not arbitrary and has a reasonable basis and a reasonable connection with the object of the rules. So long as there is no discrimination within each of such sources, the validity of the rules laying down such sources cannot be successfully challenged.

The matter was finally settled in *Dr. Jagdish Saran and Others Vs. Union of India (UOI)*, , and the question arose in the following circumstances:

The writ Petitioner before the Supreme Court was a medical graduate from the Madras University. His father, an officer under the Central Government was transferred to Delhi and the writ-Petitioner desirous of taking a postgraduate degree in Dermatology, applied for admission to the University of Delhi which offered that course. He took the common entrance test and secured enough marks to qualify for admission but was turned down because of a rule reserving 70 per cent of the seats, at the postgraduate level, to Delhi graduates who have taken their M.B.B.S. degree from the University of Delhi. The remaining 30 per cent was open to all, including graduates of Delhi.

The apex Court after referring to decision in *Chanchala's* case (supra), where the ratio of the earlier two Supreme Court judgments, namely, *Minor P. Rajendran's* case (supra) and *Minor A. Periakarupan's* case (supra) was distinguished to reach at a conclusion that under certain circumstances university-wise classification reservation was permissible. The apex Court held as under:

The State's duty is to produce real equality, rather egalitarian justice in actual life. If university-wise classification for post-graduate medical education is shown to be relevant and reasonable and the differentia has a nexus to the larger goal of equalisation of educational opportunities the vice of discrimination may not invalidate the rule. What is basic is equal opportunity, for each according to his ability, not artificial compartmentalisation and institutional apartheidisation using the mask of handicaps.

The very basis of this judgment was subsequently distinguished in *Chanchala's* case (supra) and *Dr. Jagdish Saran's* case (supra).

6. In *Dr. Jagdish Saran's* case (supra) the apex Court has held that the

University-wise selection is a perfectly valid criterion. Accordingly, we hold that even if the Departmental Selection Committee has made selection for each district separately, it is valid. It is not necessary to select candidates for the whole State and then allocate for each district. It is open to the State to take note of the vacancies in a district, constitute a Committee for selection to fill up those posts provided there is no restriction for residents of other districts also applying. Thus, to call the present case as a "district-wise" selection may even be considered as a misnomer. It is a selection for filling up of the posts in that district. There being no restriction based on residence for applying to that post, no constitutional guarantee has been violated. We have found that in the present case, the Selection Committee has considered the claim of candidates belonging to other districts. Therefore, the selection is not restricted to the residents of the district. The objection raised in the present case is, therefore, neither legally tenable nor on facts we have found that it has been so done.

(6A) The other objection raised that the selection could only be made by the Board and not by the Departmental Selection Committee is unsustainable. The selection of the Patwaris is made under the Rules and it has to be made by the Board which means the Subordinate Services Selection Board. The definition of the Board was amended,--vide notification dated August 26, 1986, and the Board means not only the Subordinate Services Selection Board, but any other authority authorised by the State Government. The Departmental Selection Committee constituted by the State Government is an authority as envisaged by the Rules for making selection and the Committee so constituted in conformity with the Rules was fully competent to make selection and after the selections have been made by the Departmental Selection Committee, the appointment is made by the Collector of the district as enjoined by Rule 9 of the Rules.

7. In Civil Writ Petition No. 8074 of 1987, the learned Counsel raised a novel argument that in the instant case, the candidates belonging to a particular district were considered for appointment in that particular district and thus this action is violative of Articles 14, 15 and 16 (2) of the Constitution of India. We do not find any merit in this submission. There was no discrimination on the ground of residence. In fact, we have found that the candidates who submitted their applications to the Board in response to the advertisement, their claim was considered by the different Selection Committees since it was not feasible by one Selection Committee to interview all the candidates. For the purpose of administrative convenience as also the convenience of the candidates, the applications of the candidates belonging to a particular area were forwarded to the Departmental Selection Committees of that area for consideration. But as found earlier there was no restriction on the ground of residence in the matter of selection of the candidates. Therefore, we do not think that any fault can be found with it. The other objection raised by the learned Counsel for the writ-Petitioners is that no criteria was laid down by the Selection Committee for making selection and the selection was made purely on viva voce test. This objection is not tenable in view of authoritative decision rendered in Dr. Keshav

Ram Pal v. U P. Higher Education Service Commission Allahabad and Ors. 1986 (1) S.L.R 681, wherein it was held that the interviewing. Board was under no obligation to sub-divide the marks under various sub-heads and the selection on the basis of viva voce test is valid. This judgment was followed by a Division Bench of this Court in Sunita Kumari v. State of Punjab and Ors. 1987 (41) SL.R. 347. The selection of the Upper Division Clerks on the basis of interview/ viva voce test was challenged on the ground that no guidelines or break-up of marks for various heads have been made available to the Selection Committee and this Court observed as under:

He has also placed reliance on a recent judgment of the Supreme Court in Dr. Keshav Ram v. U. P. Higher Education Service Commission Allahabad and Ors. 1986 (1) S.L.R. 681, wherein their Lordships of the Supreme Court, after considering their earlier decisions in Ajay Hasia's case (supra), Lila Dhar's case (supra) and Ashok Kumar Yadav's case (supra), have held that it is not a general rule that the interviewing Board is under any obligation to sub-divide the marks under various sub-heads, unless a specific direction has been issued to the Board to that effect. Therefore, the contention of the learned Counsel for the Petitioners has no merit and is rejected.

Similarly, we find that the selection which is made by different Selection Committees cannot be termed to unreasonable as no arbitrariness can be inferred from the process of selection made by the Selection Committee.

8. Before we part with this judgment, another submission of the Advocate General has to be noticed. He submits that the writ Petitioners had participated in the selection and they have been unsuccessful and now they cannot turn around and challenge this selection. In support of his submission, he relied on a judgment of this Court reported as Dalbir Singh and Ors. v. State of Punjab and Ors. 1982 (2) AISLR 521, wherein this Court observed as:

The contesting Petitioners are all persons who competed in the test and took their chance like others did. The mere fact that they have been unsuccessful does not give them the right to turn around and challenge the selection.

The above observations do support the stand taken by the learned Advocate General, but we do not think that we can non-suit the Petitioners on this ground alone. In every selection, the unsuccessful candidates can only assail it after the process of selection is completed and not before that. We do not think it proper to debar the Petitioners to challenge the selection at a later stage. If this Court is satisfied on merits that the selection is otherwise invalid, it will never hesitate from so doing.

9. For the foregoing reasons, we do not find any merit in these petitions. The Letters Patent Appeals filed by the unsuccessful candidates and the writ petitions filed by them are dismissed.