
(1998) 10 P&H CK 0080

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 14414 of 1998

Harbhagwan

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 30-10-1998

Acts Referred:

Citation : (1999) 121 PLR 163

Hon'ble Judges : V.K. Jhanji, J;Iqbal Singh, J

Bench : Division Bench

Advocate : Sanjay Majithia, for the Appellant; Shailendra Sharma, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Jhanji, J.—Challenge in this writ petition is to order dated 25.9.1997 passed by Financial Commissioner Revenue, o Punjab directing Commissioner, Patiala Division to redetermine the seniority of the patwaris who were initially appointed on ad-hoc basis but later their services were regularised.

2. Collector, Sangrur vide his order dated 30.11.1981 (Annexure P-1) appointed Patwaris including the petitioner on ad-hoc basis. Likewise, in the year 1982 some more Patwaris were appointed on ad-hoc basis. It is the case of the petitioner that he joined service as revenue Patwari on 11.12.1981 and in the seniority list, he was assigned serial No. 83. Karnail Singh (4th respondent) too was appointed on ad-hoc basis and he submitted his report on 1.1.1982. Further, according to the petitioner, services of all Patwaris who had been appointed on ad-hoc basis in 1981 and 1982, were regularised vide order dated 1.4.1985 and their interse seniority was fixed. According to the petitioner, Collector, Sangrur vide order dated 18.11.1993, disposed of all objections filed in regard to fixation of seniority and circulated final seniority list. It is alleged that petitioner's name appeared at Sr. No. 115. Fourth respondent challenged the seniority on the ground that ad-hoc service should not be counted towards seniority regularisation and seniority be assigned age-wise. Commissioner, Patiala

Division, vide order dated 1.9.1995 accepted the appeal filed by 4th respondent. Petitioner has further contended that one Vijay Kumar, Patwari filed CWP No. 2383 of 1996 and challenged order dated 1.9.1995 and this Court on 10.12.1996 quashed order dated 1.9.1995 and sent the matter to Commissioner for fresh decision. Commissioner, on remand, vide order dated 7.4.1997 dismissed the appeal of 4th respondent. Meanwhile, one Pawan Kumar, Patwari filed CWP No. 4929 of 1996 with a prayer to correct the seniority list because his date of appointment was wrongly mentioned. A Division Bench of this Court, vide order dated 27.9.1996 dismissed the writ petition by holding that the benefit of ad-hoc service cannot be given for granting seniority to an employee. 4th respondent, upon dismissal of his appeal by the Commissioner, preferred appeal before the Financial Commissioner, Revenue. The Financial Commissioner, relying upon judgment rendered in Civil Writ Petition No. 4924 of 1996, directed the Commissioner to redetermine the seniority by ignoring the ad-hoc service. It is this order which is being challenged here in this writ petition.

3. The only grievance made by the petitioner is that the period of ad-hoc service cannot be ignored for the purpose of determining seniority as the ad-hoc appointment was made by Departmental Selection Committee after following the procedure prescribed by the Rules.

4. There is no dispute with the proposition of law that if the initial appointment is made according to the Rules, subsequent regularisation of his services would entitle an employee to the benefit of intervening service of seniority. This, however, is not the position in this case.

5. Punjab Revenue Patwari, Class-III Service Rules, 1966 (for short the 1966 Rules) govern the service conditions of Revenue Patwaris. Rules 4, 7, 8, 9 and 10 of the 1966 Rules are reproduced below for facility of reference :-

"4. Mode of acceptance of Patwari candidates.-

(1) As and when a requisition is received by the Board from the Collector, the Board shall recommend to the Collector such number of candidates for acceptance as Patwari candidates as the Collector may specify in the requisition.

(2) For the purpose of direct appointment to the Service a register of Patwari candidates shall be maintained by the Collector in each district in which the names of Patwari candidates shall be entered in the order in which they are recommended by the Board.

(3) The number of Patwari candidates that may be enrolled on the register of a district shall be such as may be determined by the Government from time to time.

7. Academic qualifications.- No person shall be accepted as a Patwari candidate for appointment to the service unless he-

(i) has passed the Matriculation or Higher Secondary examination of a recognised

university preferably with Agriculture as one of the subjects;

(ii) possesses qualifications in Hindi and Punjabi upto middle standard or such standard as may be specified by the Government from time to time; and

(iii) has a good knowledge of rural economy and culture.

8. Qualifications for appointment.- (1) No Patwari candidate shall be eligible for appointment to the Service unless he qualifies the patwar examination after attending the Patwar School for a minimum period of one year, and after passing the examination undergoes such practical field training for a period of six months as may be specified by the Collector.

(2) If the candidate fails to pass the patwar examination within a period of 3 years from the date of his acceptance as candidate his name shall be struck off from the register of candidates.

(3) Nothing in this rule shall apply to a candidate who has already passed the Patwar examination before he is accepted as a candidate and has also undergone practical training as specified in sub-rule (1).

9. Appointing authority.- Appointment to posts in the Service shall be made by the Collector.

10. Method of appointment- (1) Appointment to the Service shall be made-

(a) in the case of Patwaris-

(i) by promotion from amongst the Assistant Patwaris; or

(ii) by direct appointment from amongst the accepted Patwari candidates; or

(iii) by transfer of an official already in the service of the State Government; and

(iv) by absorption of the retrenched or likely to be retrenched officials of the Punjab Consolidation Department.

(b) in the case of Assistant Patwaris by direct appointment from amongst the accepted Patwari candidates.

(2) When any vacancy arises, the appointing authority shall determine the method in which the same shall be filled in.

(3) All promotions shall be made by selection on the basis of seniority-cum-merit and seniority alone shall not give any right to appointment."

6. From the reading of the aforesaid rules, it is patently clear that only the Subordinate Services Selection Board (for short the SSS Board) is competent to recommend to the Collector, candidates for acceptance as Patwari candidates as and when any requisition is received from the Collector by the SSS Board. It is further not in dispute that in the year 1981-82, SSS Board was not functioning and, therefore, Patwaris were appointed on ad-hoc basis through Departmental

Selection Committees. It is also the admitted case that posts were not notified through public advertisement. Appointment of the petitioner which was neither made on the recommendation of SSS Board as provided under the Rules nor the post against which the petitioner was appointed, was duly advertised, cannot be said to be in accordance with rules. Petitioner who was appointed dehors the rules, is not entitled to the benefit of ad-hoc service. His seniority has to be counted from the date of regularisation.

7. Consequently, no interference is called for. Dismissed.