

(2000) 08 P&H CK 0197

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 17862 of 1997

Hawa Singh and another

APPELLANT

Vs

State of Haryana and others

RESPONDENT

Date of Decision : 24-08-2000

Acts Referred:

Constitution of India, 1950 — Article 226
Punjab Public Works Department (Irrigation Branch) Patwaris State Service, Class III
Rules, 1955 — Rule 14

Citation : (2000) 08 P&H CK 0197

Hon'ble Judges : S.S. Sudhalkar, J; R.S. Mongia, J

Bench : Division Bench

Advocate : Mr. R.K. Malik, for the Appellant; Mr. Amol Rattan, AAG and Mr. K.K. Jagia, for the Respondent

Judgement

R.S. Mongia, J.—This judgment will dispose of this writ petition as well as C.W.P. No. 16729 of 1997.

2. In the year 1974, Subordinate Services Selection Board, Haryana (in short SSS Board) advertised 495 posts of Irrigation Booking Clerks, Petitioners and some others were selected and their names were recommended to the respondent Department for appointment as such. They were deputed for three months training and after completion of three months' training a written examination was held. The candidates who qualified the written examination were appointed as Apprentice Irrigation Booking Clerks in different Irrigation Divisions. The dates of appointments of the petitioners and the private respondents as Apprentice Booking Clerks have been given in the writ petition. The different Divisions in which the petitioners and the private respondents were appointed were under the Hisar Bhakra Canaf Circle, Hissar now known as the Sirsa Bhakra Canal Circle, Sirsa. The Divisional Canal Officer of the Division concerned was the appointing authority of the posts of Irrigation Booking Clerk and there were no specific statutory rules governing the service conditions of Irrigation Booking Clerks. The post which was known as Irrigation Booking Clerk

was designated as Canal Patwari in the year 1978. On redesignation, the post came under the purview of the Punjab Public Works Department, Irrigation Branch.

3. The appointing authority of the Canal Patwaris being Divisional Canal Officer, their seniority list is kept division-wise at the divisional level. The service conditions of Canal Patwaris are governed by statutory rules, known as Punjab Public Works Department (Irrigation Branch) Patwar State Service Class III Rules, 1955 (as applicable to Haryana) read with Notification of the year 1970. By virtue of the 1970 Notification (dated January 28, 1970) the appointment to the post Canal Patwaris was required to be made through the SSS Board. Rule 14 of the 1955 Rules relating to the determination of the seniority of the members of the service is in the following terms :-

"14. The seniority of members of the service shall be determined in accordance with circle register of passed candidates in their order of passing the Patwar examination. If the position secured in the examination is the same, in the case of two or more persons, their seniority shall be determined by age, a younger member being junior to an older member."

4. The 1955 Rules and notification of the year 1970 quoted above came up for consideration before the Apex Court in *Raj Kumar and others v. Shakti Raj and others* 1997(2) SCT 76 (SC) : JT 1997(2) SC 685. Paragraph 9 of the judgment may be reproduced here :-

"9. It would, thus, be seen that in the matter of recruitment to Class-III and Class-IV posts 1970 Rules have modified the 1955 Rules by providing for recruitment in consultation with the Board instead of The recruitment by the Canal Divisional officer adumbrated in 1955 Rules. Unless there is exercise of the power under proviso to Rule 6 excluding, by a notification issued in that behalf, the requirement of consulting the Board, the recruitment to 7% posts of the Canal Patwaris in the Irrigation Department is required to be made through SSSB. A bird's eye examination of the 1955 Rules and 1970 notification, both statutory Rules, reveals that the former, to fit into the frame work of 1970 notification need suitable amendments in particular, in the matter of the source and method of recruitment, seniority and all related issues. However, it is the duty of the Court to give harmonious interpretation to the Rules so as to make them co-exist and work as a continuous whole. It is unfortunate to notice from the record that the Government was adopting its own procedure convenient to them, namely, in many an occasion, it appointed Patwaris on circle basis, under the 1955 Rules and in some instances, like the selection made in the year 1974, the selection came to be made through SSSB. In other words, the selection and the appointments to the posts of Canal Patwaris under 1955 Rules is not in accordance with the law. However, we need not declare all the selections and appointments as illegal, it is not in dispute that for the impugned selection made in the year 1992, the examinations came to be conducted between April 25 and April 28, 1992 under 1955 Rules. It is also undisputed that common

examinations conducted on different dates in four centres was on uniform pattern of examinations as State-wise one. The results thereof were declared in 1993. Subsequent thereto, the Government have excluded from the purview of the Board by four notifications, a total of 427 posts of Patwaris. Subsequently, the Government has constituted a Selection Committee for selection of Canal Patwaris, consisting of Chief Engineer, BWS Unit as member, General Manager (O) Irrigation Department as Member Secreaty, Deputy Collector, BWS/C Kaithal as Member and Executive Engineer Canal Hisar as co-opted member. They unofficial respondents, who were unsuccessful in the interview, filed the writ petitions in the High Court. The High Court had held that the constitution of Selection (sic) of the appellants is ultra vires the power of the Government. The reason in support thereof is that since 1955 rules occupy the field for selection, administrative instructions cannot be issued to constitute Selection Committee. Therefore, it set aside the selection and appointment of all the appellants as Canal Pawaris. Instead it directed to make appointment in terms of 1955 Rules, those who appeared in the examinations conducted between April 25 and April 28, 1992 and remained successful and fulfilled other qualifications in that behalf. Thus these appeals by special leave."

It would be seen that the Apex court considered the notification of 1970 as a Statutory Rule modifying. 1955 Rules and it was further observed that both 1955 Rules and 1970 notification are statutory rules and further a bird's eye examination of the 1955 Rules and 1970 notification reveals that the former to fit into the frame work of 1970 notification needs suitable amendments in particular in the matter of the source and method of recruitment, seniority and all related issues.

5. In the aforesaid case, before the Apex Court certain Canal Patwaris had been appointed on the basis of the interview and test held by the department without reference to the SSS Board. In these circumstance the Apex Court observed that after 1970 notification came to be issued thereafter to the extent of method and manner of selection of canal patwaris 1955 Rules stood modified and the only competent authority to select the candidates is SSS Board. Since some appointments had been made, as observed above, without reference to SSS Board, the Apex Court observed under the circumstances as under in the aforesaid judgment :-

"17. The question then is: what would be the correct procedure under the law ? Unfortunately, no outside candidate has questioned the selection of the candidates in the interview. In the light of what we have stated in the facts and circumstances, the appropriate and better course would be that SSS Board should call the names of all the candidates who were successful in the written examinations conducted between April 25 and April 28, 1992, interview the candidates and select them in accordance with law laid down above. Since the appellants came to be appointed by virtue of the selection made, they would continue in service till the proper selection is made and the candidates are

appointed in accordance with the rules.

18. The Government is directed to send within three, weeks from the date of the receipt of the order, all the names of the candidates who became successful in the Patwar examination conducted between April 25 and April 28, 1992, to the SSS Board as per the results declared. The Board is directed to call for interview, all the candidates within four weeks from the date of the receipt of the record from the Government. The Board is further directed to interview all those candidates according to the procedure, consider their cases in accordance with the above law laid down and then select the candidates as per merit list duly applying the rule of reservation. The Board would recommend to the appointing authority and appointments would be made strictly in accordance with the merit list prepared after following the rule of reservation. If any of the candidates would, at the relevant time, become barred by age, necessary relaxation of age would be given to them and appointment made accordingly."

6. It may be observed here that the next promotion from the rank of Canal Patwari is to the post of Assistant Revenue Clerk. The appointing authority of the Assistant Revenue Clerk was the Superintending Canal Officer, meaning thereby that a working seniority of Canal Patwaris in a circle which is under a particular Superintending Canal Officer was to be maintained for the purpose of promotion to the rank of Assistant Revenue Clerk. Their appointment was governed under the Rules known as "The Punjab Public Works Departments (Irrigation Branch) Revenue Clerks State Service Class-III Rules, 1956", which were repealed by the Rules, known as the Haryana Irrigation Department Revenue and Assessment Clerks (Group-C) (1) Service Rules, 1991. By virtue of 1991 Rules, the Engineer-in-Chief in the Irrigation Department became the appointing authority of Assistant Revenue Clerk and necessarily a State-wise working seniority of Canal Patwaris has to be maintained for the purpose of promotion to the Assistant Revenue Clerks who are now on the State level cadre.

7. After coming into force the 1991 Rules a tentative seniority list of the Canal Patwaris was issued, which was challenged by filing a writ petition in this Court viz. C.W.P. No. 1691 of 1996 for giving directions to the respondents to finalise that seniority list after hearing to all concerned. The respondents adopted the following criteria for fixing the seniority :-

"Those who are the recommendees of the SSS Board like the petitioners their seniority has been determined on the basis of the merit determined at the time of their passing the Patwar examination and not the merit determined by the SSS Board. So far as those who were working on ad hoc basis and later on regularised under executive instructions issued by the Government their dates have been taken to be the date of regularisation as per the relevant instructions regarding regularisation. So far as seniority of Canal Patwaris from HSMITC will be considered from the date of joining in the Irrigation Department."

The seniority of Canal Patwaris joining the circle on transfer at their own request

will be placed at the bottom on the date of joining the circle and similarly those who have been transferred out of the circle at their own request shall forfeit their seniority on the date of being relieved."

It may be observed here that as per the 1955 Rules, read with Notification of 1970, a person who is selected through the SSS Board is required to undergo training for three months and then is required to pass a Patwar examination and on being successful in the examination he is appointed as an apprentice Canal Pawari and is regularised as and when a regular post becomes vacant. All the petitioners after being selected by the Board in the year 1973-74 were regularised in 1974 after completing the training and passing the Patwar examination.

8. The main grievance of the petitioners is that either their seniority should be determined in accordance with the merit determined by the Board or in absence of that from the date they were regularised and not on the basis of the merit they obtained in the Patwar examination. This, according to the learned counsel for the petitioners, is on the basis that the petitioners must have been regularised in order of merit determined by the Board as and when regular vacancies become available and further they having been regularised more than a decade back that date should not be changed now on the basis of the merit determined in the Patwar examination. This argument has been buttressed by the observations made by the Apex Court in the judgment, referred to above, specific reference to paragraphs 17 and 18, which have been reproduced above, that even the Apex Court observed that the appointments would be made strictly in accordance with the merit determined by the Board even of those candidates who had already been appointed by the Committee and they had passed the Patwar examination.

9. It may be observed here that so far as the merit obtained by the petitioners before the SSS Board is concerned, that is not available with the official respondents. Their seniority as Canal Patwaris had been determined on the basis of date of regularisation or regular appointment against a substantive post and on the basis of that seniority a number of them had been promoted as Assistant Revenue Clerks on May 31, 1991, and further promoted as Zildar in December, 1995. Now their seniority is sought to be changed on the basis of merit obtained by them in the Patwar examination. In other words, the seniority of the Canal Patwaris is being determined as follows :-

(i) For the batch of the persons like the petitioners (1974 batch) inter se seniority is being now determined on the basis of merit obtained in the Patwar examination.

(ii) Those who were appointed on ad hoc basis without the recommendation of the Board in their case the seniority has been determined from the date of regularisation. The persons who have been transferred from Corporation to the Irrigation Department, their date of transfer to the Irrigation Department has

been recommended as the date for the purpose of seniority.

(iii) Those who were recruited in the year 1995, in their case the inter se seniority has been determined in order of merit determined by the SSS Board.

10. As observed above, the petitioners are aggrieved of criteria (i) above. According to the petitioners' counsel, the inter se seniority of a particular batch should be determined as per the merit determined by the SSS Board. Since in the case of the petitioners, the merit prepared by the SSS Board is not available, the criteria which has been adopted by the respondents for almost two decades should not be changed qua those whose merit in the SSS Board is not available. Of such persons, the seniority had been determined on the basis of date of regularisation and on that seniority, the petitioners were further promoted as Assistant Revenue Clerk and Zildar in the years 1991 and 1995 respectively.

11. After hearing learned counsel for the parties, we are of the view that there is merit in the submission of the learned counsel for the petitioners. If for ad hoc appointees, the date of regularisation has been considered to be the relevant date for purpose of determining seniority, we do not find any justification with the respondents in determining the seniority of the petitioners (in whose case the merit determined by the SSS Board is not available) on the basis of merit obtained in the Patwar examination. We can also assume that the regularisation of the incumbents like the petitioners must have been done on the basis of merit which had been obtained by them before the SSS Board. In other words, determining the seniority of the petitioners in whose case the SSS Board's merit is not available on the basis of dates of regularisation would literally be on the basis of merit determined by the Board. We are also impressed with the argument of the learned counsel for the petitioners that since for almost a decade the seniority of the petitioners has been determined on the basis of date of regularisation and they have been further promoted as Assistant Revenue Clerk and Zildars way back in the years 1991 and 1995 respectively, the change in the criteria for determining seniority for them would entail their reversions from the ranks which they have held for more than nine years and five years respectively.

12. For the foregoing reasons, we hold that the seniority of the petitioners as Canal Patwaris should be on the basis of date of regularisation. This will be in consonance with the judgments of the Apex Court (*supra*). No fault can be found with the basis of determining seniority as mentioned at (ii) and (iii) above and in fact there is no challenge to the same. Let the seniority be accordingly determined of the petitioners and others.

13. As a matter of abundant caution we may observe here that we are not determining in this case whether the dates of regularisation of the petitioners or for that matter of any other person as Canal Patwari is the correct date or not. If the official respondents think that the date of regularisation of a particular individual is not correct on any ground and they can legally change that date,

they may do so in accordance with law. Needless to mention that if there are any writ petitions which are already pending or which may be filed claiming that a particular date of regularisation is not correct on any ground, naturally the date of regularisation as may be determined or may be directed to be determined by the Bench would be the date of regularisation of that person.

The writ petitions are allowed to the aforesaid extent.

14. Petition allowed.