
(2015) 09 P&H CK 0084

In the Punjab And Haryana At Chandigarh

Case No : CWP-5336-2002 and CWP-10715-2010 (O&M)

Indraj Singh and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 02-09-2015

Acts Referred:

Citation : (2015) 09 P&H CK 0084

Hon'ble Judges : Mahesh Grover, J

Bench : Single Bench

Advocate : J.S. Yadav, for the Appellant; G.S. Wasu, Addl. AG, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Mahesh Grover, J—This order will dispose of two writ petitions mentioned above as they involve commonality of facts.

2. The Subordinate Services Selection Board advertised 1248 posts of candidates for Patwar training in Patwar School with the following breakup:-

3. The educational qualification prescribed was matric or its equivalent examination of a recognized Board/University and knowledge of Hindi upto matric standard. It was further stipulated that selected candidates would have to undergo training in Patwar training school for one year and would also be required to undergo prescribed practical field training for a period of six months. The petitioners fulfilled the educational qualification and applied in response to the advertisement dated 07.11.1992.

4. As against the required 1248 posts, the respondents selected about 2396 candidates vide result which was declared on 03.08.1994.

5. The selection was challenged by virtue of writ petition bearing no.11526 of 1994 alleging political interference and nepotism in selection.

6. The writ petition remained pending in this Court for a substantial number of

years and was finally disposed of on 11.02.2009. The impact of this judgment would be detailed in the subsequent paragraphs.

7. All the petitioners in Civil Writ Petition No. 5336 of 2002 are Ex-serviceman and in CWP No. 10715-2010 are under Backward Class category raised their claim against 250 and 123 respectively posts which was intended for these categories. There is on record Annexure P10, an order passed by this Court in CWP-3725 of 1996, titled as Rajesh Kumar Yadav v. State of Haryana and others where this Court observed as follows:-

" On a careful reading of these rules, it becomes clear that the respondent Board recommends candidates for patwar training in a patwar school as per the requisition made by the Director. These candidates are then sent for training at the patwar school and only those who pass the examination held at the end of the training, are recommended for appointment. As per rule 10(2) read with rule 11 recommendations are to be made in the same order in which names of the candidates appeared in the merit list maintained by the Director. Rule 15 provided for seniority amongst direct recruits according to the order of merit determined by the Board. It is, thus, clear that more recommendation by the Board of the name of a candidate for patwar training does not entitle such candidates to claim appointment. Passing of the patwar examination held at the end of the training constitute a condition precedent to appointment as patwaris. This being the position, the interim stay order passed by the Court in CWP No. 11526/1995 Raj Pal v. State of Haryana, cannot be made basis by the Board for not recommending the names of the reserved category candidates for patwar training as per the requisition made by the Director. The restraint order passed by the Court will be operative at the stage of appointment, meaning thereby that the respondents will not be entitled to make appointment of patwaris beyond 1248. That cannot be treated as a stay against sending of the names for purpose of training more so, when candidates belonging to the reserved categories like scheduled castes and ESM/DESM have not been recommended as per the requisition sent by the Director. We, therefore, hold that the respondent Board has acted illegally in not sending the names of the petitioners to the Director even though their names appear within the outer limit of 250 which respondents the number of vacancies reserved for ex-servicemen or their dependents

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There is another reason for giving a direction to the respondents to send the name of the petitioners and other selected candidates for training because ultimate appointment would be given only from amongst those who pass the examination held at the end of the training. As on date, it lies in the realm of pure speculation whether 1248 candidates will at all become entitled to be appointed after passing the examination. Therefore, we do not see any reason or logic in the decision taken by the Board not to recommend the names of the petitioners and other similarly situated persons for patwar training.

For the aforementioned reasons, the writ petition are allowed. The respondent Board is directed to recommend the names of the petitioners for patwar training at the patwar school. We further direct the Board to send the names of persons who come within the limit of 250 against the vacancies reserved for ex-servicemen and their dependents upto 250 irrespective of the fact that such candidates may not have approached this Court. Issue of this direction is necessary in order to avoid similar type of litigation by persons who may have been placed at a higher position in the merit list prepared by the Board but who may not have been able to approach the Court due to poverty, ignorance or other similar factors. We also make it clear that it would also be open to the Board to recommend the names of Scheduled Castes candidates in order to make good the deficit in the number of recommendators belonging to the scheduled caste category. All such candidates should be sent for training by the Director, Land records, Haryana and appointment be made from amongst those who pass the examination held at the end of the patwar training. Seniority of such persons shall be determined in accordance with rule 15 of the 1981 Rules.

We also make it clear that these directions will be subject to the final decision of the Civil Writ Petition no.1526 of 1994 and if the entire selection is affected by the order which may be passed in that writ petition, the petitioners and other similarly situated persons will not be entitled to claim any right on the basis of this order.

Parties are left to bear their own costs.

8. These writ petition also pertain to the same selection.

9. It may be necessary to state here that while disposing of CWP-3725- 1996, this Court had observed that mere passing of patwar examination will not confer any right of appointment and thus, directed the respondents to send the names of the petitioners therein as also other selected candidates for patwar training for appointments to follow subsequently. The Court also made it clear that the directions issued by it would be subject to the outcome of the CWP-11526-1994 where a challenge to the entire selection had been mounted.

10. Petitioners in the present writ petitions now pray that they be appointed as there are vacancies still existing out of 1248 posts which were to be filled up pursuant to the selection.

11. The respondents expressed their inability to do so by referring the reply filed to CWP-10715 of 2010 that a decision was taken way back to abolish all posts which were lying vacant as on 29.02.2000 vide letter dated 16.03.2000. Consequently, 1069 posts of patwari which were lying vacant or more than two years as on 29.02.2000 were abolished. The matter was agitated before this Court by way of writ petition and ultimately the Hon"ble Supreme Court which was also seized of the matter passed an order dated 09.02.2001, the relevant portion of which may be extracted here-below:-

" Pending disposal of the matter by the High Court status quo shall be maintained with regard to filling of the posts."

12. In the meantime, the decision in CWP-11526-1994 was rendered saving all the appointments made pursuant to the aforesaid selection as the Court thought it not fit to disturb the appointment which have existed for 15 years. For the purposes of references relevant portion of the decision rendered by this Court in CWP-11526-1994 is extracted here-below:-

"25. Thus, if we had to take a decision on merits, we may have reiterated the view earlier taken by this Court. However, the Court has to adopt a pragmatic approach having regard to the circumstances of the case. The fact remains that the selected candidates have worked for 15 years, though throughout, challenge to the selection has been pending. The clock cannot be reversed. In these circumstances, without recording any final finding on the question whether selections were vitiated by interference of the then Chief Minister, we are of the view that the selections are not liable to be disturbed at this point of time.

26. We are conscious that mere delay cannot be a ground to uphold selections which may be vitiated by abuse of power. The petitioners challenged the selection immediately. However, the selected candidates joined and worked for 15 years. Though, the factum of candidates having worked for 15 years cannot always be conclusive, if their appointments were tainted or vitiated, the fact remains that the clock cannot be reversed and the events that have taken place cannot altogether be ignored in moulding the relief. The approach of the Court cannot be static in such matters. It may depend upon so many factors.

27. Having regard to all circumstances, we find it impracticable to interfere with the appointments.

28. In view of above, while we do not interfere with the selections 1248 candidates who have already joined, selection of candidates beyond 1248 candidates is set aside. We also direct that the State may relax the condition of age for the petitioners in a fresh selection process.

29. The writ petition is disposed of accordingly."

13. In view of the above, all the appointments of 1248 candidates who had already joined made pursuant to the selection were saved. This Court would be unable to grant prayer of the petitioner faced with obvious constraints of non availability of further vacancies in view of the afore extracted directions in CWP-11526-1994.

14. Consequently, the both writ petitions are dismissed.

15. In case the petitioners have any remedy in law, they would be at liberty to avail the same.