

(2019) 09 RAJ CK 0113

In the Rajasthan High Court

Case No : Civil Writ Petition No. 3007, 3014, 4869, 5058, 5073, 5109, 5193,
5403 Of 2019

Rohatsh Kumar And Ors

APPELLANT

Vs

State Of Rajasthan And Ors

RESPONDENT

Date of Decision : 13-09-2019

Acts Referred:

Rajasthan Service Rules, 1951 — Rule 141

Rajasthan Land Revenue (Land Records) Rules, 1957 — Rule 24A, 34, 412

Citation : (2019) 09 RAJ CK 0113

Hon'ble Judges : Arun Bhansali, J

Bench : Single Bench

Advocate : J.S. Bhaleria, Rekha Borana

Final Decision : Dismissed

Judgement

These writ petitions have been filed by the petitioners aggrieved against orders dated 01.11.2018 (Annexure-P/5), dated 05.02.2019 (Annexure-P/6) and dated 08.02.2019 (Annexure-P/7) with all consequential benefits, whereby, the Collector has sent the petitioners-Patawaris under Land Settlement Officer, the order dated 01.11.2018 has been modified and two names of Patwaris have been replaced by other Patwaris and the Land Settlement Officer, Bikaner has allotted villages/chak and directed undertaking of the survey/re-survey work, respectively.

It is, inter alia, indicated in the writ petitions that petitioners participated for direct recruitment on the post of Patwari, were selected and were allotted district Hanumangarh. Whereafter appointment order was issued by the District Collector, Hanuangularh on 06.10.2017. After undertaking the Patwar Cadre post training, the petitioners have been posted in various Patwar Mandals and are under probation for two years as is reflected from order dated 01.07.2018 (Annexure-P/2).

It is further, inter alia, indicated that on 28.09.2018 a letter was issued by the

Commissioner, Land Settlement, Rajasthan to various District Collectors indicating that the Digital India Land Record Modernization Programme ('DILRMP') is under progress, which is required to be undertaken in their Districts as per Chapter-7. The work is being executed by Ameen, which positions are vacant and, therefore, at least 15 Patwaris be sent on deputation for six months for undertaking survey/re-survey.

Based on the said communication, the officer in-charge required the Tehsildar of various Tehsils under District Hanumangarh to name two Patwaris each for the said purpose, based on which, the Collector passed orders dated 01.11.2018, 05.02.2019 sending the petitioners under Land Settlement Department and required the concerned Tehsildars to relieve the petitioners.

Whereafter by order dated 08.02.2019, the Land Settlement Officer allotted villages/Chak for the purpose of survey/re-survey to the petitioners. The petitioners by communication dated 12.02.2019 indicated that after giving preference in the Land Settlement Department they have been sent for survey work to Anoopgarh, which was against their wishes and, therefore, their deputation be stopped and they be accorded appropriate posting.

It is, inter alia, submitted that under Rule 141 of the Rajasthan Service Rules, 1951 no deputation could be made outside the cadre without taking the consent of the employee concerned and as no consent has been taken from the petitioners and order of deputation has been passed, the same deserves to be quashed.

Further submissions have been made that petitioners have been appointed as Patwaris, the work of survey is to be conducted by the Land Settlement Department and as the petitioners are under probation, sending them on deputation is not justified. Submissions have also been made that the petitioners have selected a place of posting as per their merit and they have been sent to other districts, which is not permissible.

A reply to the writ petition has been filed by the respondents, inter alia, indicating that the petitioners have not been sent on deputation from their parent department to the Land Settlement Department, they have just been sent for training for the survey/re-survey work.

Further reliance has been placed on Clause (x) and (xi) of Rule 24A of the Rajasthan Land Revenue (Land Records) Rules, 1957 ('Rules of 1957') to submit that the work being assigned to the petitioners is well within the purview of their duties.

Submissions have been made in the reply seeking to emphasize the importance of the DILRMP. Reliance has also been placed on Rule 34 of the Rules of 1957 in this regard. Rest of the averments made in the petitions have been denied/disputed and it is prayed that the writ petitions be dismissed.

A rejoinder to the reply has been filed by the petitioners, inter alia, refuting the

contents of the reply. It has been emphasized that the duties indicated under Rules 24A and 34 of the Rules of 1957 can only be asked to be done while working as Patwari. Further reliance has been placed on communication dated 22.04.2019 (Annexure-P/9) issued by the Joint Secretary of the Revenue Department, inter alia, indicating that the use of word 'deputation' in the previous communications was not appropriate and, therefore, the same is modified and it be indicated that the same may be treated as 'transfer' against the vacant posts of (^Hkwekid^) Bhumapak.

Based on the said communication it is emphasized that the orders were issued for deputation and the plea raised in this regard in the reply that the petitioners were being sent for training is incorrect.

Reliance has been placed on Rule 412 of the Rules of 1957 in relation to transfers of Patwari and it is reiterated that the action of the respondents in this regard is not justified.

Whereafter, an additional affidavit has been filed placing on record an advertisement dated 11.06.2019 issued by the Land Settlement Commissioner calling upon the willing Patwaris to apply for posting for the purpose, for a period of three years.

Based on the said additional affidavit submissions have been made that as the respondents by their own conduct have conceded the requirement to seek consent, the earlier orders passed in this regard deserve to be set aside.

An additional affidavit has been filed by the respondent State relying on a communication dated 08.07.2019 (Annexure-A/1) issued by the District Collector, whereby, the order dated 05.02.2019 (Annexure-P/6) has been modified and instead of indicating that Patwaris were sent under Land Settlement Officer, Bikaner, the same be read as that they have been transferred against the vacant posts of Bhumapak in the Land Settlement Department. It is claimed that by passing of the order dated 08.07.2019, the order dated 05.02.2019 is no more in existence and the petition has thus become infructuous.

Further submissions have been made that the Land Settlement Department is part of the Revenue Department only and, therefore, any transfer of an employee from the Revenue Department to the Land Settlement Department would not be deemed to be a transfer to any Foreign Department so as to be in contravention to the RSR or Rules of 1957.

A chart showing the hierarchy of the department has been placed on record as Annexure-A/2. Further submissions have been made that similar petitions have been rejected at Jaipur Bench.

Further affidavit has been filed alongwith a communication dated 27.08.2019, inter alia, indicating that the transferred Patwaris would be posted for survey/re-survey in the same District, from which, they have been transferred and after the work of survey/re-survey is over, they would be transferred back to the Revenue

Department in the same district.

The said additional affidavit has been again contradicted by way of reply to the additional affidavit with the submissions that the respondents have been changing their stand from time to time. Alongwith affidavit two judgments in Hem Raj Bhavsar v. State & Ors. : S.B.C.W.P. No. 5819/2005, decided on 09.03.2006 and Inder Singh v. State of Rajasthan & Ors. : 2007 (1) WLC 728 have been annexed as Annexure-P/13.

Learned counsel for the petitioner with reference to the provisions vehemently submitted that respondents have been taking a vacillating stand qua their action in sending the petitioners for survey/re-survey work, inasmuch as, initially it was claimed as training, which was changed to transfer and ultimately other Patwaris have been called upon to apply for the same work, for which, the petitioners are sought to be forcibly transferred and, therefore, the action of the respondents in this regard deserves to be set aside.

Submissions have been made that reliance placed on the order passed at Jaipur Bench is misplaced, wherein, the order has been passed indicating that as the petitioners are under transfer and not on deputation without consent, the petition has been rejected, whereas, even the transfer is not permissible under law and, therefore, the writ petition filed by the petitioners deserves to be allowed.

Learned counsel for the respondents with equal vehemence submitted that the action of the respondents is well within its jurisdiction, wherein, the petitioners have been transferred in accordance with law, which action does not call for any interference.

With reference to the order dated 27.08.2019 (Annexure-A/1) it was submitted that the fundamental objections raised by the petitioners regarding they being sent out of the District, is now taken care of and, therefore, the petitions deserve to be dismissed.

I have considered the submissions made by learned counsel for the parties and have perused the material available on record.

The initial order dated 05.02.2019 (Annexure-P/6) was issued, inter alia, indicating that the petitioners were being sent under the Land Settlement Officer, Bikaner. The petitioners challenged the said action by terming the same as deputation. The respondents initially took the stand that the petitioners were being sent for training and also emphasized that it was part of their duty to undertake survey/re-survey work in terms of Rule 24A and Rule 34 of the Rules of 1957 and emphasized the importance of DILRMP.

The said stand of the respondents was changed with the communication dated 22.04.2019 (Annexure-P/9), wherein, it was indicated that instead of use of word 'deputation' the Patwaris be sent on transfer against vacant posts. The said stand resulted in passing of order dated 08.07.2019 qua the petitioners modifying the order dated 05.02.2019.

Prior to that on 11.06.2019 an advertisement was issued calling for applications for posting from willing Patwaris for execution of work of Ameen/Bhumapak and lastly a document dated 27.08.2019 (Annexure-A/1) has been placed on record alongwith additional affidavit, inter alia, indicating that all those Patwaris, who have been transferred to the Land Settlement Department would be posted in the same District from where they have been transferred for the work of survey/re-survey and after completion of survey/re-survey work they would be again transferred to the Revenue Department in the same District.

In so far as the issue raised by the petitioners aggrieved against the alleged deputation is concerned, the Jaipur Bench in *Ajay Kumar Gurjaar & Ors. v. State of Rajasthan & Ors.* : S.B.C.W.P. No. 5112/2019, decided on 01.06.2019 concluded as under:-

"Mr. Ankit Sethi, counsel for the petitioners cannot deny the fact of the order dated 22.4.2019 issued under the hand of District Collector (Land Records), Tonk, whereby it has been clarified that the petitioners have been transferred and not sent on deputation to the Settlement Department.

I am of the considered view that for reason of the order dated 22.04.2019, the foundation of the petition is taken away as now the petitioners are under transfer not on alleged deputation without consent.

The petition is accordingly dismissed."

In view of the above, the issue of alleged deputation stands concluded by order passed by the co-ordinate Bench at Jaipur in the case of *Ajay Kumar Gurjaar* (supra), which petition raised identical issues.

The judgment in the case of *Hem Raj Bhavsar* (supra) cited by learned counsel for the petitioner would have no application in view of the categorical stand taken by the respondents alongwith the hierarchy chart produced as Annexure-A/2, wherein, the Land Settlement Department has been shown as the part of the Revenue Department alongwith Colonization as well as Revenue, inasmuch as, the case relied on pertained to absorption from Irrigation Department to the Revenue Department.

The relevant provisions of Rule 24A and 34 of the Rules of 1957, which read as under, leaves no manner of doubt that the petitioners are bound to assist/undertake survey/re-survey work:-

"Rule 24A Additional Duties of Patwari

i.

ii.

x. to assist revenue officers in all matters connected with survey, settlement and preparation of record of rights and annual village registers; and

xi. to perform such other duties as may be cast on him under any other law for

the time being in force."

"34. Survey and Reports - (i) The Patwari shall make any survey, field inspection, record of crops, inspection, revision of maps or reports relating to revenue or rent or circumstances of cultivation which he may be ordered to make through the Inspector or the office Qanungo."

The apprehension and the objection raised regarding the petitioners being sent out of their districts is taken care of by the specific affidavit as well as the communication dated 27.08.2019 filed as Annexure-A/1 with the additional affidavit dated 28.08.2019 indicating that the petitioners would work within the same district under the Land Settlement Department.

The judgment in the case of Inder Singh (supra) cannot be read to mean that under no circumstances a Patwari can be transferred from his place of posting. The importance of survey/re-survey work as emphasized by the respondent - State cannot be undermined and allegations made by the petitioners in this regard being wholly unsustainable cannot be accepted.

The fact that the respondents have issued circular/advertisement dated 11.06.2019 seeking applications from willing Patwaris for undertaking the similar work does not in any affect the power of the State in subjecting the petitioners to transfer.

In view of the above discussion, as the petitioners have simply been transferred within the Revenue Department for undertaking the survey/re-survey work and would be working within the District allotted to them, while according posting to them as Patwari, the challenge laid by the petitioners in the petitions cannot be countenanced.

Consequently, there is no substance in the writ petitions, the same are, therefore, dismissed.