

(2023) 08 SHI CK 0106
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 8433 Of 2023

Vicky And Others

APPELLANT

Vs

State Of Himachal Pradesh And Others

RESPONDENT

Date of Decision : 21-08-2023

Acts Referred:

Citation : (2023) 08 SHI CK 0106

Hon'ble Judges : Satyen Vaidya, J

Bench : Single Bench

Advocate : Sunil Mohan Goel, Pushpender Jaswal, Rahul Thakur, Gautam Sood, Priyanka Chauhan, Sanjeev Kuthiala, Ankita

Final Decision : Disposed Of

Judgement

Satyen Vaidya, J

1. By way of instant petition, petitioners have prayed for following substantive reliefs:

(i) That this Hon'ble Court may kindly be pleased to issue an appropriate writ of certiorari quashing impugned final seniority list dated 24.2.2021 whereby the private respondents have been reflected over and above the petitioners and further this Hon'ble Court may be pleased to issue writ of certiorari quashing office order dated 22.4.2021 issued by the Deputy Commissioner, Una rejecting the objections made by the petitioners against the tentative seniority list dated 7.11.2020 of the Patwaris.

(ii) That this Hon'ble Court may further issue writ of certiorari quashing order dated.../07/2022 passed by the Divisional Commissioner, Kangra Division at Dharamshala rejecting the appeal filed by the petitioners against the impugned seniority list dated 24.2.2021.

(iii) That this Hon'ble Court may further be pleased to issue a writ of mandamus directing the respondents to recast the seniority list of the Patwaris strictly in

accordance with the date of appointment of the petitioners and the private respondents as Patwaris on contract basis.

(iv) That this Hon'ble Court may further be pleased to issue writ of mandamus directing the respondents not to promote the private respondents to the post of Kanungo on the basis of impugned seniority list dated 24.2.2021, and if any exigency of service promotions are to be made then the same may be made strictly as per the date of appointment of the petitioners and the private respondents as Patwaris.

2. Petitioners and private respondents herein belong to the cadre of Patwaris (Mohal) in District Una, Himachal Pradesh. Their service conditions are governed by the Recruitment & Promotion Rules for the post of Patwari (Mohal) Class-III, (Non-Gazetted) in the Department of Revenue, notified by the State Government on 10.08.2009 (for short, "2009 Rules").

3. In the seniority list of Patwaris (Mohal) District Una as on 1.1.2020, private respondents occupy higher places than the petitioners.

4. Petitioners are claiming seniority over private respondents and having remained unsuccessful in getting their grievance redressed from official respondents, have filed the instant petition for the reliefs as noticed above.

5. The facts necessary for adjudication of instant petition, in nut-shell, are as under:

5.1 The recruitment to the posts of Patwari (Mohal) as per 2009 Rules is made 100% by direct recruitment on regular or on contract basis, as the case may be.

5.2 The service conditions of the Patwaris (Mohal), recruited on contract basis are governed by Rule 15-A of 2009 Rules. As per Rule 15-A (iv), the selection process to be followed for recruitment of Patwari (Mohal) on contract basis is the same as laid down in Rule 15 of the 2009 Rules.

5.3 Rule 15 of 2009 Rules read as under:

"15. Selection for training of Patwari candidates and their recruitment for the post of Patwari (1) Selection for Patwari training from amongst the candidates sponsored by the Employment Exchanges in HP and the applications called directly by advertising the vacancies in Giriraj. All India Radio Shimla & displaying on the office Board of the respective Deputy Commissioners, shall be made on the basis of written test and viva-voce test, the standards/syllabus etc. of which shall be prescribed by the Financial Commissioner (Revenue).

(2) The maximum number of persons to be selected by each Deputy Commissioner, as Patwari candidates shall be 25% of the cadre strength or vacancies likely to occur in the next five years within the district whichever is less.

(3) The Deputy Commissioner shall maintain a register of Patwari Candidates selected for training strictly in accordance with merit obtained in the selection

test as prescribed in sub rule (1) supra. This register will be called Selection Register.

(4) Selected candidates as per their seniority maintained in Selection Register, shall have to undergo Patwari training as laid down in Land Records Manual at their own expenses. A candidate who, for reasons to be recorded in writing by the Deputy Commissioner/ Settlement Officer/ Director, Revenue Training Institute, is not able to successfully complete the Patwari training, may be with the approval of the Financial Commissioner (Revenue) through Director, Land Records allowed to undergo fresh training in the same district or other district(s)/ Settlement Division/ Revenue Training Institute as the case may be in the next batch or subsequent batches.

(5) On the completion of training, the candidate shall have to qualify the Patwari examination by such standard and syllabus as may be prescribed by Financial Commissioner (Revenue) from time to time.

Provided that a candidate who does not qualify the Patwari examination in the first attempt, he can qualify the same in two subsequent successive examinations, which shall be held for the purpose as prescribed by the Financial Commissioner (Revenue).

(6) On passing of Patwari examination, the candidate will be considered as 'Qualified Patwari Candidate. The Deputy Commissioner shall maintain another Register which will be called as Qualified Patwaris Candidate Register' in which the seniority of the Qualified Patwari Candidates will be fixed in accordance with their merit determined on the basis of Patwari Examination and practical training. The Qualified Patwari Candidates will be offered the post of Patwari, strictly in accordance with their seniority maintained in the 'Qualified Parwari Candidate Register, under rules ibid as per roster prescribed by the State Government for filling up of vacancies reserved for the candidates belonging to Scheduled Castes/ Scheduled Tribes/Other Backward Classes/ Other categories of persons, time to time.

Provided further that the candidates who do not qualify the Patwari Examination in the first attempt and qualify the same later on, their name/seniority will be placed/fixed in the Qualified Patwari Candidate Register below the candidates who have qualified in the first attempt.

Provided further that the candidates who do not qualify in the second attempt, their names/seniority will be placed/fixed in the Qualified Patwari Candidate Register below the candidates who have qualified in the second attempt.

Provided further that the candidates who fail to qualify the examination in the third attempt, their names shall be struck off from the 'Qualified Patwari Candidate Registered maintained by the concerned Deputy Commissioner.

Provided further that the qualified Patwari candidates will be offered the post of Patwari on batchwise basis i.e. the Qualified Patwari candidates of first batch will

be considered first for the post of Patwari and thereafter that of second batch, third batch and so on. Thus, the candidate who does not pass the Patwari examination in first attempt, but passes the same before or on the date of declaration of result of Patwari Examination of Qualified candidates of second batch, his name will be considered first for the post of Patwari irrespective of his merit obtained in the Patwari Examination. But, in case, he passes said examination after the declaration of result of candidates of second batch and before or on the date of declaration of result of Qualified candidates of third batch, his name/seniority will be placed below the Qualified candidates of second batch but above the Qualified candidates of third batch irrespective of his merit obtained in the Patwari Examination and so on.

Provided further that the factor of merit obtained in the Patwari Examination and practical training for the purpose of fixing seniority of Qualified Patwari Candidates will be applied only within the same batch and not in fixing seniority of Qualified candidates of different batches.

Provided that if Qualified Patwari Candidate does not accept the offer of appointment excepting the cases where the reasons are given to the satisfaction of the Appointing Authority, his name shall be struck off from the aforesaid register."

5.4 Vide advertisement issued in September, 2013, applications were invited from eligible candidates for participation in selection process 'Patwari training'. The examination was held on 8.12.2013 for 74 posts in District Una.

5.5 The result was declared in February, 2014. Total 72 candidates including petitioners and private respondents qualified the written examination and were called for interviews.

5.6 Vide office order dated 13.2.2014, 57 persons including the petitioners were sent for training. The petitioners completed their 18 months duration training and thereafter appeared in the examination held in August, 2015. The petitioners qualified and were accordingly offered appointment as Patwari (Mohal) on 30.10.2015 on contract basis.

5.7 Respondents No. 4 to 12 were asked to undergo Patwari training vide office order dated 30.6.2014. Their 18 months training was to conclude in December, 2015, nonetheless they were allowed to appear in Patwari examination held in August, 2015 alongwith petitioners. After completion of their training in December, 2015, the respondents No. 4 to 12 were offered appointment as Patwari on 18.01.2016.

5.8 The services of petitioners and private respondents were regularised as Patwaris w.e.f. 01.04.2019 vide office order Annexure P-3, wherein petitioners were shown higher in place than private respondents.

5.9 Respondent No.2 issued tentative seniority list dated 07.11.2020 of the Patwaris of District Una as on 01.01.2020. The private respondents in the said

tentative seniority list were shown above the petitioners. Petitioner No.1 filed objections, which were dismissed. The service appeal filed before the Divisional Commissioner, Kangra at Dharamshala was also dismissed.

6. Petitioners have represented their claim to seniority over private respondents on the premise that they had acquired eligibility as 'Qualified Patwari Candidates' prior to private respondents and their date of appointment was also prior in time. On the other hand, the claim of petitioners is being contested by the respondents on the ground that the private respondents had qualified the examination alongwith petitioners in August 2015 and had secured higher merit, therefore, they were rightly placed in seniority list in accordance with para 4 below clause 13.3.1 of the Hand Book on Personnel Matters.

7. I have heard learned counsel for the parties and have also gone through the records of the case carefully.

8. The complete procedure for appointment of Patwari (Mohal) is prescribed by Rule 15 of 2009 Rules.

The different stages for such selection procedure can be highlighted as under:

(i) In the first stage the selection is made for 'Patwari training' from amongst the candidates sponsored by the Employment Exchanges in Himachal Pradesh and the applications called directly by advertising the vacancies.

(ii) To get selected for Patwari training written and viva-voce test has to be qualified.

(iii) The Deputy Commissioner of the District is obligated to maintain a register of 'Patwari candidates' selected for training strictly in accordance with merit obtained in the selection test as prescribed in sub-rule 1 of Rule 15. The register is called as 'Selection Register'.

(iv) Thereafter, the selected candidates as per their seniority maintained in the Selection Register are deputed to undergo Patwari training as laid down in the Land Records Manual.

(v) The training period is 18 months.

(vi) On the completion of the training, the candidate is mandatorily required to qualify the Patwari examination.

(vii) On passing of Patwari examination, the candidate is considered as "Qualified Patwari Candidate" and his name is registered in the "Qualified Patwari Candidate Register", maintained by the Deputy Commissioner of the District. The seniority of Qualified Patwari Candidate is fixed in accordance with the merit determined on the basis of Patwari examination and practical training.

(viii) The Qualified Patwari Candidate is offered the post of Patwari strictly in accordance with the seniority maintained in the "Qualified Patwari Candidate Register".

9. It has not been disputed by either of the parties that the requisite period of Patwari training is 18 months. As per the petitioners, a Patwari candidate to become eligible has to complete the 18 months training before qualifying the Patwari examination. It is contended for the petitioners that the training period of respondents No. 4 to 12 had commenced in June, 2014 and their 18 months training would have completed in December, 2015 and it was after the completion of the training, the private respondents would have been eligible to appear in the Patwari examination as per the requirement of Clause 15 (5) of the 2009 Rules.

10. The respondents have maintained their stand that respondents No. 4 to 12 had also qualified the same examination conducted by the Director of Land Records, Himachal Pradesh in August, 2015, in which the petitioners had appeared. The Director of Land Records, Himachal Pradesh vide communication dated 05.10.2015 had submitted the result of the Patwari candidates who had undertaken the examination held in August, 2015 with a request to respondent No.2 to appoint them on contract basis after completion of codal formalities. It was also intimated that the candidates who had not completed their Patwar training as yet, were to be appointed after completion of Patwar training. It is thus submitted that since all the candidates including petitioners and private respondents had qualified the Patwari examination in the same batch, their merit in the said examination was to form base for placing their respective seniority as per para 4 of the Hand Book on Personnel Matters below Rule 13.3.1.

11. Respondent No.2 has admitted that though the register of Patwari as per Rule 15 (3) of 2009 Rules had been maintained in his office, but the "Qualified Patwaris Candidate Register" in terms of Rule 15 (6) had not been maintained.

12. Another factual position that needs notice is that the petitioners and private respondents had qualified the examination of 'Patwari training' together in February 2014. However, when called for interview the private respondents abstained from appearance for the reasons best known to them and for such reason could not be sent for training alongwith petitioners. Accordingly, the start of their training period was delayed by about four months. Once, that being so the conclusion of their training had to be delayed by about four months. Private respondents thus cannot say that the delay in start of their training was for reasons beyond their control. They themselves had not appeared for interviews when called and thus delay in their training was caused.

13. The question then arises whether respondents 4 to 12 merely by virtue of appearance in examination before completion of 18 months training can be said to have completed the selection process in terms of Rule 15 of 2009 Rules?

14. The answer to above question, in my considered view, has to be in negative for all the steps as envisaged under Rule 15 are essential. Sub-rule (5) of Rule 15 of 2009 Rules clearly provides that the candidate shall have to qualify the Patwari examination on the completion of training. The training could be

completed after 18 months and in the case of private respondents the date of completion of training was 23.12.2015. In such circumstances, the completion of entire period of training was sine qua non for the private respondents for becoming eligible to qualify the Patwari examination.

15. The candidates could qualify the Patwari examination if they were eligible to appear. The plain language of sub-rule (5) of Rule 15 of 2009 Rules is clear and unambiguous. No other meaning can be imported than what is intended to be conveyed thereby.

16. The respondents have not been able to place on record any material to justify the appearance of private respondents in examination in August 2015, when they had not yet completed the training. No such rule has been brought to the notice of the court under which the private respondents could be allowed to appear in examination before completion of training. Once, the private respondents were not eligible to appear in and qualify the Patwari examination for want of completion of requisite training period, their eligibility cannot be compared with that of the petitioners. Though, respondent No.2 had not maintained the "Qualified Patwaris Candidate Register", still the mandate to maintain such register required the names of Qualified Patwari Candidates to be incorporated in the sequence of their seniority, which was to be determined on the basis of merit of Patwari examination and practical training. In this view of the matter, the petitioners had become qualified Patwari candidates on successful completion of training and qualification of Patwari examination in October, 2015, whereas the merit of the private respondents for the purpose of inclusion in the "Qualified Patwari Candidate Register" could not be considered till completion of the training period. For application of the principle enshrined in part-4 of Hand Book on Personnel Matters below Rule 13.3.1, the petitioners and private respondents cannot be said to have achieved the requisite qualification at the same time. Said rule will come into play inter-se the candidates who had achieved the requisite qualification at the same time. Clearly, the petitioners had achieved such qualification prior in time than the private respondents and as such, they were entitled to be placed above the private respondents in seniority list. To that extent, the final seniority list dated 24.02.2021 and order dated 07/2022 passed by the Divisional Commissioner, Kangra at Dharamshala on the service appeal of the petitioners are required to be quashed and set-aside.

17. Accordingly, the petition is allowed. The final seniority list dated 24.02.2021 and order dated 07/2022 passed by the Divisional Commissioner, Kangra at Dharamshala on the service appeal of the petitioners are quashed and set-aside. Respondents No.1 to 3 are directed to recast and reframe the seniority list of Patwari (Mohal) of District Una as maintained on 1.1.2020 in terms of what has been held hereinabove and to hold the DPC for further promotional post on the basis of such re-framed seniority list.

18. The petition stands disposed of in the aforesaid terms, so also the pending miscellaneous application(s), if any.