

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****Date of decision: 27.04.2016****CWP No.8195 of 1995**

Raghbir Singh & others

...Petitioners

Vs.

State of Punjab & others

...Respondents

CWP No.4591 of 1996 (O&M)

Resham Singh & others

...Petitioners

Vs.

State of Punjab & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINAPresent: Mr. Amit Chopra, Advocate, for the petitioners
in CWP No.8195 of 1995.Mr. H.S.Gill & R.K.Dhiman, Advocates, for the petitioners
in CWP No.4591 of 1996.

Mr. Harkesh Manuja, Addl. AG, Punjab.

Mr. R.D.Bawa & Mr. Samuel Gill, Advocates, for respondent
No.11 in CWP No.8195 of 1995 and respondents No.7, 20 & 21 in
CWP No.4591 of 1996.Mr. Vikas Singh, Advocate, for respondents No.5, 6, 9, 10, 13, 14
& 35 in CWP No.4591 of 1996.Mr. Ramesh Goyal & Mr. Arihant Goyal, Advocates, for
respondents No.55 & 57 in CWP No.4591 of 1996.

1. *To be referred to the Reporters or not?*
2. *Whether the judgment should be reported in the Digest?*

RAJIV NARAIN RAINA, J.

This order will dispose of the above two cases bearing CWP No.8195 of 1995 & CWP No.4591 of 1996, as common questions of law and fact are involved in them, which can conveniently be decided by a common order.

The private respondents served as Patwaris on ad hoc basis since January, 1982. Four petitioners became members of the service on 19.12.1986 as Patwaris selected by the Departmental Selection Committee tasked by the respondent revenue department to make recommendations for appointment of candidates by way of direct recruitment. The names of the petitioners were recommended for appointment on selection.

The petitioners claim seniority over and above the private respondents in the cadre of Patwaris. The dispute arose when District Mansa was carved out from erstwhile District Bathinda on 13.04.1992. On 30.04.1992, 93 Patwaris including the petitioners and the private respondents were allocated to the newly created District Mansa w.e.f. the date of creation of the District. There was no final seniority list of Patwaris prevailing in District Bathinda. Therefore, a fresh tentative seniority list of Patwaris was framed and circulated by office order dated 12.10.1992 by the District Collector, Mansa, the answering respondent. The objections were invited to the tentative seniority list. The objections received from respondents No.4, 9 & 10 were accepted in the light of the Government instructions dated 05.09.1986. Before the petitioners were appointed in service, the services of all those Patwaris who had completed one year of ad hoc service as on 01.04.1985 were regularized. The position then prevailing was that the respondents were regularized in service prior to the petitioners' induction as regular Patwaris and order to this effect was passed on 17.04.1994 by the District Collector, which came to be

appealed against before the Commissioner, Ferozepur Division, Ferozepur. 4th petitioner along with others filed an appeal before the Commissioner, Ferozepur Division which was decided on 04.05.1995 as per the directions of this Court in CWP No.5241 of 1994 and CWP No.5344 of 1994. The petitioners' appeal was rejected after hearing them. The State pleads that it corrected the mistake committed by it and the competent authority had a right to rectify any mistake at any time in formulating the seniority list, relied upon by the petitioners, which has undergone change by rectification in view of above position.

A perusal of the impugned order passed by the Commissioner, Ferozepur Division dated 04.05.1995 reveals that the respondents took their rights to seniority from the date of regularization in terms of the policy instructions of the Punjab Government dated 29.03.1985 and 08.08.1985 according to which officials who had completed one year of ad hoc service on 01.04.1985 were to be regularized. This was the prevailing law in the 80s when ad hoc service was not shunned. The material date thus became 01.04.1985 to count the seniority of the two competing sides. The rules of service governing the post of Patwari are called 'The Punjab Revenue Patwari Class-III Service Rules, 1966'.

The petitioners contend that the respondents were wrongly regularized on 01.04.1985 [the present petition brought in the year 1996] and were, therefore, wrongly shown senior to the petitioners in the seniority list (Annex P-14). It transpired that some of the respondents had filed CWP No.5881 of 1995 for issuance of directions for regularization of their services w.e.f. the date when their juniors were regularized. The State granted the relief and the writ petition was dismissed as infructuous on 21.03.1996. The petitioners had filed an application under Order 1 Rule 10 CPC in the said

petition and were added as respondents No.3 to 7 in the memo of parties. The order dated 21.03.1996 reads as under:

*“Present: Mr. Jagdev Singh, Advocate, for the petitioner.
Ms. Charu Tuli, DAG, Punjab.*

Ms. Charu Tuli has filed short reply. Alongwith the reply, Annexures R-1 and R-2 have been filed showing that the services of the petitioners have been regularized in the cadre of Patwari with effect from 01.04.1985 and they have been assigned seniority by the competent authority from the date of regularization of their services.

In view of the reply filed by the respondents, the writ petition is dismissed as having become infructuous.”

On the other hand, the respondents submit that the present petition is liable to be dismissed as having been rendered infructuous because the petitioners gave undertakings/declarations in writing placed at Annex R-13 to R-16 before the Collector that they have no objection if promotions are made on the basis of seniority list (Annex P-14). They further gave undertaking that they will not challenge such promotions in any court of law. The declarations have been accepted by the Collector vide Annex R-17. Consequently, the answering respondents No.4, 5, 6, 9, 10, 13, 14 & 39 were promoted as Naib Tehsildars while the petitioners were given the current duty charge of the post of Naib Tehsildar. The orders of regularization in favour of the respondents were passed on 19.09.1995 (Annex P-12) and it was declared therein that they would take the benefit of the policy if they had rendered one year of service before 01.04.1985. This order has not been challenged in the present petition which is fatal to the cause.

It is the entire case of the petitioners that the services of the ad hoc employees were terminated vide order dated 19.12.1986 vide Annex P-2 and it

happened that selections were made on the same date and appointments followed. Even in the select/merit list (Annex P-1) (the complete list of which is placed on record as Annex R-4/1, because Annex P-1 was incomplete document), the petitioners were shown at Serial Nos.79, 57, 74 & 64, whereas the names of answering respondents were shown against higher slots and thus became senior on the basis of the merit selection made on 19.12.1986, and accordingly the petitioners become junior to the respondents. It is complained that the petitioners have deliberately not annexed the complete order to create confusion while submitting Annex P-1 and that is how Annex R-4 was brought on record. It is also submitted that respondent No.6 was promoted on 18.08.1989 as Naib Tehsildar, which was much before the issuance of the impugned seniority list and his promotion order has not been challenged. The petitioners have challenged alone Annex P-10 and P-11 issued by the Commissioner, Ferozepur Division, but without impleading the Commissioner. Since the other orders have not been challenged in this petition, the same is liable to be dismissed on this count alone. The seniority list in favour of the respondents is based on the order of regularization (Annex P-12) which has not been challenged. Plea against the seniority list was, therefore, not available with the petitioners.

It was in these circumstances that the Commissioner, Ferozepur Division in the order dated 04.05.1995 rejected the representation of the petitioners and held that the seniority list dated 17.04.1994 was issued as per the Government instructions regarding counting ad hoc service for purposes of regularization. The orders of regularization were a class action involving many persons and therefore no separate orders were required to be passed in each case, the ground being covered by policy instructions on regularization then prevailing.

It is contended that the rights of the private respondents have long remained settled down in terms of the policy instructions of the Punjab Government then prevailing, which policy instructions have not been challenged and it is only its aftermath that has been questioned in the petition. It may be mentioned that the period of two years prescribed for regularization of ad hoc services vide instructions dated 31.03.1995 was reduced to a period of one year, which position is not contested by the petitioners nor can be entertained. The respondents were working on ad hoc service before the petitioners came to be inducted as regular Patwaris in December, 1986. The respondents had longer length of service protected by legal and valid orders of regularization

The State in the reply asserts that Rule 11 of the Rules amended vide notification dated 08.12.1985 provided therein that the Collector may appoint Patwari on temporary basis for a short term duration till the candidates recommended by the Board become available, but such appointments shall not confer any right of regular appointments nor shall the period spent on such appointment count for seniority even if the period of such appointment is followed by a regular enrollment. However, it is Rule 15, which governs seniority of Patwaris. The State argues in para. 7 of the written statement that Rule 11 cannot supersede Rule 15, which deals with seniority. Moreover, the amendment does not take away the powers of the Government to regularize the service of ad hoc Patwaris by instructions issued under Article 162 of the Constitution. That power vests in the Government and if it is not exercised for extraneous considerations, it is not open to criticism. Rule 15 reads as under:

“15. Seniority - The seniority inter se of members of the service in each cadre shall be maintained districtwise and shall be determined by the length of continuous service on a post in that cadre;

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Note 1. This rule shall not apply to persons appointed on purely provisional basis pending their passing the qualifying tests."

The seniority of Patwaris in District Mansa had to be decided in accordance with the seniority list of erstwhile Bathinda District because on 13.04.1992 there was no seniority list of Patwaris finalized by Collector Bathinda. It is only after the creation of the District that the Collector was competent to finalize the seniority list in District Mansa. With the creation of Mansa District, there had to be re-allocation of officials on their options given whether they would like to serve in Bathinda or Mansa and that is how the dispute started. In any case, the Government was bound to comply with the judgment delivered by this Court in CWP No.2374 of 1985 for making regular appointments of Patwaris and regularization of ad hoc services of Patwaris in accordance with the Punjab Government instructions dated 29.03.1985. It follows that the State has not acted contrary to Rules, instructions and judgments delivered including CWP No.624 of 1985 and the aforesaid writ petition. The State also points out that the petitioners were in service at the time judgment was delivered in CWP No.2374 of 1985. This Court on due consideration of the case does not think it fit or appropriate to disturb the order dated 04.05.1995 (Annex P-10) rejecting the representation of the petitioners claiming seniority above the respondents as Patwaris.

Besides, the petitioners were interveners in the writ petition filed by the private respondents bearing CWP No.5881 of 1995 in which they sought regularization w.e.f. 01.04.1985 and seniority w.e.f. even date in view of the notification dated 29.03.1985, which was rendered infructuous vide order dated 21.03.1996 passed by the Division Bench. They did not seek leave to agitate the matter in a fresh petition and the petition is as a result hit by principles of

constructive res judicata. Moreover, principles of delay and laches have a vicious part to play in a seniority matter and allowing rights to settle down over long period of time.

For the reasons recorded above, the present petitions are found without substance and are ordered to stand dismissed without costs.

[RAJIV NARAIN RAINA]
JUDGE

27.04.2016
Vimal