

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.15840 of 2015
Date of Decision:- 21.04.2016

Mohinder Singh and another

....Petitioners

Versus

State of Haryana and another

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Namit Kumar, Advocate, for the petitioners.

Mr. Hitesh Pandit, Additional Advocate General, Haryana.

RITU BAHRI, J. (Oral)

Petitioners by way of present petition are seeking directions to the respondents to grant the benefit of first ACP w.e.f. 25.06.2007 on completion of 10 years of service instead of 01.06.2009 and 25.05.2012 with all consequential benefits.

Petitioners were appointed as Patwaris in pursuant to advertisement dated 07.11.1992 whereby 1248 posts of patwari were advertised. They completed theoretical training of one year as well as of field training of six months. In the year 1996, they appeared in the examination and were appointed as Revenue Patwaris, vide appointment letter dated 24.06.1997. The promotion from the post of Revenue Patwari is

to the post of Field Kanungo and the services of Field Kanungo are governed by the Rules known as “Haryana Kanungo Service Group ‘C’ Rules, 1981 and one of the essential qualification for promotion to the post of Field Kanungo is to have passed the Kanungo Examination held by the Director. Against advertisement of 1248 posts of patwaris, the list of selected candidates was finalized and the Board has made recommendation of 2395 candidates for admission to the Patwar Training School. The said selection was challenged before this Court and thereafter the matter went before the Hon’ble Supreme Court and the same has been remanded back on 28.09.2007 to this Court. This Court disposed of the writ petition and did not interfere in the selection of 1248 candidates, who have already joined and the selection beyond 1248 posts was set-aside. On account of pendency of the litigation, the petitioners were not allowed to sit in the Kanungo examination, which was held in the year 2002. Thereafter, Kanungo examination was held on 28/29.05.2009, where petitioner No.1 has passed the same, whereas petitioner No.2 was re-appeared in one of the subject of Math and thereafter the same has been passed in the Kanungo Examination held on 11/12.11.2010 and the result was declared on 25.05.2012. Vide order dated 27.09.2010 (Annexure P-2), petitioner No.1 has been granted the benefit of 1st ACP, from the date when he has been placed in the pay scale of ₹5200-20200+3200 GP w.e.f. 01.06.2009 on completion of 10 years of satisfactory service and passing of Kanungo examination on 29.05.2009. In the same manner, petitioner No.2, vide order dated 24.09.2013 (Annexure P-3), after completion of 10 years of

service and passing of examination on 25.05.2012.

The grievance of the petitioners in the present petition is that after joining the department on 24.06.1997 as revenue patwaris, they were eligible for grant of 1st ACP w.e.f. 01.06.2009 and 25.05.2012 respectively after completion of 10 years i.e. in the year 2007. They were not allowed to participate in the Kanungo examination on account of pendency of the litigation. The petitioners were in the initial list of selected candidates of 1248 and had joined as such in the year 1997. Passing of departmental examination was an eligibility condition to get the ACP scale and if they were not allowed to appear in the examination in 2002 and 2007 they cannot be denied the benefit of ACP as the department was responsible for this flow.

The stand taken by the respondents in the written statement is that the selection of the petitioners was subject matter of challenge in CWP No.16605 of 1995 titled Jai Bhagwan Vs. State of Haryana and others. This writ petition was finally decided on 11.02.2009. After the decision of said writ petition, the petitioners were allowed to sit in the departmental examination of Kanungos, which was held on 28.05.2009 and 29.05.2009. Hence, the petitioners have become eligible after passing the examination and the benefit has been rightly extended to them after they cleared the examination. The respondents have placed on record the instructions dated 28.05.1975 (Annexure R-1), which lays down that a permanent patwari, who had completed three years service can appear in Departmental Examination with other candidates. Moreover, as per the instructions dated

27.06.2000 (Annexure R-2), which was issued by the revenue department, the revenue patwari as per Rule 5(3) (a) (b) of the ACP Rules, 1998, were required to qualify the requisite departmental examination for the post of Kanungo before being granted the 1st ACP and 2nd ACP. After participated in the departmental examination, the necessary relief for grant of ACP has been given to the petitioners. Similar conditions of eligibility are dated 24.10.2008 (Annexure P-3).

After going through the contents of the writ petition and written statement, the main question for consideration in the present case is whether the petitioners, who were regularly appointed on the post of patwaris, could be denied to participate in the departmental examination of Kanungo in the year 2002 and 2007.

Reference at this stage can be made to instructions dated 28.05.1975 (Annexure R-1), which are followed by the department till date and as per these instructions a permanent patwari, who had completed three years of service, can appear in the Departmental Examination with other candidates. Since, clearing of departmental examination was one of the eligibility condition, the petitioners for all intents and purposes after being appointed on regular basis on 24.06.1997 could participate in the departmental examination after completing three years of regular service i.e. after 24.06.2000. They could sit in the examination of Kanungo and pendency of litigation could not be made a ground not to issue roll number to them to pass the eligibility examination which in the present case the department had done as they did not issue roll number nor allowed them to

participate in the departmental examination solely on the ground that their selection was subject matter of litigation. Since the petitioners were selected against the advertised post of 1248, so, their selection was not beyond the advertised post after completing three years of service, the department as per instructions R-1 should have issued them roll numbers to give them opportunity to participate in the Kanungo examination. After the dismissal of the writ petition in the year 2009, they have appeared in the examination and cleared the eligibility test. Petitioner No.1 has cleared the examination in the year 2009 whereas petitioner No.2 has cleared the examination in the year 2012.

At this stage, the petitioners can be extended the benefit in view of the judgment of Hon'ble Supreme Court in the case of **K.K. Gohil Vs. State of Gujrat and others**, 2015(3) S.C.T. 573 whereby the Supreme Court considered the case for grant of time bound Higher Pay Scale under the policy of State Government for grant of Higher Grade Scale, which was introduced on 16.08.1994. The higher pay scale was not granted as they did not fulfill the condition of departmental examination and no such examination was held by the department. As per resolution dated 16.08.1994, in case the employee gets higher grade scale without passing any competitive examination, he will have to clear the departmental examination otherwise the grant of higher grade scale was to be withdrawn. By subsequent circular dated 24.11.2004, the State Government modified the earlier resolution taking note of the High Court's order and directed that in cases where for getting higher pay scale a departmental examination was necessary then the departmental examination should be organized in time.

Vide order dated 22.06.2006, the Government has brought to the notice of the department that if the higher departmental examination was not organized during the eligibility period then in such cases the higher pay scale benefit cannot be stalled on such ground. The Supreme Court after examining the above said circulars came to a conclusion that the benefit of higher grade was to be given to an employee after completing nine years of service and could not be withdrawn if the departmental examination was not held by the department.

The ratio of the above said judgment of the Hon'ble Supreme Court is directly applicable to the facts of the present case as in the present case the petitioners after being appointed on regular basis were eligible to participate in the Kanungo examination as per instructions dated 28.05.1975 (Annexure R-1), after completing three years of service but they were not allowed to appear in the examination in view of the litigation. Even though the litigation was pending, the petitioners as per instructions dated 28.05.1975 (Annexure R-1), after completing three years of service, was to be allowed to appear in the departmental examination with other candidates, which the department in the present case did not allow in the year 2002 and 2007. The petitioners have cleared the departmental examination in the year 2009 and 2012. Though the petitioners have cleared the examination but the ACP scales cannot be denied to them simply on the ground that they have not passed the departmental examination, which in the present case not on account of fault of the petitioners but was on account of wrong interpretation of instructions

instructions dated 24.10.2008 (Annexure R-3), it was decided that the patwaris with minimum experience of five years were eligible to appear in the examination of Kanungo. These instructions cannot be used against the petitioners as they had completed three years of regular service as per instructions dated 28.05.1975 (Annexure R-1) when the examination took place in the year 2002 and 2007. The respondents cannot deprive the petitioners the right of participating of departmental examination as per instructions (Annexure R-1). Hence, further amendment made as per letter dated 24.10.2008 (Annexure R-3), cannot go against the interest of the petitioners.

In view of above, the present writ petition is allowed and the directions is given to the respondents to grant the benefit of 1st ACP w.e.f. 25.06.2007 instead of 01.06.2009 and 25.05.2012 to the petitioners with all consequential benefits along with 9% interest as per the judgment of Hon'ble Supreme Court in case **D.D. Tewari (D) through LRs vs. Uttar Haryana Bijli Vitran Nigam Ltd. and others, 2014 AIR (SC) 2861.**

April 21, 2016
naresh.k

(RITU BAHRI)
JUDGE