IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P. No. 26423 of 2016
Date of Decision:- 20.12.2016

Baljeet Singh and others **....Petitioners**

vs.

State of Punjab and others **....Respondents**

CORAM:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Dinesh Kumar, Advocate,
for the petitioners.

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DAYA CHAUDHARY, J.

The prayer in the present petition is for issuance of a writ in the nature of Certiorari for quashing the impugned order dated 18.11.2016 conveyed vide memo dated 18.11.2016 in compliance of order dated 3.10.2016 passed in CWP No. 20771 of 2016. A further prayer has also been made for restraining the respondents from finalizing the selection and appointment in pursuance of advertisement dated 10.9.2016 issued by respondent No. 3 i.e. Director Land Records, Punjab.

Briefly, the facts of the case, as made out in the present petition, are that CWP No. 20771 of 2016 was filed for granting one time relaxation in qualification by considering the fact that for the last more than two decades, no recruitment to the post of Revenue Patwari took place in the State of Punjab and a large number of candidates possessing the qualification prior to amendment of Rules 2014 became ineligible. Earlier,

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the recruitment to the post of Patwari was governed by The Punjab Revenue Patwaris, Class III Service Rules, 1966. Subsequently, there was an amendment in the Rules and the Punjab Revenue Patwaris, Class III Service (First Amendment) Rules, 2008, were notified incorporating the qualification for appointment to the post of Patwari as 10+2. Thereafter, The Punjab Revenue Patwaris Class III Service (First Amendment) Rules, 2014 (hereinafter referred to as 'The Service Rules, 2014') were notified. A public notice was issued on 18.8.2015 inviting applications to fill up 1227 posts of Revenue Patwaris. The last date of the registration was 15.9.2015 and for depositing the application fee, last date was fixed as 18.9.2015. With the amendment of the qualification vide notification dated 28.10.2014, the candidates possessing 10+2 qualification with Patwar course were eligible for the post of Patwari under 1966 Rules and amended in the year 2008. Some of the candidates filed **CWP No. 19351 of 2015** titled as **Vivek Chaudhary and others vs. State of Punjab and others,** which was allowed and the petitioners in that case were permitted to submit their applications manually till 18.9.2015. However, the appointments were ordered to be subject to decision of the writ petition. Another writ petition i.e. **CWP No. 20044 of 2015** for seeking the same relief was dismissed on 19.9.2015 as the last date was over. The petitioners then filed **LPA No. 1437 of 2015** and the Hon'ble Bench directed to accept the applications, if filed, within 15 days. Ultimately, **LPA Nos. 1437 of 2015, 1473 of 2015 and CWP No. 21964 of 2015** were dismissed on account of amendment in the qualification. The recruitment process was stopped and directions were issued to all the departments to put on hold all ongoing recruitments. A

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memo was also issued to all the Deputy Commissioners conveying the decision of the Cabinet Committee meeting held on 29.7.2015 to invite applications for the post of Patwaris on contract basis with certain conditions that the age should be between 60 to 65 years as on day of engagement and after engagement, one can continue for two years irrespective of the fact that he exceeds 65 years of age during the period of contract. Besides other conditions, one condition was also there that contract can be terminated by either side with 30 days' prior notice.

Some of the candidates challenged memo dated 5.8.2016 by way of filing **CWP No. 17470 of 2016**. While issuing notice of motion, the appointment in pursuance of impugned memo was stayed. During pendency of said petition, an advertisement was also issued inviting applications for the post of 1227 Revenue Patwaris and 857 Canal Patwaris.

Aggrieved by the said advertisement, the petitioners served a legal notice upon the respondents. The writ petition bearing **CWP No. 20771 of 2016** challenging the advertisement and the Rules was disposed of with a direction to the respondents to consider the case of the petitioners for grant of one time relaxation in the qualification. However, it was observed that the order may not be construed as a direction or an amendment of the Rules. In compliance of direction issued in said petition, impugned order dated 18.11.2016 was passed which is subject-matter of challenge in the present writ petition.

Learned counsel for the petitioners submits that the petitioners are Matriculates/10+2 and they are also possessing certificate of Patwar training from the authorized organization. Learned counsel further submits

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that as per notification dated 28.10.2014, the recruitment rules were amended by the Service Rules, 2014. The requisite qualification is Graduation from a recognized University and in view of amendment not only they have become ineligible but some of them have become overage also and a grave prejudice has been caused to the petitioners.

Learned counsel submits that earlier the petitioners were eligible to apply for the post of Patwaris under the un-amended Rules of 1966 as the qualification was 10+2. Not only a legal notice was served but representations were also made and ultimately, the claim of the petitioners was rejected vide order dated 18.11.2016 on the ground that there are large number of graduates/post graduates, who are unemployed and there is no justification to give relaxation.

Rule 21 of the Punjab Revenue Patwaris Class III, Service Rules, 1966 deals with relaxation in provisions of the Rules and is hereby reproduced as under:-

> **"21. Power of relaxation:** Where the Government is of the opinion that it is necessary or expedient so to do, it may, by order, for reasons to be recorded in writing, relax any of the provisions of these rules with respect to any class or category of persons."

No doubt, the respondent-State is competent to relax any of the provisions of Rules relating to a class or category of persons but while exercising the powers an opinion is to be formed by recording reasons in writing. No reasons whatsoever have been mentioned. Simply by mentioning that the large number of candidates with higher qualifications

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are available. They having 10+2 with Computer knowledge as well as Patwar training certificate, the qualification should be relaxed. The power of relaxation vests with the respondent-State. The order rejecting the claim is not well reasoned as it has been mentioned that there are large number of graduates/post graduates who are unemployed. The qualification was modified from 10+2 to Graduate. According to Rule 21 of the Service Rules, 1966, the relaxation can be made for any class or category of persons by the State Government. The case of the petitioners is not that they want relaxation in general and the State Government has refused to exercise the discretionary power provided under Rule 21 of the Service Rules, 1966. No material has been brought on record to allow relaxation to a particular category. Nothing has been pointed out by learned counsel for the petitioners as to how it is necessary or expedient to grant relaxation in the amended qualification. Simply by saying that no posts were advertised for the last two decades, relaxation has been claimed and the grievance that they are unemployed but it can't be a ground to give relaxation in the qualification. There are many candidates like the petitioners who are not possessing the amended qualification. It is a settled position of law that the employer has an absolute right to lay down the qualification for a particular post which is advertised and to see as to whether the candidates for selection/appointment for the post are suitable or not. The amended qualification is the requirement of the nature of duties. Moreover, the rule making Authority is the best Judge to see requirement of a particular post and is well equipped to prescribe the requisite qualifications. The Courts are not to prescribe the requisite qualification. It is for the employer to fix

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the criteria for appointment and not the Courts to substitute the same.

Hon'ble the Supreme Court in case of **State of J & K vs. Shiv Ram Sharma and others, 1999(2) SCT 599** has observed as under:-

> "The law is well settled that it is permissible for the Government to prescribe appropriate qualifications in the matter of appointment or promotion to different posts. The case put forth on behalf of the respondents is that when they joined the service then the requirement of passing the matriculation was not needed and while they are in service such prescription has been made to their detriment. But it is clear that there is no indefeasible right in the respondents to claim for promotion to a higher grade to which qualification could be prescribed and there is no guarantee that those rules framed by the Government in that behalf would always be favourable to them. In **Roshal Lal Tandon v. Union of India, 1968 (1) SCR 185,** it was held by this Court that once appointed an employee has no vested right in regard to the terms of service but acquires a status and, therefore, the rights and obligations thereto are no longer determined by consent of parties, but by statute or statutory rules which may be framed and altered unilaterally by the Government. The

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> High Court has also noticed that there was an avenue provided for promotion but the prescription of the qualification was not favourable to respondents. The principle of avoiding stagnation in a particular post will not be with reference to a particular individual employee but with reference to the conditions of service as such. As long as rules provide for conditions of service making an avenue for promotion to higher grades the observations made in T.R. Kothandaramans case (supra) stand fulfilled. In that view of the matter, we do not think the High Court was justified in allowing the writ petitions filed by the respondents."

In the realm of service jurisprudence framing of rules, prescription of qualifications, eligibility and the recognition of the qualification is the sole prerogative of the employer. It is not for the Courts to venture into such an exercise as it is the function of experts in the field. The employer is the best judge to lay down the conditions for recruitment/appointment to various posts in the hierarchy of service. Merely because some conditions/qualifications or eligibility are not conducive to a particular section of the candidates or employees does not per se permit the Court to exercise the power of judicial review unless in the opinion of the Court the exercise of power is arbitrary or is in contravention of any constitutional provision.

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In view of facts as mentioned above and the law position as discussed above, there is no merit in the contentions raised by learned counsel for the petitioners and as such, the petition being devoid of any merit is hereby dismissed.

December 20, 2016 **(DAYA CHAUDHARY)**
poonam **JUDGE**

Whether speaking/reasoned **Yes**

Whether reportable **Yes**

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