

*CWP No.1918 of 2013 &
CWP No.3171 of 2014*

-1-

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.1918 of 2013
Date of Decision:-19.04.2017.

Dharam Chand and others

.....Petitioners

Versus

State of Haryana and others

.....Respondents

CWP No.3171 of 2014

Subhash Chander

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. Akshay Bhan, Senior Advocate with
Mr. Chanderhas Yadav, Advocate for the petitioner No.2 in
CWP No.1918 of 2013 and for the petitioner in
CWP No.3171 of 2014.

Mr. Anurag Goyal, Advocate for petitioner Nos.1 and 3 in
CWP No.1918 of 2013.

Mr. Keshav Gupta, AAG, Haryana.

Mr. R.K. Chopra, Senior Advocate with
Ms. Gagandeep Kaur, Advocate for
respondent No.5.

P.B. BAJANTHRI, J. (Oral)

1.) By this order the above two writ petitions shall be decided as

the issue involved in both the writ petitions is identical. For brevity, facts

are being extracted from CWP No.1918 of 2013.

2.) In the instant writ petition, petitioners have questioned the validity of order dated 31.12.2012 passed by the learned Commissioner, Rohtak Division, Rohtak Annexure P-6. The petitioners are in the cadre of Patwaris. Final seniority list of Patwaris of District Jhajjar was prepared and published as on 1.1.2009 (Annexure P-4). The petitioners have no grouse against final seniority list of Patwaris vide Annexure P-4. The private respondent filed an appeal before the Commissioner against the final seniority list of Patwaris (Annexure P-4). The appeal of the private respondent was allowed vide Annexure P-6. Thus, the petitioners are aggrieved by the order passed in appeal (Annexure P-6). Legal contention raised by the petitioners is that there is no appeal provision against final seniority list of a particular cadre. Therefore, the Commissioner exceeded his jurisdiction in entertaining the appeal of the private respondent while altering the final seniority list of Patwaris (Annexure P-4). Thus, Annexure P-6 is liable to be set aside.

3.) Per contra, learned counsel for the respondents vehemently contended that Commissioner has powers to entertain appeal against the final seniority list of a cadre with reference to Rule 17, 18 and 9 of the Punishment and Appeal Rules and further under latter Rule called the Haryana Revenue Patwaris (Group-C) Service Rules, 2011. Thus, the Commissioner has a source of power to entertain appeal against the final seniority list of Patwaris. Hence, the contention of the petitioners that the Commissioner has exceeded its jurisdiction in entertaining the appeal and deciding the same by the respondent is not tenable.

5.) Crux of the issue in the present matter is whether the Commissioner has been delegated power of appeal against the final seniority list of Patwaris or not. Reading of the above cited Rule 1981 and 2011 read with the Punishment and Appeal Rules do not cover the issue relating to seniority in respect of appeal. They are relating to other than the seniority. Under the Punishment and Appeal Rules, appeal provision is made against only penalty. Here it is not a question of imposing any penalty so as to entertain appeal by the Commissioner. Therefore, the Commissioner has no power to entertain the appeal against the final seniority list of Patwaris in the absence of specific statutory provision, the Commissioner cannot exercise the power of appeal and decide the *inter se* seniority among the Patwaris with reference to final seniority list. Preparation of seniority list is under statutory provision. When the statutory provision are silent relating to appeal against the final seniority list, the Commissioner has exceeded his jurisdiction in entertaining the appeal against the final seniority list of Patwaris (Annexure P-4). Thus, the decision on the appeal of the private respondent by the Commissioner vide Annexure P-6 is hereby set aside.

6.) Petitions stand allowed. Reserving liberty to the private respondents to look out for remedy in accordance with law.

(P.B. BAJANTHRI)
JUDGE

April 19, 2017.
sandeep sethi

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.