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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP-11801-2019 (O&M)
Date of decision : 18.09.2019**

Suresh Kumar

... Petitioner

Versus

State of Haryana and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. C.R. Narwal, Advocate
for the petitioner.

Mr. R.K. Doon, AAG, Haryana.

AMIT RAWAL, J. (ORAL)

Petitioner has invoked jurisdiction of this Court for issuance of a writ in the nature of certiorari quashing the action of respondents putting the condition of clearing Departmental Revenue Examination for the purpose of promotion to the post of Zilladar.

As per certificate dated 17.05.1993 (Annexure P-1), petitioner has successfully passed the Canal Patwari's Examination and appointed Canal Patwari in Irrigation Department, Haryana.

Mr. C.R. Narwal, learned counsel appearing on behalf of the petitioner submitted that post of Canal Patwari is governed by the Rules i.e. Punjab Public Works Department (Irrigation Branch), Patwaris' State Service, Class III, Rules, 1955 (in short 'the Patwaris Rules'). On 06.10.1997, he was promoted as Assistant Revenue Clerk and then Revenue Clerk on 24.10.2011 and after rendering three years of service, on

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14.09.2017, promoted to the post of Zilladar, which is governed by Punjab Public Works Department (Irrigation Branch), Zilladar' State Service, Class III Rules, 1955 (hereinafter called 'the Zilladar Rules'). There are two categories for appointment as Zilladar; i) by way of promotion of departmental candidates; and ii) direct recruitment. Direct selected candidate Zilladar, as per Rules, is required to undergo training and pass the departmental patwari examination as prescribed in para No.7.34 of the Manual of Administration as well as pass the Departmental Revenue Exam, during the probation period. The nomenclature given to the Zilladar appointed through direct recruitment is 'Candidate Zilladar', whereas promoted Zilladar as Zilladar. Respondent No.2/Engineer-in-Chief, Irrigation and Water Resources Department, Haryana, issued a notification dated 20.6.2018, affording the last opportunity to the Zilladars, who have not cleared the Departmental Revenue Exam, during the probation period as specified in Rule 11(3) of the Zilladar Rules. There is inconsistency in Rules 10 and 11 of the Zilladar Rules, as, the expression 'if recruited direct', in sub-Rule 3 of Rule 11, for clearing the departmental examination only applies to the direct recruited candidates and not to the persons, who have been promoted, for, para 6.6 of the Manual of Administration of Zilladar Rules, is not in consistent with the Rule 10 and Appendix 'B', wherein there is no provision of clearing Departmental Examination to the promoted Zilladars. Both the categories i.e. Direct and Promoted, have different qualification, thus, letter/notification dated 20.06.2018 (Annexure P-5) is not sustainable in the eyes of law.

I have heard learned counsel for petitioner, appraised the paper book and of the view that there is no force and merit in the submissions of

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Mr. Narwal for, there is no challenge to the aforementioned Rules. Emphatic reliance has been laid to the Manual. Manual has no governing role to the service condition of Zilladars, appointed directly or by way of promotion.

It would be in the fitness of things to extract Rules 10 and 11 of the Zilladar Rules, which read as under:-

"Rule 10: Method of recruitment

a) Initial appointments to the service shall be made to the grade of candidate Zilladar.

(b) Prior to appointments candidates for training shall be selected from amongst:

(i) Member of the Punjab Public Works Department (Irrigation

Branch) Overseers Engineering State Service Class III, who have been recommended by the Superintending Engineer;

(ii) Member of Punjab Public Works Department (Irrigation Branch) Revenue Clerks State Service Class III, who have completed not less than 3 years approved service, are permanent in that service and are recommended by the Superintending Engineer;

(iii) Naib-Tehsildars and Qanungoes, recommended by the Financial Commissioner Punjab;

(iv) Persons already in the service of the Government of a State or of Union; and

(v) Direct candidates.

(c) The selection of direct candidates for training shall be made by the Chief Engineer.

The following proportions shall be observed as far as possible for making selection:

(1) Departmental candidates : 40%

(2) Land Revenue Department : 10%

(3) *Direct recruitment candidates including persons already in service of Government of State of the Union : 50%*

In the event of a sufficient number of suitable Departmental and Land Revenue Department candidates not being available, the deficiency may be made up by selecting extra direct candidates

(d) *Selected candidates will be required to undergo the training specified in Appendix "B" and on passing the examination and test prescribed therein will be appointed as Zilladars on probation as and when posts become available.*

(e) *Persons already in service of Government of State or of the Union, by transfer.*

(f) *Notwithstanding anything in the above rules, appointment to the services shall be made purely by selection and no official shall be entitled to such appointment as of right.*

Rule 11

"11: Probation of members of the service"

(1) *Persons who are appointed against permanent vacancies in the service, shall remained on probation for a period of two years, in the first instance, during the period of probation all the person shall be allowed to pay in the time scale they shall also be eligible to draw increments during the period of probation provided their work is satisfactory.*

Explanation: Officiating service or service spent on deputation to a corresponding or higher post shall be reckoned as period spent on probation but no person who is officiating in any appointment Shall, on completion of the requisite period of two years in such appointments be entitled to be confirmed until he is appointed against a permanent vacancy and has only at least two good annual reports in succession on his work. Provided that the seniority according to the list of accepted candidates as laid down in the rule 13(2) shall not be changed,

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that is to say, a candidate cannot be appointed on probation from date prior to that from which his seniority so appointed.

(2) If the work or conduct of any person during this period of probation is, in the opinion of the Chief Engineer, not satisfactory, the Chief Engineer, may at any time during the period of probation or prior to his confirmation, dispense with his services, if recruited direct, or revert him to former post, if he had been recruited otherwise than by the direct appointment.

(3) On the completion of the period of probation specified in sub Rule (1) of any person, the Chief Engineer make confirm such person in his appointment, or if his work or conduct has, in the opinion of the Chief Engineer, not been satisfactory, or he has failed to pass the Departmental Revenue Examination referred to in rule 12, dispense with services if recruited direct, or, as the case may be, revert him to his former post, if he had been recruited otherwise than by direct appointment, or extend the period of his probation (but not so as to increase it beyond three years, except in the case provided in rule 12), and upon the completion of such extended period of probation, the Chief Engineer may pass such orders as could have been passed under sub rule (2)."

There is hardly any force in the contention of Mr. Narwal, as far as inconsistency in the aforesaid Rules as in view of provisions of Rule 12, dealing with examination to be passed and applicable to all the Zilladars, on probation. There is no classification that the aforementioned Rule would apply only to the direct recruited candidates and not to the promoted candidates. For the sake of brevity, Rule 12 of the Zilladar Rules, reads as under:-

"Rule 12: Examination to be passed

Every Zilladar on probation shall be required to pass the

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Departmental Revenue Examination before he is confirmed his appointment:

Provided that the Chief Engineer may, if he thinks fit, extend the period of probation upto two years subsequent to the date of issue of a notification appointing a person as a Zilladar on probation, if such extension is necessary in order to enable such person to make a further attempt or attempts to pass the aforesaid examination."

Once the Rule envisages the passing of Departmental Examination, the attempt to take different stand in overcoming condition is too far fetched.

Keeping in view the above, no case is made for for judicial intervention under Articles 226/227 of the Constitution of India. The present writ petition is devoid of merit, accordingly, it is dismissed *in limine*.

18.09.2019

Yogesh Sharma

**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**