

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

1. CWP No. 26468 of 2016

Virender Singh and anr.Petitioners
versus

State of Haryana and others ...Respondents

2. CWP No. 1834 of 2017

Jitender Kumar and anr.Petitioner
versus

State of Haryana and others ...Respondents

Date of decision : 18.01.2019

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr.Sanjiv Gupta, Advocate and
Mr. Mohnish Sharma, Advocate
for the petitioners.

Ms. Palika Monga, DAG Haryana

Mr. Sourabh Goel, Advocate
for respondent No. 2 to 4

RITU BAHRI, J. (Oral)

The above mentioned two petitions are being disposed of by this common judgment, as common questions of law and facts are involved therein. However, for the facility of reference, the facts are being taken from CWP No. 26468-2016.

Prayer in the present writ petition is for quashing of order dated 11.02.2009 (P-13) passed by respondent No. 3 and further prayer is for issuance of direction to the respondents to consider the case of the petitioner for appointment as Patwaris on regular basis w.e.f the date, persons junior to them were regularized.

Pursuant to advertisement dated 25.08.2007 (P-1), the petitioners being fully eligible applied for the post of Patwaris on contract/regular basis. Their extension was extended from time to time. Further vide recommendation letter dated 02.05.2008 (P-7), the case of the petitioners along with respondents Nos. 5 and 6 was recommended for regular appointments for the post of Patwaris with the Corporation. But vide order dated 22.05.2008(P-8 and P-9), respondent No. 1 considered the case of respondent No. 5 and 6 only for regular appointments and they were issued appointment letters. The petitioners then gave the representation to respondent No. 3 to consider their names for regular appointments but instead of considering their names, the respondent No. 1 again issued orders by which the contract period of the petitioners was extended to another six months w.e.f 18.05.2008. The petitioners finding no other way approached this Court along with Jitender Kumar and Vijay Pal by filing CWP No. 16489-2008 for issuance of direction to the respondents to consider the petitioners for appointment as Patwaris. This petition was disposed of on 17.09.2008 (P-12) and direction was given to competent authority to take cognizance of the representation filed by the petitioners and decide the same within a period of two months. But the claim of the petitioners was rejected, vide order dated 11.02.2009 (P-13) and hence the present writ petition.

The petitioners continued pursuing their case for regularization with respondent-Corporation while working as Patwari on contract basis. Thereafter, the Assistant District Attorney vide office note dated 25.07.2013 (P-14) duly recommended that fresh case for regularization of the petitioners along with Vijay Pal and others be sent to Government after getting the report from Tehsil MCF if deemed fit and proper.

Thereafter, vide office note dated 22.08.2014 (P-15), the

Corporation recommended the case of the petitioners to selection committee for consideration of regularization of their services. The case of petitioners along with Vijay Pal and Jitender Kumar was considered along with notification dated 18.06.2014 (P-16) passed by Government of Haryana. But till date no action has been taken and the petitioners have also submitted representation in this regard on 05.09.2016 (P-19).

On notice of this petition, a written statement has been filed on behalf of respondent Nos. 2 to 4 taking a stand that the petition is liable to be dismissed on the ground of delay only as the present writ petition has been filed after a gap of 08 years. It has further been submitted that initially there were 11 posts of Patwaris and out of which 03 were reserved for SC, 03 for BC and 05 for General category. Thereafter, petitioners were engaged on contract basis despite the fact that they do not have the requisite qualification, in view of the emergent circumstances. On the other hand, respondent no. 5 and 6 have the requisite qualifications as per Haryana Municipal Corporation Employees (Recruitment and Conditions) Service Rules, 1998 were selected on regular basis from general category on 22.05.2008(P-9). It has been admitted that the case of petitioners for regularization has been sent vide office note dated 14.08.2014 and the Committee referred the matter to the Commission, MCF with recommendation to regularize them and other similarly situated persons. But the Commissioner, MCF did not accept the Committee's recommendation and vide order dated 28.08.2014 decided to obtain clarification from the Government to the effect that whether the qualification of Canal Patwar, which these contractual Patwaris (including petitioners) were possessing, can be treated at par or not with qualification of Revenue Patwari, for the purpose of regularization. But the policy of 2014 was put on hold by the Government and later on the same was withdrawn by the

Government, vide letter dated 03.06.2016.

Now the only question for consideration before this Court would be whether the petitioners have the requisite qualification on the day when respondent Nos. 5 and 6 have been regularized as Patwaris.

Learned counsel for respondent Nos. 2 to 4 has referred to noting (Annexure R-3/1) wherein the Committee observed that only three candidates namely Mann Singh, Charan Singh and Balwant Singh fulfilled the requisite qualification i.e Revenue Patwar whereas the remaining eight were having the qualifications of Canal Patwar. But since there was acute shortage of Revenue Patwaris and keeping in view the fact that all the sanctioned post of Patwaris in the Corporation was suffering very badly, the committee recommended that the candidates having the qualification of Canal Patwar may also be considered for appointment as Patwari on contract basis.

Learned counsel for the petitioners is relying upon judgment of this Court in a case of ***Amrik Singh and another vs. State of Punjab and others, 1990 (1) PLR 240*** wherein petitioners were selected as Patwaris and were undergoing training at State Patwar Training School, Jalandhar. The writ petition was disposed of in para 6, it has been observed as under:-

6". Clause (iii) of Rule 10 provides for appointment by transfer of an officer already in the service of the State Government. The patwaris working in the Irrigation Department whose conditions of service and recruitment are governed by the Punjab Public Works Department (Irrigation Branch) Patwaris State Cadre Service Class III Rules, 1995, are the employees of State Government and they can be appointed as Revenue Patwaris by transfer as provided in Clause (iii) of Rule 10.

Too narrow and rigid construction cannot be placed upon this clause. It

cannot apply to only those employees whose services are regulated by the Rules. The appointment by transfer is a well recognized method adopted and approved in the Government Service. Merely because the service conditions and recruitment of Patwaris working in Canal/Irrigation Department and revenue are regulated by different set of rules, will not deprive the patwaris working in irrigation department for recruitment as revenue patwaris. Thus, I hold that appointment by transfer of Irrigation Patwaris as Revenue Patwaris is fully justified under the Rules.

In the present case, the petitioners were appointed way back in the year 2007, pursuant to advertisement (P-1) and were duly qualified at that stage. Keeping in view the above judgment, wherein it has been held that work of Revenue Patwari and Canal Patwari are same and both employees can be transferred, as the posts are equivalent.

In the present case, the case of the petitioners have also been recommended for appointment on regular basis and thus the present writ petitions are allowed and order dated 11.02.2009 (P-13) is set aside. The respondent will consider the case of petitioners for regularization at par with respondent Nos. 5 and 6 and pass appropriate orders within a period of two months. The petitioners are entitled to consequential benefits.

January 18, 2019
G Arora

(RITU BAHRI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No