

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-8681-2023

Date of Decision: 12.07.2023

Maninderjit Singh and others

. . . . Petitioners

Vs.

State of Punjab and another

. . . . Respondents

CORAM: HON’BLE MR. JUSTICE SANJEEV PRAKASH SHARMA

Present Mr. Nitesh Singla, Advocate
 for the petitioners.

Ms. Shivani Sharma, DAG, Punjab.

SANJEEV PRAKASH SHARMA, J.(Oral)

1. The petitioners by way of this Writ Petition have submitted that the post of Patwari is governed by The Punjab Revenue Patwaris, Class III Service Rule, 1966, Part A (hereinafter referred to as ‘Patwari Service Rules of 1966’).
2. Rule 8 of the said Patwari Service Rules, 1966 provides as under:

“8. Qualifications for appointment-

(1) No Patwari candidate shall be eligible for appointment to the Service unless he qualifies the Patwar examination after attending the Patwar School for a minimum period of one year, and after passing the examination undergoes such practical field training for a period of six months as may be specified by the collector.

(2) If the candidate fails to pass the Patwar examination within a period of 3 years from the date of his acceptance as candidate his name shall be struck off from the register of candidates.

(3) Nothing in this Rule shall apply to a candidate who has already passed the Patwar examination before he is accepted as a candidate and has also undergone practical field training as specified in sub rule (1).”

3. The petitioners have come up before this Court stating that they were selected and were sent for patwar school training for one year and for practical field training for a period of six months as per the said Rule. For the training period, one year was started on 02.05.2022 and was completed on 01.05.2023 during the pendency of this Writ Petition. While the petitioners have undergone one and a half year training as above, the respondents have selected another batch of candidates vide advertisement dated 14.01.2021, and departing from the Rule and the condition of advertisement, the respondents have issued an order on 11.07.2022 reducing the training period to 9 months in Patwar School and 3 months training in the field.
4. Learned counsel for the petitioners submits that resultantly, the candidates who have been allowed to join on the post after their training of one year would become senior to the petitioners, and the petitioners would lose their seniority. The said letter dated 11.07.2022 is prayed to be declared *ultra vires* of the Rules.
5. Learned counsel submits that any action taken based on the said letter dated 11.07.2022 also deserves to be declared bad in law.
6. A reply has been filed on behalf of respondents with the short affidavit of Special Secretary Revenue-cum-Director, Land Records, Punjab stating that so far as the petitioners are concerned, in terms of the General Common Condition Service Rules, 1994, during the probation they would be paid basic salary only and during the training period, a stipend equal to Rs.5,000/- per month is to be paid to the Patwari candidates. It is further stated that on the demands raised by several patwar unions, the Government has taken a decision to amend/modify Rules and Punjab Revenue Patwari (Group C) Service Rules, 2023 have been framed wherein the training period has been proposed to be reduced from one and

a half year to one year with 9 months Patwar school training and 3 months of field training. The said draft rules are yet to be cleared by the Council of Ministers. However, taking into consideration the said draft Rules, the Director, Land Records, Punjab, Jalandhar was directed to incorporate the said condition in the appointment letters of the new patwaris. The cut off date for proposed amended provisions is 11.07.2022 and therefore all patwaris who have been issued appointment letter/recruited after 11.07.2022 have been governed by the draft Rules, while the petitioners who were appointed/recruited prior to 11.07.2022 would be governed by the earlier Rules.

7. Learned counsel for the petitioners submits that the draft Rules do not have force of law and they cannot replace the existing Patwari Service Rules, 1966 till the draft Rules are notified.
8. The learned counsel for the respondents states that the draft Rules have been notified on 02.06.2023 and now only 1 year total training is required, and therefore they should be applied to the persons who have been sent for total one year training.
9. I have considered the submissions and perused the Punjab Revenue Patwaris (Group C) Service Rules, 2023 which have been notified on Gazette on 26.05.2023.
10. As per the provisions of Rule 1(2) of the said Rules of 2023, the Rules have been brought into force from the date of their publication in the Official Gazette i.e. 26.05.2023. The Rule therefore could not have been been applied retrospectively on the patwaris who have been recruited prior to 26.05.2023, and therefore all the patwaris who are appointed under any of the advertisements which may have been issued prior to 26.05.2023, would be governed by the Patwari Service Rules, 1966 which provides for 1 ½ years' training.

11. The law has been well settled by the Supreme Court in the case of ***Chairman, Railway Board And Ors vs C.R. Rangadhamaiah And Ors., 1997 (3) Suppl. SCR 63*** wherein the Constitution Bench of the Supreme Court held that unless a rule has been made specifically retrospective by notification, the same would be always read prospectively.
12. In a recent unreported judgment in ***Sivanandan C.T. and others vs. High Court of Kerala*** pronounced by the Constitution Bench today i.e. 12.07.2023, the Apex Court has frowned upon the applying of draft Rules to the ongoing selection process and held that draft Rules shall not have application on the selection process.
13. It may not be out of mention that training period is not to be counted for the purpose of seniority as held by the Supreme Court ***in Civil Appeal No.822 of 2023*** in the case of ***Ashok Ram Parhad and others vs. The State of Maharashtra and others***, wherein it has been observed as under:

“28. It appears to us that the High Court’s view is the correct view. The resolutions have been passed in the context that the person who successfully completes the training effectively gets the monetary compensation for his training period and is not deprived of the same. This cannot amount to giving seniority from the date of initial recruitment process to determine inter se seniority, when the Proviso to Rule 2 of the 1984 Rules makes the date of appointment for direct recruits clear. This is also in the background that while the direct appointees have no experience in the field having been freshly recruited, the promotees have been doing the task.”
14. Keeping in view the above, the action of the respondents in imparting only one year training to the patwaris appointed/recruited prior to 26.05.2023 is held to be illegal and unjustified.
15. The said patwaris would have to now undergo complete training as provided under the erstwhile Rules of 1966, and if they have been paid salary, same shall be accordingly re-fixed after being given training stipend for the said period. They will, of course, be junior to the

petitioners who were appointed while earlier advertisement under the earlier recruitment.

- 16. It is made clear that even if the training period of recruitees appointed under an earlier advertisement is completed later, they shall have to be treated senior to the recruitees who are recruited under the subsequent advertisement.
- 17. Accordingly, this Writ Petition stands allowed.
- 18. Respondents shall take appropriate steps as above.

(SANJEEV PRAKASH SHARMA)
JUDGE

July 12, 2023
Mohit Goyal

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| 1. Whether speaking/reasoned? | Yes/No |
| 2. Whether reportable? | Yes/No |