

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

(217)

CWP-1087-2017

DATE OF DECISION:- 14.02.2023

JAI SINGH

...PETITIONER

VERSUS

STATE OF HARYANA AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: None for the petitioner.

Mr. Saurabh Mohunta, DAG, Haryana.

SUVIR SEHGAL, J. (ORAL)

Petitioner has approached this Court seeking issuance of a writ in the nature of certiorari for quashing impugned order dated 04.11.2016, Annexure P-1, whereby he is being reverted from the post of Assistant Revenue Clerk to that of Beldar.

Petitioner was engaged as a Beldar in July, 1983 against a sanctioned post and his services were regularized. He was promoted as Canal Patwari w.e.f. 26.10.1983 after he cleared the Patwar exam and was later promoted as Assistant Revenue Clerk. He was due for superannuation in July, 2018. While considering the case for grant of 3rd ACP, by impugned order, Annexure P-1, petitioner is being reverted.

While issuing notice, this Court stayed the operation of the impugned order. Writ petition has been contested by the respondents by filing a written statement, wherein it has been submitted that there is no provision for promotion to the post of Canal Patwari. Reference has been made to Rule 10 (a) of the Punjab Public Works Department (Irrigation Branch) Patwaris State Service Class-III Rules, 1955 to submit that the only mode of recruitment to the post of Canal Patwaris is by way of direct recruitment. Reference has also been made to the judgment passed by a Division Bench of the Court on 29.08.1995 in **CWP-15649-1994, Randhir Singh Versus State of Haryana**, etc.

I have perused the paper-book and heard the State counsel.

A Division Bench of this Court vide judgment dated 29.08.1995 has held as under:-

“Challenge in this writ petition is to the order of promotion of respondents 6 and 7, made vide order dated 9.2.1994, Annexure P-4, on the ground that respondents 6 and 7 were working as Peons and have been promoted as Canal Patwaris by way of promotion whereas the recruitment to the post of Canal Patwaris is to be made only by way of direct recruitment as per Rule 10 (a) of the Punjab Public Works Department (Irrigation Branch) Patwaris State Service Class-III Rules, 1955 (hereinafter referred to as ‘the Rules’). Rule 10(a) reads as under:-

“10(a) – Appointment to the service shall be made by direct recruitment.”

Accepted position of fact is that the recruitment to the post of Canal Patwaris is to be made only by way of direct recruitment; that appointment to the post of Canal Patwaris cannot be made by way of promotion. Petitioner had passed the Canal Patwaris examination and was brought on the Circle Register of the passed candidates in accordance with the provisions of Rule 12 of the Rules. Petitioner had also successfully completed the training. Respondents No.1 to 5 promoted respondents 6 and 7, who were working as Peons, as Canal Patwaris, which has been challenged in this writ petition, on the ground that

there could be no appointment to the post of Canal Patwaris by way of promotion.

Counsel for the respondents have conceded at the Bar that there is no provision for making recruitment to the post of Canal Patwaris by way of promotion and the only mode provided for recruitment to the post of Canal Patwaris is by way of direct recruitment and that there is no channel of promotion to the post of Canal Patwaris from amongst the Peons.

In view of the fact that there could be no appointment to the post of Canal Patwaris by way of promotion, we are left with no option but to quash the appointment of respondents 6 and 7 to the post of Canal Patwaris from the post of Peons by way of promotion. Writ Petition is, accordingly, allowed with no order as to costs."

In view of the above judgment, there can be no dispute that the petitioner was not entitled to be promoted to that of a Canal Patwari. However, it deserves to be noticed that in para 4 of the writ petition, petitioner has categorically averred that nine employees of the department have been promoted as Canal Patwari or Assistant Revenue Clerk despite the fact that their initial recruitment was to the post of Beldar. In response, the respondents in their reply, have met this averment by taking the following stand:-

"4. That the other officials/Canal Patwaries (sic Patwaris) were engaged as Class-IV employee as shown in the writ petition in para 4 at Sr. No.5 & 8 namely Subhash Chander & Raj Kumar respectively has since been expired and at Sr. No.1, 3, 4 & 7 namely Vidhya Parkash, Raghubir Singh, Dalbir Singh & Ram Gopal respectively are also retired from Govt. service since long. Moreover, the notice regarding reversion on the original post have been served upon by various Divisions to Sr. No. 1, 4, 6 & 7 namely Vidhya Parkash, Dalbir Singh, Kitab Singh & Ram Gopal where their lien stand (Annexure 3, 4, 5, 6 are enclosed)".

During the pendency of the writ petition, the petitioner has attained the age of superannuation in July, 2018 and he has retired from a Group-C post. The financial emoluments, which have been paid to him, cannot be recovered in view of the judgment of the Supreme Court in *State of Punjab and others Versus Jagjit Singh and others (2017) 1 SCC 148*.

In view of the above circumstances, writ petition is disposed of with a direction to the respondents, to proceed in accordance with law. It is clarified that in case the respondents pass any adverse order against the petitioner, financial benefits already disbursed to him shall not be recovered in view of the judgment of the Supreme Court in *Jagjit Singh’s* case (supra).

14.02.2023
Kamal

(SUVIR SEHGAL)
JUDGE

Whether speaking/ reasoned	Yes/ No
Whether Reportable	Yes/ No