

Before M. R. Agnihotri, J.

SURINDER KUMAR AND OTHERS,—*Petitioners.*

*versus*

THE STATE OF PUNJAB AND OTHERS,—*Respondents.*

*Civil Writ Petition No. 316 of 1987.*

August 21, 1987.

*Punjab Revenue Patwaris Class III Service Rules, 1966—Rules 2(a), 4(2) and 9—Constitution of India, 1950—Article 16—Selection of Patwaris—District-wise recruitment—Whether intra vires Art. 16—Selection by Staff Selection Committee instead of Subordinate Service Selection Board—Whether proper—Such committee—Whether an ‘other authority authorised by the Government to make recruitment’ and covered by amended Rule 2(a)—Selection made on the basis of interview alone—Whether proper.*

*Held*, that since knowledge of rural economy and culture is essential to be possessed by a candidate for the post of Patwari and the fact that rural economy and culture differ from district to district, it could neither be intended by the Legislature nor was it feasible to make common and combined selections and appointments of Patwaris drawn from all regions. Therefore, the broad idea and the objective to be achieved by the Legislature while framing service rules for appointment of Patwaris is inevitably to make recruitment on district-wise basis and not on State-wise basis. Hence selection made district-wise does not infringe Art. 16 of the Constitution. (Para 6)

*Held*, that the Staff Selection Committee is an authority duly covered within the expression ‘or any other authority authorised by the Government to make recruitment to the Service, used in amended definition of ‘Board’ under rule 2(a) of the Rules. Therefore, it is not necessary that the Subordinate Service Selection Board, Punjab, alone should monopolise the definition of the expression ‘Board’. Therefore, it is held that the Selection having been made by the Staff Selection Committee and appointments having been made by the Collector of the district concerned under rule 9 of the Rules, are proper.

(Para 10).

*Held*, that to hold written test alongwith interview for making selection of Patwaris, has neither been provided as a statutory requirement nor is it based on any principle or precedent. Hence it has to be held that the selection made on the basis of interview alone is proper. (Para 13).

*Petition under Article 226 of the Constitution of India praying that a writ of Certiorari, Mandamus or any other suitable Writ,*

*Direction or Order be issued, directing the respondents :—*

- (i) *to produce the complete records of the case;*
- (ii) *the order at Annexure (P-5) be quashed;*
- (iii) *to consider the petitioners for appointment to the post of Patwaris in the entire State of Punjab;*
- (iv) *this Hon'ble Court may also pass any other order which it may deem just and fit in the circumstances of the case;*
- (v) *this Hon'ble Court may also grant all the consequential reliefs in the nature of arrears of salary, seniority etc.*
- (vi) *the petitioners be exempted from filing the originals of Annexures F-1 to P-5;*
- (vii) *the petitioners be exempted from serving the notice of the writ petition on the respondents in advance;*
- (viii) *it is further respectfully prayed that pending the decision of the writ petition in this Hon'ble Court, the operation of the order at Annexure P-5 may kindly be stayed. Still further, the respondent-State be restrained from making appointments in pursuance to Annexure P-5;*
- (ix) *the costs of this writ petition may also be awarded to the petitioners.*

J. L. Gupta, Sr. Advocate (Rajiv Atma Ram, Advocate with him), for the Petitioners.

Kuldip Singh, A.G., (Pb.) (G. C. Gupta Advocate with him), for the Respondents.

Amar Singh Sandhu, Advocate, for respondents Nos. 59 to 112.

### JUDGMENT

M. R. Agnihotri, J.

(1) This judgment will dispose of C.W.P. No. 316 of 1987 and sixteen other writ petitions Nos. 455, 576, 727, 891, 943, 964, 1070, 1076, 1208, 1220, 1878, 1907, 2068, 2350, 2681 and 3324 of 1987, as common questions of fact and law are involved in all these petitions. For

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appreciating the brief history of the case, facts have been taken from C.W.P. No. 316 of 1987.

(2) The respondent State of Punjab through the Secretary to Government, Punjab, Revenue Department, Chandigarh, issued an advertisement published on 15th October, 1983 (Annexure P-2), by which applications were invited for 421 posts of Patwaris (Mal). A number of persons, including the petitioners in the aforesaid writ petitions, applied in response to the advertisement as all of them were Matriculates and had also passed the Patwar Examination, besides having undergone the Field Training. As the regular recruitment in response to the advertisement was bound to take some time due to non-functioning of the Punjab Subordinate Services Selection Board, *ad hoc* arrangements were made by making appointments to the posts of Patwaris. This *ad hoc* recruitment was challenged in C.W.P. No. 2374 of 1985 (*Gurjit Singh etc. vs. State of Punjab*), and the same was set aside. This Court directed the respondents to make regular appointments of Patwaris within six months and further directed the State of Punjab to constitute the Subordinate Services Selection Board for the said purpose. The direction issued by I. S. Tiwana, J. on 1st November, 1985, while disposing of the aforesaid writ petition (No. 2374 of 1985) was in the following terms:—

“In the light of the above discussions, while not quashing the appointments of the persons who have been appointed in place of the petitioners on *ad hoc* basis, I direct the State Government to make appointments of Patwaris throughout the State on regular basis in accordance with the Rules within a period of six months from today. It is needless for me to say that to implement this direction the State Government would be obliged to constitute the Subordinate Services Selection Board at the earliest. I do not choose to disturb or upset the *ad hoc* arrangement that has been resorted to till the expiry of the said period of six months. I, however, pass no order as to costs.”

Thereafter, the respondent State of Punjab, though did not constitute the Subordinate Services Selection Board yet it entrusted the work of recruitment to the Staff Selection Committees constituted for this purpose. This was done just before making an amendment in the statutory service rules, known as the Punjab Revenue Patwaris, Class III Service Rules, 1966 (hereinafter called the ‘1966 Rules’).

(3) The Staff Selection Committees of the Revenue Department interviewed the candidates in each district and as a result of the interviews, recommendations of 215 persons were made by the Collector, Bhatinda district. They were therefore, accepted as Patwari candidates of Bhatinda district under rule 4(2) of the 1966 Rules. Aggrieved by their non-selection, the petitioners have challenged the selection of respondents Nos. 5 to 219 on various grounds.

(4) To start with Mr. Jawahar Lal Gupta, learned Senior Advocate, appearing on behalf of the petitioners has vehemently contended that the selection of Patwaris should have been made on State-wise basis and not on district-wise basis and the Collectors of the respective districts should not have made appointments by considering the claims of the candidates *vis-a-vis* candidates of the district concerned but by permitting each and every candidate to compete against all the candidates applying in response to the advertisement, no matter the ultimate appointments of the selected candidates were to be made in other districts of the State. Non-observance of this method of recruitment has resulted in violation of Article 16 of the Constitution. In support of his contention, the learned counsel has placed firm reliance on a Single Bench judgment of this Court reported as *Naresh Kumar Joshi and others vs. The State of Punjab and others* (1). It was a case of admissions to Patwar Schools in which merits of the selected candidates were not considered *vis-a-vis* candidates from other districts. In this situation, I. S. Tiwana, J. held the selection made in that case on district-wise basis as violative of Article 14 of the Constitution of India. While taking this view, the learned Judge, in turn, placed reliance on two judgments of the Supreme Court in *Minor P. Rajendran vs. State of Madras* (2) and *Minor A. Periakarupan v. State of Tamil Nadu* (3), in which admissions to the Medical College made on district-wise basis were not approved by the Hon'ble Supreme Court and were held violative of Article 14 of the Constitution.

(5) Before meeting the challenge to the selection on the afore-said ground, Mr. Kuldip Singh, learned Advocate-General, Punjab, has made a detailed reference to the 1966 Rules, which were published in the Revenue Department notification dated 4th January, 1966, as published in the Punjab Government Gazette dated 7th January, 1966.

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(1) 1981 P.L.R. 630.

(2) A.I.R. 1968 S.C. 1012.

(3) A.I.R. 1971 S.C. 2303.

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At that time, it was joint Punjab and all the districts of the present State of Haryana as well as Kulu, Lahaul and Spiti, Simla and Kangra districts of the present State of Himachal Pradesh were also part of Punjab. For each of the aforesaid districts as well as for all the districts of the present State of Punjab, cadre of Patwaris was provided in Appendix-A to the aforesaid Rules and district-wise allocation was made allotting different number of posts of Patwaris for separate districts. Under rule 4 of the 1966 Rules, it is provided that "as and when a requisition is received by the Board from the Collector, the Board shall recommend the Collector such number of candidates for acceptance as Patwari candidates as the Collector may specify in the requisition". Expression "Collector" has been defined in rule 2(b) to mean 'the Collector of the District'. Further, while laying down the academic qualifications for being accepted as a Patwari candidate, it has been provided in rule 7 that no person shall be accepted as Patwari candidate for appointment to the service unless he—(i) has passed the Matriculation or Higher Secondary examination of a recognised University preferably with Agriculture as one of the subject; (ii) possesses qualifications in Hindi and Punjabi upto Middle standard or such standard as may be specified by the Government from time to time; and (iii) has a good knowledge of a rural economy and culture.

(6) According to the learned Advocate-General, a good knowledge of rural economy and culture of that district is essential to be possessed by a candidate who was keen to be appointed as a Patwari in that district. Since rural economy and culture differ in the districts of Kulu, Kangra, Simla, Lahaul and Spiti in Himachal Pradesh, Gurgaon, Rohtak, Narnaul, etc. in Haryana, as well as Bhatinda, Faridkot, Ferozepur, etc. in Punjab, it could neither be intended by the Legislature nor was it feasible to make common and combined selections and appointments of Patwaris drawn from all the three regions of the former State of Punjab, in order to appoint them indiscriminately without requiring the knowledge of rural economy and culture of the district to which the candidate belonged or to which he wanted to be appointed. Further, under rule 9, it has been provided that appointment to posts in the Service shall be made by the Collector, which means the Collector of the district. Therefore, according to the learned Advocate-General, the broad idea and the objective to be achieved by the Legislature while framing service rules for appointment of Patwaris is inevitably to make recruitment on district-wise basis and not on State-wise basis.

(7) After analysing the aforesaid service rules, Mr. Kuldip Singh, learned Advocate-General, Punjab, appearing on behalf of the respondents has distinguished the judgment of the learned Single Judge in *Naresh Kumar Joshi's case* (supra) on two grounds. First, the learned Single Judge was dealing with the case of admissions to Patwar Schools and selection of candidates for the posts of Patwaris by the Collector—the sole authority competent to make appointments under the statutory rules—was not the question before the Hon'ble Judge. The admission to School, which is supposed to impart academic, technical or vocational training, is wholly at a different footing than a selection to be made for the purposes of appointment to a regularly constituted service in the State which is governed by statutory rules, where the appointing authority is the head of the district and the cadre is district-wise. The second ground of distinction urged by the learned Advocate-General is that the two judgments of the Supreme Court, relied upon in the judgment of the learned Single Judge, that is, in *Minor P. Rajendran's case* (supra) and *Minor A. Periakarupan's case* (supra), were considered in its later judgment by the Supreme Court in *Dr. Jagdish Saran and others v. Union of India and others* (4). The Hon'ble Court, after noticing both the judgments distinguished the same and upheld the admissions made on University-wise basis.

(8) I find force in the arguments of the learned Advocate-General and the judgment of the learned Single Judge in *Naresh Kumar Joshi's case* (supra) is clearly distinguishable as the same was dealing with a different contingency. Hence, the first contention of the learned counsel for the petitioners is hereby repelled.

(9) The learned counsel for the petitioners has next contended that the Subordinate Services Selection Board alone was competent to make selections and not the Staff Selection Committees in pursuance of the judgment in C.W.P. No. 2374 of 1985 delivered by I. S. Tiwana, J. on 1st November, 1985. Thus, the selection made by the Staff Selection Committees was illegal.

(10) While replying to this contention of the petitioners, the learned Advocate-General drew my attention to the fact that the selection had been made on the basis of interviews held by the Staff Selection Committees between October to December, 1986. These Committees had, in fact, assumed the character of the

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(4) A.I.R. 1980 S.C. 820.

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Subordinate Services Selection Board as the definition of the expression "Board" had been amended by the Punjab Government, Department of Revenue and Rehabilitation, Notification No. G.S.R. 54/P.A. 17/1887/S-28/Amd. (5)/86, dated 26th August, 1986, published in the Punjab Government Gazette dated 28th August, 1986. By this amendment, the definition of the expression "Board" as given in clause (a) of rule 2 of the 1966 Rules was substituted to read as under:—

“ ‘Board’ means the Subordinate Services Selection Board, Punjab or any other authority authorised by the Government to make recruitment to the Service.”

According to the learned Advocate-General, the Staff Selection Committees were the authorities duly covered within the expression "or any other authority authorised by the Government to make recruitment to the Service" and, therefore, it was no longer necessary that the Subordinate Service Selection Board, Punjab, alone should monopolise the definition of the expression "Board". The selection having been made by the Staff Selection Committees and appointments having been made by the Collector of the district concerned under rule 9 of the 1966 Rules, the attack of the learned counsel for the petitioners to the selection on the aforesaid ground fails, being without any merit.

(11) The next contention of the learned counsel for the petitioners has only to be noticed and ignored. The crux of the argument advanced by the learned counsel is that the vacancies were in existence earlier to 1986 when the selection was made, and at that time there was no amendment to the definition of the expression "Board" as the same had been effected only by the notification of 26th August, 1986, and published in the Punjab Government Gazette dated 28th August, 1986. This argument of the learned counsel has to be rejected as the mere fact that the vacancies were in existence earlier to 1986, is no ground to hold that the authorities authorised by the State Government under the amended expression "Board" were not competent to make selection against these posts as the selected candidates were ultimately to be appointed against the posts of Patwaris, which were available with the Collector for the last many years. What has been held in *Y. V. Rangaiah and others v. J. Sreenivasa Rao and others* (5), on which reliance has been placed

by the learned counsel for the petitioners in support of his contention, is that the amendment changing the eligibility for posts, should not be made applicable while making recruitment to the posts existing prior to the amendment by which qualifications had been changed. In the case in hand, no qualifications for eligibility or recruitment had been changed and the only change was with regard to constitution of Staff Selection Committees. Hence, the argument of the learned counsel for the petitioners is without merit and the same is rejected.

(12) Mr. Gupta, learned Senior Advocate, has lastly contended that the impugned selection was bad in law as the same was based solely on interview and no written test had been held for the purpose. He further contends that no guidelines were laid down for taking interviews and there were no separate marks allocated for separate sub-heads like personality, experience, qualifications, etc. According to him this resulted in selection of less qualified and less meritorious persons thereby rendering the selection as arbitrary.

(13) To hold a written test along with interview for making selection of Patwaris, has neither been provided as a statutory requirement nor is it based on any principle or precedent. Moreover, this argument has already been considered by the Supreme Court and in a number of Full Bench and Division Bench judgments of this Court. It has been authoritatively held that it is not necessary that while making selections, the selecting body must hold a written test and if such a written test is not held, the selection made on the basis of interview alone would be bad in law. For authority, reference may be made to *Joginder Singh v. State of Haryana and others* (6), (Full Bench) and *Ashok Kumar Yadav and others vs. State of Haryana and others* (7).

(14) In C.W.P. Nos. 1076 and 1907 of 1987, the learned counsel for the petitioners have taken an additional argument that the petitioners in these petitions belonged to Scheduled Caste Communities in the State of Punjab and were thus entitled to be appointed against reserved vacancies according to their quota. The assertion has been denied in the returns and it has been stated that the appointments have been made out of the qualified persons available for appointment.

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(6) A.I.R. 1986 Pb. & Hry. 339.

(7) A.I.R. 1987 S.C. 454.



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In view of this, the contention of the learned counsel is without any merit, hence rejected.

(15) In the result, all these petitions are dismissed with no order as to costs.

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R.N.R.

Before R. N. Mittal, J.

ANITA RANI AND OTHERS,—Appellants.

*versus*

STATE OF PUNJAB AND OTHERS,—Respondents.

*First Appeal from Order No. 455 of 1986.*

September 8, 1987.

*Fatal Accidents Act (XIII of 1855)—Sections 1(A), 2 and 3—Damages for causing death by wrongful act—Claim for such damages—Right to file such claim—Particulars of persons for whose benefit the action brought—Necessity and form of furnishing such particulars.*

*Held*, that action for damages on account of wrongful act, neglect or default of another person resulting in death can be brought by an Administrator, Executor or representative of the deceased person and the Court shall grant damages to the person for whose benefit the action has been brought. If Sections 1-A and 3 are read conjointly it is clear that the mentioning of the names of the persons who are entitled to the damages in the plaint is sufficient compliance of the provisions of Section 3. It is not necessary to mention in the plaint that the suit had been brought for the benefit of the persons mentioned therein. Otherwise also, it is well settled that the plaint should not be construed very strictly and the Court should be slow to throw out a claim on a mere technicality of pleading when the substance of the thing is there and no prejudice is caused to the other side, however clumsily or inartistically the plaint may be worded. (Paras 7 and 8).

*First Appeal from the order of the Court of Shri H. R. Nohria, P.C.S., Senior Sub Judge, Patiala dated 15th April, 1986 allowing the application of defendants No. 2 to 9 and rejecting the application for permission to sue as indigent persons.*