

generally that services of all Government servants should be retained up to the age of 58 years, we cannot see why the Government cannot pass a general order in anticipation of the relevant rule being amended raising the age of retirement in the public interest. We, therefore, read the executive instructions contained in the memorandum as amounting to an order of Government retaining the services of all Government servants up to the age of 58 years."

In view of this authoritative judgment of their Lordships, we hold that the decision of the Board recorded in Annexure P1/A would meet the requirement of Regulation 12, with the result that the age of superannuation of the employees of the Corporation, including the petitioners, continued to be 58 years and therefore, seniority list Annexure P3, indicating the age of retirement on the basis of superannuation age being assumed to be 55 years is quashed and we also quash the orders retiring them with effect from the date mentioned in Annexure P3, and consequently allow all the three petitions. The petitioners shall be entitled to the consequential benefits resulting from this judgment. The emoluments shall be paid to the petitioners with interest at the Bank rate, as undertaken on behalf of the respondent-Corporation on 8th May, 1984 in CWP 1930 of 1984.

(9) In view of what we have said above, the other grounds raised in the petition are not required to be determined and gone into.

N.K.S.

Before Pritpal Singh, J.

SATWINDER SINGH AND OTHERS,—*Petitioners*

versus

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

Civil Writ Petition No. 624 of 1985.

September 19, 1985.

Punjab Revenue Patwaris Class III Service Rules, 1956—Rules 4, 8, 10 and 11—Petitioners selected for admission to the State Patwar Schools successfully passing the Patwar School examination—

Satwinder Singh and others v. The State of Punjab and others
(Pritpal Singh, J.)

Theoretical and field training also completed by them—Successful completion of training—Whether vests in them a right of appointment as Patwaris.

Held, that only that person who has been recommended by the Subordinate Services Selection Board to the Collector in terms of Rule 4(1) of the Punjab Revenue Patwaris Class III Service Rules 1956 and whose name has been entered in the register of Patwari candidates in terms of Rule 4(2) has the right to be appointed as a Patwari provided he qualifies the Patwar examination and then undergoes practical field training for six months described in Rule 8(1). According to Rule 8(2), if he fails to pass the Patwar examination within a period of 3 years his name has to be struck off from the register of candidates. It is, therefore, abundantly clear that Rule 8 deals only with eligibility of a candidate accepted under Rule 4 to be appointed as a Patwari under Rule 10. Rule 8 certainly does not presuppose that any person who is allowed to attend the Patwar school and is successful in passing the Patwar examination would acquire legal right of appointment as a Patwari. Rule 8 plainly does not override the provisions of Rule 4. It is therefore, held that simply because the petitioners had been selected to attend the Patwar school and they had successfully passed the Patwar school examination and had further undergone practical field training for six months, they would not be deemed to have acquired the legal right of being appointed as Patwaris under Rule 10.

(Paras 7 & 9)

Petition under Act 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) a direction be issued that the appointments be made to the post of Patwari advertised only from the Register of Patwari Candidates;
- (iii) a writ of mandamus be issued directing the respondents to appoint the petitioners to the post of Pawtaris in accordance with the 1966 Rules;
- (iv) the advertisement at P-6 be quashed;
- (v) It is further prayed that during the pendency of the writ petition, the termination of the petitioners working on ad hoc basis be stayed;

- (vi) it is further prayed that during the pendency of the writ petition, the declaration of the results of the objective test held in January, 1985 be stayed;
- (vii) this Hon'ble Court may also pass any other order which it may deem just and fit in the circumstances of the case;
- (viii) this Hon'ble Court may also grant all the consequential reliefs in the nature of arrears of salary, seniority etc;
- (ix) the service of advance notice on the respondents be dispensed with;
- (x) the filing of the originals of annexures be dispensed with;
- (xi) the costs of this writ petition may also be awarded to the petitioners.

J. L. Gupta, Senior Advocate, with Rakesh Khanna and Rajiv Atma Ram, Advocates, for the Petitioner.

Amar Singh Sandhu, Additional A. G., Punjab, for the Respondents.

JUDGMENT

Pritpal Singh, J.

(1) Common question of law having arisen in these six writ petitions (C.W.P. Nos. 624, 104, 339, 549, 581 and 2254 of 1985) they are being disposed of together.

(2) The petitioners in all the petitions were selected by the State of Punjab for admission to the State Patwar Schools in response to the advertisements issued by the respondent-Director Land Records. They underwent theoretical training of one year in the school and thereafter field training of six months was given to them. After completing the theoretical as well as the practical training successfully, certificates in token thereof were issued to them. They have sought writs of mandamus directing the State of Punjab to appoint them as Patwaris.

(3) The Revenue Patwaris in the State of Punjab have to be appointed in accordance with the Punjab Revenue Patwaris, Class III Service Rules, 1966 (hereinafter referred to as 'the Rules'). The

Satwinder Singh and others v. The State of Punjab and others
(Pritpal Singh, J.)

relevant Rules pertaining to the appointment of Patwaris by direct recruitment are 4, 8, 10 and 11, which are as under:—

- "4. *Mode of acceptance of Patwari candidates*:—(1) As and when a requisition is received by the Board from the Collector, the Board shall recommend to the Collector such number of candidates for acceptance as Patwari candidates as the Collector may specify in the requisition.
- (2) For the purpose of direct appointment to the Service a register of Patwari candidates shall be maintained by the Collector in each district in which the names of Patwari candidates shall be entered in the order in which they are recommended by the Board.
- (3) The number of Patwari candidates that may be enrolled on the register of a district shall be such as may be determined by the Government from time to time.
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).
10. *Method of appointment*:—(1) Appointment to the Service shall be made:—
- (a) in the case of Patwaris:
- (i) by promotion from amongst the Assistant Patwaris; or

(ii) direct appointment from amongst the accepted patwari candidates; or

(iii) by transfer of an official already in the service of the State Government; and

(iv) by absorption of the retrenched or likely to be retrenched officials of the Punjab Consolidation Department”.

(b) in the case of Assistant Patwaris by direct appointment from amongst the accepted Patwari candidates.

(2) When any vacancy arises, the appointing authority shall determine the method in which the same shall be filled in.

(3) All promotions shall be made by selection on the basis of seniority-cum-merit and seniority alone shall not give any right to appointment.

11. *Order in which appointments are to be made from amongst candidates.*—Appointment from amongst patwari candidates shall be made in the order in which their names appear in the register of patwari candidates”.

(4) These Rules envisage that on receipt of requisition by the Collector the Subordinate Services Selection Board (hereinafter referred to as ‘the Board’) shall recommend the names of candidates for acceptance as Patwari candidates. These names then have to be entered by the Collector in a register of Patwari candidates. Such candidates become eligible for appointment as Patwaris only if they qualify the Patwar examination after attending the Patwar school for a minimum of one year and after passing the examination undergo practical field training for a period of six months. All direct appointment have to be made from amongst the accepted candidates in the order in which their names appear in the register of Patwari candidates.

(5) It is not alleged by the petitioners that their names have been recommended by the Board to the respective Collectors. Clearly therefore, the petitioners are not such candidates who satisfy the requirements of Rule 4. They are not Patwari candidates whose

Satwinder Singh and others v. The State of Punjab and others
(Pritpal Singh, J.)

names have to be entered in the register of Patwari candidates under sub-rule (2) of Rule 4. In other words they are not the accepted Patwari candidates who have the right to be appointed as Patwaris in terms of Rules 10 and 11. Their only qualification is that they were selected to attend the Patwar School and they have successfully cleared the Patwar examination after attending the school for one year and have also undergone practical field training for six months. Some of them have even been appointed as Patwaris on *ad hoc* basis.

(6) The law point which arises in all the six petitions is whether in the above circumstances the petitioners can be considered to have acquired legal right to be appointed as Patwaris? To put it in other words does the successful training in the Patwar school for one year and practical field training for six months mentioned in Rule 8 vest right of appointment as Patwaris in the petitioners?

(7) On a careful consideration of the aforementioned Rules the answer to this question has to be in the negative. Only that person who has been recommended by the Board to the Collector in terms of Rule 4(1) and whose name has been entered in the register of Patwari candidates in terms of Rule 4(2) has the right to be appointed as a Patwari, provided he qualifies the Patwar examination and then undergoes practical field training for six months described in Rule 8 (1). According to Rule 8 (2) if he fails to pass the Patwar examination within a period of three years his name has to be struck off from the register of candidates. It is, therefore, abundantly clear that Rule 8 deals only with eligibility of a candidate accepted under Rule 4 to be appointed as a Patwari under Rule 10. Rule 8 certainly does not pre-suppose that any person who is allowed to attend the Patwar school and is successful in passing the Patwar examination would acquire legal right of appointment as a Patwari. Rule 8 plainly does not override the provisions of Rule 4.

(8) It is provided in paragraph 3-0 of the Land Records Manual that a patwar school shall function at the State level under the control of the Director of Land Records as and when considered necessary. It is not indicated from the contents of this paragraph that a Patwar school is meant only to give training to the successful candidates recommended by the Board to the Collector for acceptance as Patwari candidates under Rule 4(1). Of course, the candidates entered in the register by the Collector under Rule 4 (2) have necessarily to attend the School and to qualify the Patwar examination as well

as to undergo practical field training for six months to become eligible for appointment as Patwaris in view of Rule 8. However, it cannot be said that all persons who are allowed to attend the Patwar school and who successfully qualified the Patwar examination and underwent practical field training for six months would acquire legal right to be appointed as Patwaris irrespective of the provisions of Rule 4.

(9) The learned counsel for the petitioners contended that the persons having successfully qualified the Patwar examination at having undergone six months practical field training envisaged under Rule 8 should be deemed to have been selected for appointment as Patwaris; under Rule 4. I discern no merit in this contention. In Rule 8 it is nowhere provided that all the persons so qualified by attending the Patwar schools as well as by undergoing the practical field training for six months would have the vested right to be appointed as Patwaris. All that this rule says is that no Patwari candidate accepted under Rule 4 would become eligible for appointment to the service unless he qualifies the Patwar examination and undergoes practical field training for six months. If he fails to pass the Patwar examination, within a period of three years, his name has to be struck off from the register of candidates in view of Rule 8(2). Rule 8(3) clarifies that if any candidate has already passed the Patwar examination before he is accepted as a candidate under Rule 4 (1) he need not be given fresh training after his acceptance. Meaning thereby that Patwar school examination can be passed even before selection under Rule 4 (1). I am, therefore, unable to subscribe to the view of the learned petitioners' counsel that simply because the petitioners had been selected to attend the Patwar school and they had successfully passed the Patwar school examination and had further undergone practical field training for six months, they should be deemed to have acquired the legal right of being appointed as Patwaris under Rule 10. In this context an earlier judgment of this Court in *Tilak Raj and another vs. State of Punjab and others*, (1) may also be noticed. In that case the Deputy Commissioner, Gurdaspur, had appointed a number of persons, who had obtained the training from the Patwar School, as Patwaris on *ad hoc* basis. It was held in unambiguous terms that such persons had not been appointed as Patwaris on regular basis in accordance with the Rules. The view taken was that

(1) CWP 5147 of 83 decided on 14th December, 1984.

Tej Ram v. Amar Singh (J. V. Gupta, J.)

such *ad hoc* appointments were nothing but a clear intention on the part of the Collector to bypass the Rules and to do what the Rules forbade him to do. In the result the Collector, Gurdaspur, was directed not to extend *ad hoc* appointment of those persons and he was ordered to fill up the vacancies of Patwaris strictly in accordance with the Rules. This judgment clearly runs contrary to the view that merely by undergoing training in the Patwar school successfully the candidates acquire vested right to be appointed as Patwaris irrespective of Rule 4.

(10) For the the reasons stated above, there is no escape from the conclusion that the petitioners of these writ petitions have no legal right to be appointed as Patwaris under the Rules and resultantly the writ petitions are dismissed. No order as to costs.

N.K.S.

Before J. V. Gupta, J.

TEJ RAM,—Petitioner.

versus

AMAR SINGH,—Respondent.

Civil Revision No. 1245 of 1984

October, 15, 1985

Code of Civil Procedure (V of 1908)—Section 145—Person standing surety for Judgment-debtor—Such person—Whether liable to pay the amount for which he stood surety.

Held, that a reading of section 145 of Code of Civil Procedure, 1908 quite evidently shows that any person who has furnished a security or given a guarantee, decree against him may be executed in the same manner as provided for the execution of the decrees. Of course, the said person will be liable to pay the amount for which he was the surety. If the decree holder claims over and above that amount, then the same will be determined by the executing court and after determination, the amount over and above that, if any, will be recovered from the judgment-debtor.

(Para. 2).