

(2013) 05 P&H CK 0198

High Court Of Punjab And Haryana At Chandigarh**Case No:** Civil Writ Petition No. 25303 of 2012 and C.W.P. No. 2779 of 2013

Avtar Singh and Another

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision: May 2, 2013**Citation:** (2013) 171 PLR 414**Hon'ble Judges:** Augustine George Masih, J**Bench:** Single Bench

Advocate: R.K. Malik and Ms. Maaruchi, for the Appellant; Monica Chhibbar Sharma, D.A.G., Punjab for Respondent Nos. 1 to 4, Mr. Ajay Pal Singh Rehan for Respondent Nos. 5, 8 and 36, Mr. Parminder Paul Sharma for Respondent No. 12, Mr. Ashok Goel for Respondent No. 24, Mr. A.K. Walia for Respondent Nos. 38, 40 to 44 and Mr. Arihant Goyal for Mr. Ramesh Goyal for Respondent Nos. 58 and 59, for the Respondent

Final Decision: Allowed

Judgement

Augustine George Masih, J.

By this order, I propose to decide CWP No. 25303 of 2012 and CWP No. 2779 of 2013, wherein challenge is to the order dated 22.11.2012 (Annexure P-9) passed by the Financial Commissioner Revenue, Punjab, upholding the order dated 25.12.2001 passed by the District Collector, Sangrur and the order dated 25.03.2008 passed by the District Collector, Barnala, determining the seniority of the petitioners viz-a-viz the private respondents on their regularization w.e.f. 01.04.1985 on the basis of their age instead of the length of ad-hoc service rendered by them prior to their regularization. Petitioners and private respondents were appointed on ad-hoc basis as Patwaris on different dates. Assertion has been made that after due advertisements and considering the claim of the eligible persons, appointments were made between the years 1981 to 1983. The Government of Punjab issued a policy decision dated 28.03.1985 (Annexure P-1), wherein all ad-hoc employees, who had completed two years of service on 01.04.1985, were held entitled to be considered for regularization. As per para 1 clause (vii) of the said policy

instructions, inter-se seniority of ad-hoc/temporary employees was to be determined on the basis of the service rendered on ad-hoc/temporary basis. The older member would be senior to younger member appointed on the same date and the ad-hoc/temporarily appointed employees were to be placed junior to those employees who were working on regular basis. As per Clause 3, the orders of regularization of ad-hoc/temporary services would be effective from 01.04.1985. As per instructions dated 05.09.1986 (Annexure P-2), Patwaris working on ad-hoc basis, who had completed one year's service on 01.04.1985 and fulfilled other prescribed conditions, as per notification dated 26.08.1986, were also to be considered for regularization of their services w.e.f. 01.04.1985. In pursuance to these decisions of the Government of Punjab, petitioners as well as private respondents were regularized in service as Patwaris w.e.f. 01.04.1985.

2. C.W.P. No. 4924 of 1996 titled as Pawan Kumar v. State of Punjab and others, was filed by some of the Patwaris claiming seniority from the date of their ad-hoc appointment. The said writ petition was dismissed vide judgment dated 27.09.1996 (Annexure P-3). Similar claim was made in CWP No. 14414 of 1998 titled as Harbhagwan Patwari v. State of Punjab and others, which was also dismissed by this Court vide order dated 30.10.1998 (Annexure P-4). A similar writ petition preferred by Dilbag Ali and another, i.e. CWP No. 14844 of 1998 was also dismissed in same terms by this Court vide order dated 13.11.1998 (Annexure P-5) in the light of the judgment passed by this Court in Harbhagwan Singh's case (supra).

3. After the perusal of the judgments passed in these writ petitions, the District Collector, Sangrur, vide order dated 25.12.2001 determined the seniority of the Patwaris, who were regularized on 01.04.1985 on the basis of their date of birth i.e. irrespective of the date of ad-hoc appointment of the employees whoever was regularized w.e.f. 01.04.1985 keeping in view the age with older in age getting precedence over the younger in age. Similarly, District Collector, Barnala, vide order dated 25.03.2008, determined the seniority of the Patwaris in his district in the same manner as was determined by the District Collector, Sangrur.

4. These two orders were challenged before the Financial Commissioner, Revenue. Vide order dated 27.12.2010 (Annexure P-6), the Financial Commissioner, Revenue set aside the orders dated 25.12.2001 passed by the District Collector, Sangrur and the order dated 25.03.2008 passed by the District Collector, Barnala and granted seniority to the employees on the basis of para-1 clause (vii) of the instructions dated 28.03.1985 i.e. the inter-se seniority of adhoc employees was to be determined on the basis of length of service rendered by them and if the employees were appointed on same date, older member was to be senior to the younger member. This order was challenged in CWP No. 2915 of 2011 titled as Niranjan Parshad and another v. State of Punjab and others, which came up for hearing on 02.04.2012 when the same was disposed of with directions to the Financial Commissioner, Revenue to pass a fresh decision in the light of the judgment passed

by this Court in Pawan Kumar's case (supra). Vide this order, the impugned order in that writ petition i.e. 27.12.2010 (Annexure P-6) was also set aside. Directions were issued to take a fresh decision within a period of six months. Petitioner No. 2 in the present writ petition had moved an application for impleadment as a respondent in CWP No. 2915 of 2011 but before the said application could be decided, the writ petition was disposed of vide judgment dated 02.04.2012 (Annexure P-7) leaving the application undecided.

5. Petitioner No. 2 Hamir Singh preferred a review application, which was dismissed and thereafter, Letters Patent Appeal No. 631 of 2012 titled as Hamir Singh v. Niranjana Parshad and others. The said appeal came up for hearing before the Division Bench on 04.05.2012 when the said appeal was disposed of leaving it open to the appellant (petitioner No. 2) to raise the point with regard to the applicability of para 1 clause (vii) of the instructions dated 28.03.1985 before the Financial Commissioner and to the non-applicability of the judgment passed by this Court in Pawan Kumar's case (supra).

6. The matter was again taken up for consideration as per the directions issued by this Court in Niranjana Parshad's case (supra) by the Financial Commissioner, Revenue, Punjab, who, vide order dated 22.11.2012, has confirmed the orders passed by the District Collector, Sangrur dated 25.12.2001 and the District Collector, Barnala dated 25.03.2008 determining the seniority of the Patwaris as per their age on the date of their regularization i.e. 01.04.1985. Petitioners, through this petition, are challenging this order dated 22.11.2012 (Annexure P-9).

7. It is the contention of the senior counsel for the petitioners that the Financial Commissioner Revenue-respondent No. 1, while passing the impugned order dated 22.11.2012, has wrongly applied Note to Rule 8 of the Punjab Civil Services (General and Common Conditions of Service) Rules, 1994 (hereinafter referred to as "1994 Rules") by asserting that it would supersede the executive instructions dated 01.04.1985. His contention is that the 1994 Rules were notified on 04.05.1994 and as per Rule 1(2) thereof, the said Rules came into force on that very day. The 1994 Rules, therefore, would not be applicable for determining the seniority of the petitioners whose services have been regularized w.e.f. 01.04.1985. Their seniority has to be determined as per para 1 clause (vii) of the instructions dated 28.03.1985, which are clear and specific with regard to this aspect. The Statutory Rules governing the seniority of the Patwaris are the Punjab Revenue Patwaris Class III Service Rules, 1966, which also state that inter-se seniority of the members of the service in each cadre shall be maintained district wise and shall be determined by the length of continuous service on a post on that cadre. None of the proviso, as mentioned therein, would be applicable to the seniority of the petitioners and private respondents who were appointed on ad-hoc basis. The judgment passed by this Court in the case of Pawan Kumar (supra) would not be applicable to the claim, as has been made by the petitioners in the present case as in those cases what was

claimed by the petitioners was seniority from their initial date of appointment on ad-hoc basis and in this regard, this Court had held that the same could not be granted as they become members of the cadre on the date of their regularization and, therefore, ad-hoc service could not be counted for the purpose of seniority. He, on this basis, contends that the impugned order dated 22.11.2012 (Annexure P-9) cannot sustain and deserves to be set aside.

8. On the other hand, counsel for the respondents submit that the basic principle, which is applicable to the determination of the seniority, is laid down in Note to Rule 8 of the 1994 Rules, according to which the seniority has to be determined of persons appointed on purely provisional basis or on ad-hoc basis from the date of their regular appointments. When two or more persons are appointed on the same date, person older in age would be treated as senior than a person, who is younger in age. The said principle would be applicable and has rightly been applied by the Financial Commissioner. That apart, reliance has also been placed upon Rule 15 of the 1966 Rules to contend that in the case of the persons appointed on the same date, their seniority would be determined on the basis of age. Emphasis has been laid upon the judgment of this Court in Pawan Kumar's case (supra), wherein claim of the employees, who had been appointed on ad-hoc basis claiming benefit of the said services towards seniority, stands dismissed. On this basis, assertion has been made for upholding the order passed by the Financial Commissioner dated 22.11.2012 (Annexure P-9).

9. An objection has been raised by the counsel for respondents No. 38, 40 to 44 that petitioner No. 1 has not raised any objection with regard to the determination of the seniority and has straight-away now approached this Court challenging the order dated 25.12.2001.

10. I have considered the submissions made by the counsel for the parties and with their assistance, have gone through the records of the case.

11. As per the facts, which are undisputed, petitioners and private respondents were appointed on ad-hoc basis between the years 1981 to 1983. Their services were regularized under the policy decision dated 28.03.1985 (Annexure P-1) w.e.f. 01.04.1985. On the said date, the statutory Rules, which were applicable to the petitioners, were the 1966 Rules. Rules 15 thereof deals with seniority and the same reads as follows:-

15. Seniority.-The seniority inter se of members of the service in each cadre shall be maintained district wise and shall be determined by length of continuous service on a post in that cadre.

Provided that in the case of two or more members appointed on the same date, their seniority shall be determined as follows:-

a) a member recruited by direct appointment shall be senior to a member recruited otherwise.

b) a member appointed by promotion shall be senior to a member appointed by transfer.

c) in case of members appointed by promotion or transfer, seniority shall be determined according to the seniority of such members in the appointments from which they were promoted or transferred; and

d) in the case of members appointed by transfer from different cadres, their seniority shall be determined according to pay, preference being given to a member who was drawing a higher rate of pay in his previous appointment, if the rates of pay drawn are also the same then by their length of service in those appointments and if the length of such service is also the same, an older member shall be senior to a younger member.

12. According to the above Rule, the cadre of Patwaris is a district cadre and the inter-se seniority of the members of the service is to be determined by the length of continuous service on the post in that cadre. Proviso to the Rules would not be applicable as the petitioners as well as private respondents were regularized under the same instructions and their nature of appointment was also the same, which can be termed as the source of appointment.

13. As per the judgment in Pawan Kumar's case (supra), an employee becomes the member of the cadre on the date of his regular appointment. If that be so, petitioners became the members of the cadre on 01.04.1985. Rule 15 deals primarily with such a situation where members of the same source become members of the cadre on the same date. Under those circumstances, the basic principle, which could be culled out from Rule 15, could be the continuous length of service on a post. Even if this is not specifically applicable, but as the petitioners and the private respondents have been regularized as per the policy instructions dated 28.03.1985 (Annexure P-1), the conditions mentioned and the matters referred therein would be applicable in toto to the employees who seek and are granted benefit of the said instructions. All those employees, who were to be regularized as per these instructions, their inter-se seniority was to be determined as per para 1 clause (vii), which reads as follows:-

(vii) Inter se seniority of ad-hoc/temporary employees will be determined on the basis of service rendered on adhoc/temporary basis. The older member will be senior to a younger member appointed on the same date. All such ad-hoc/temporarily appointed employees will be placed junior to those working on regular basis.

14. Para 3 of the said instructions states that the orders of regularization of ad-hoc/temporary services will be effective from 1st April, 1985. According to this,

services of petitioners as well as private respondents shall stand regularized w.e.f. 01.04.1985. They are, therefore, from that date borne on the cadre of Patwaris as per the judgment in Pawan Kumar's case (supra). However, their inter-se seniority shall be determined on the basis of para 1 clause (vii), according to which, an employee, who was appointed on adhoc/temporary basis earlier on the basis of his length of service, shall be senior to an employee, who was appointed at a later date and thus, has a shorter length of service. If two employees are appointed on the same date, the older member will be senior to the younger member. This principle would be applicable to the petitioners as well as the private respondents for determining their inter-se seniority. After the said seniority has been fixed as per this clause, they would accordingly, be placed in their seniority in the cadre on their regularization. The real determinative factor would thus be the length of service of an employee on ad-hoc basis and the age would be relevant only where two employees were appointed on ad-hoc basis on the same date.

15. The 1994 Rules, which have been pressed into service by the Financial Commissioner Revenue while passing order dated 22.11.2012, would not be applicable to the present case as these Rules came into force with effect from the date of notification dated 04.05.1994 as is apparent from Rule 1 Clause (2) of the said Rules. Reliance thus on Rule 8 of the said Rules for determining seniority is totally misplaced as the date, on which the seniority has to be determined i.e. 01.04.1985, these Rules were not in existence and have been enforced only on 04.05.1994 when they were notified.

16. The objection raised by the counsel for the private respondents that the petitioner No. 1 has not raised any objection to the seniority, which was determined by the District Collector, Sangrur vide order dated 25.12.2001 and, therefore, cannot now be permitted to challenge the same, would not make any difference as petitioner No. 2 has, all through, been agitating his claim viz-a-viz the private respondents. The principles, as have been decided by this Court in the present case, would govern his claim as well as he is similarly placed and admittedly, has a longer period of service as ad-hoc employee than the private respondents. Further, the Division Bench of this court in LPA No. 631 of 2012 preferred by petitioner No. 2 granted liberty to the petitioner to raise the point of applicability of para 1 clause (vii) of the instructions dated 28.03.1985 and non-applicability of the judgment in Pawan Kumar's case before the Financial Commissioner, Revenue to whom the case was remanded for fresh decision.

17. In view of the above, the present writ petition is allowed. Impugned order dated 22.11.2012 (Annexure P-9) is hereby set aside along with order dated 25.12.2001 passed by the District Collector, Sangrur and the order dated 25.03.2008 passed by the District Collector, Barnala, being not in accordance with law. Accordingly, the seniority determined by the District Collector, Sangrur and District Collector, Barnala is also set aside. A direction is issued to the respondents to re-determine the

seniority of the petitioners and other Patwaris whose services were regularized on 01.04.1985 in pursuance to the policy instructions dated 28.03.1985 (Annexure P-1) and instructions dated and another connected matter 13 05.09.1986 (Annexure P-2) as per the position clarified above. This exercise be completed within a period of two months from the date of receipt of certified copy of this order.