A SARDARA SINGH AND ORS. ETC.

v.

STATE OF PUNJAB AND ORS.

SEPTEMBER 17, 1991

B [M.M. PUNCHHI AND K. RAMASWAMY, JJ.]

Service Law:

The Punjab Revenue Patwari Class III Service Rules, 1963: Rules 2(a),4(1),7: Notification dated 26.8.1986—Patwaris—ad-hoc appointments C *—Direction by Court to appoint regular Patwaris within stipulated period—Service Selection Board not in existence—Constitution of District Committees—Nomination of members by virtue of their offices—Transfer of member before selection—Successor in office participated in selection—Selections made on the basis of viva voce only—Validity of.*

D **In a writ petition decided by the High Court of Punjab and Haryana, it allowed the ad-hoc appointments made by the Government of Punjab to the posts of Patwaris, to continue for six months from the date of the judgment and directed the Government to make regular appointment of Patwaris within that period. Since the Service Selection Board, Punjab** E **was not constituted at the relevant time, the Government of Punjab by a Notification dated 26.8.86 amended Rule 2(a) of the Punjab Revenue Patwari Class III Services Rules, 1963, and empowered the State Government to authorise "other authorities" to make recruitment to the service. Accordingly, the Government constituted a selection committee for each district. The District Committee of Patiala consisted of the Dy.** F **Commissioner, Patiala as Chairman, and District Revenue Officer, the District Sainik Welfare Officer and the District Social Welfare Officer (Scheduled Caste) as its Members. The pending names of the candidates before the Service Selection Board were sent to the Committee for selection. The District Collector also invited applications from children affected by the riots at Delhi, terrorists affected families in Punjab and the** G **like special categories. By the date of the interview the District Revenue Officer was transferred and his successor participated in the Selection.**

The selections were challenged by unsuccessful candidates in several writ petitions which were dismissed by the High Court. Aggrieved the H **petitioners filed appeals before this Court by special leave.**

It was contended on behalf of the appellants that the selection was bad because: the Committee was not properly constituted; the District Collector was not competent to invite applications afresh; written test was abandoned and only oral interviews were conducted; no proper opportunity was given to appellants in the interview inasmuch as 821 candidates were interviewed in 15 hours. It was also prayed that since the appellants had meanwhile become overage, the Government should be directed to relax their age and to give appointments to them. A B

Dismissing the appeals, this Courts,

HELD 1.1 On the transfer of the member having been nominated by virtue of his office, the incumbent in office was entitled to participate in the selection of the candidates. The committee constituted was properly composed of the representatives enumerated therein, and the selection of the candidates, therefore, was legal and valid. [pp. 155 F-G; 156-A] C

1.2 Although the representation of the Scheduled Castes need be by an officer belonging to Scheduled Caste, and the District Social Welfare Officer (Scheduled Caste), as required should be an officer belonging to the members of the Scheduled Castes, yet it is not uncommon that the Social Welfare Officer may be an officer other than one from the Scheduled Castes. [p. 155 G,H] D E

2. If applications from candidates are invited and they are called for interview though under a mistaken compliance on wrong impression, the selection of the candidates, so applying, does not become illegal. [p. 156 D]

3. Normally it may be desirable to conduct written test and in particular hand-writing that which is vital for a Patwari whose primary duty is to record clearly entries in revenue records followed by oral interview. The rules did not mandate to have both. Options were given either to conduct written test or viva voce or both and the committee adopted viva voce as a method to select the candidates which could not be said to be illegal. [p.157 D-E] F G

4. On an average three minutes were spent for each candidate for selection. Keeping in view the facts that educational qualifications were apparent from the record, the candidates normally hailing from rural background had presumptively good knowledge of rural economy and H

culture, under the circumstances, much time need not be spent on each candidate for selection except asking some questions on general knowledge and aptitude for work as Patwari etc. [p. 157 B-D]

Ashok Yadav v. *State of Haryana,* **[1985] Suppl. 1 SCR 657, held-in-applicable.**

5. The appellants had taken the chance for selection and they were not selected on the basis of comparative merits. Merely because they were carrying on the litigation, there could not be any justification to give direction to the Government to consider their cases by relaxing the age qualification for appointment as Patwari. [157 F-G]

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos.3033-34 of 1989.

From the Judgment and Order dated 28.2.1989 of the Punjab Haryana High Court in C.W.P. No. 7209 of 1987 (in L.P.A. No. 748/87) and C.W.P. No. 7607 of 1987.

WITH

Special Leave Petition (C) Nos. 4483-4485 of 1989.

D.V. Sehgal, R.D.Upadhyaya, Ashok Sharma, Nabhyawala, D.S. Tewatia and Ms. Madhu for the Appellants.

Ms. B. Rana and N.S. Das Behl (for the State) for the respondents.

The Judgment of the Court was delivered by

K. RAMASWAMY, J. Leave granted in Special Leave Petitions and heard alongwith the appeals.

Common questions of facts and law arise in the appeals and hence are disposed of by a common judgment. It is not necessary to restate the facts, preceding the decision of the High Court of Punjab & Haryana in *Gurjit Singh & Ors.* v. *State of Punjab & Ors.* (WP No. 2374 of 1985). Suffice to state that the High Court in the said judgment, while allowing the ad-hoc appointments made by the Government of Punjab to the posts of Patwaris under the Punjab Revenue Patwari Class III Service Rules, 1963, for short 'the Rules' to continue for six months, directed the State Government to make regular appointments in accordance with the rules within the said period from the date of the judgment or else the ad-hoc arrangement would lapse. Pursuant thereto, since the Service Selection

Board, Punjab was not constituted, the Government of Punjab by a notification dated August 26, 1986 amended rule 2(a) and empowered the State Govt. to authorise "other authorities" to make recruitment to the service. Accordingly the Govt. constituted a Committee for each District, by proceeding dated May 27, 1986 to make selection. For the District Committee of Patiala, the Dy. Commissioner, Patiala was the Chairman, the District Revenue Officer, Patiala, District Sainik Welfare Officer and District Social Welfare Officer (Scheduled Caste) were nominated as members of the Committee. The pending names of the candidates before the S.S. Board were sent to the Committee for selection. The District Collector invited applications from special categories, namely, children effected by the riots at Delhi, terrorists effected families in Punjab, etc. and issued call letters to 1210 candidates for interview. By the date of the interview Shri Piara Singh, the District Revenue Officer was transferred and his successor had participated in the selection. Out of 821 candidates appearing for interview, 189 candidates were selected; the list was prepared in their order of merit; and the Distt. Collector appointed 146 candidates and sent them for Patwari training and on their completion of it in a period of one year, they were appointed as Patwaris on probation. The selections were challenged by unsuccessful candidates in several writ petitions and by judgment dated February 28, 1989, the High Court dismissed the L.P. Appeal and the Writ Petitions. On leave under Article 136, the appeals arise from that batch.

The first contention of the appellants that the Committee was not properly constituted and, therefore, the selection of the candidates are invalid has no force. Under rule 4(1) of the rules, as per amended rule 2(a) the authority authorised by the Govt. is entitled to make recruitment to the service of Patwaris. The Committee constituted consists of Dy. Commissioner as Chairman, the District Revenue Officer, Patiala, District Sainik Welfare Officer and District Social Welfare Officer (S.C.) as members. Undoubtedly, at the time when the Committee was constituted, Piara Singh was the District Revenue Officer. On his transfer, his successor had participated in the selection. We have seen the notification. The Distt. Revenue Officer, Patiala was nominated in official capacity. Therefore, the member having been nominated by virtue of his office, the incumbent in office was, therefore, entitled to participate in the selection of the candidates. It is true that the representation of the scheduled castes need be by an officer belonging to Scheduled Caste. The District Social Welfare Officer (Scheduled Caste) as required should be an officer belonging to the members of the scheduled caste. It is not uncommon that the Social Welfare Officer may be an officer other than one from the scheduled castes. But here in this case it is not the contention that the

A District Social Welfare Officer was not a scheduled caste officer representing the scheduled castes. Therefore, we find that the committee constituted was properly composed of the representatives enumerated therein. The composition of the committee and the selection of the candidates, therefore, are legal and valid.

B It is next contended that the District Collector was not competent to invite applications afresh and selection of the candidates from out of those applicants is illegal. It is true that he is bound by the instructions issued by the Government in Annexure 'D' wherein it was stated that since the number of applicants are quite large in number, it would not be necessary to solicit candidate afresh from Employment Exchange or through C public advertisement. But in paragraph 4 therein it was stated that priority categories listed in the proceeding dated April 24, 1986 will have to be given precedence over candidates from all other sources other than the regularisation of the existing ad-hoc Patwaris. It had given room to the District Collector to invite applications from those categories. Though it was a mistaken compliance on wrong impression, the selection of the candidates, so applying does not become illegal. It was next contended that D instead of calling the applications by publication in the newspapers, only notice was put on the Notice Board of the Collector's office and some candidates submitted their applications in pursuance thereof and that is not a proper notification. Though we find that the procedure adopted by the Collector, in inviting applications is not ommendable, but the E grievance would be voiced only by the persons who did not have the opportunity to make applications within the prescribed period. But no such grievance could be raised by persons like the appellants. Under those circumstances, the procedure adopted, though irregular, does not vitiate the selection of candidates, ultimately made by the Committee.

F It is next sought to raise a contention that none of the candidates from the priority categories were selected and this was used only as a lever to invite applications from the candidates other than those, some of which were ultimately selected and it is irregular. We find no substance in it. That apart it is a factual position to be investigated and that no such plea was raised nor argued in the High Court. Therefore, we cannot permit the appellants to raise this contention for the first time in this Court. G

It is next contended that there was no proper opportunity given to the appellants in the interview. Only 15 hours were spent to interview 821 candidates and the selection, therefore, is a farce. This contention also was not raised before the High Court, but raised in these appeals for the first time. In the counter filed in this court, it was refuted. It was stated H that they had spent 35 hours in total at the rate of 7 hours per day. That

means they spent 5 days in selecting the candidates. The selection is for the Patwaris in the Class III service. The ratio in *Ashok Yadav* v. *State of Haryana*, [1985] Suppl. 1 SCR 657 has no application to the facts in this case. Therein the selection was to the Class I service of the State service and sufficient time was required to interview each candidate. In this case, on calculation, we found that on an average three minutes were spent for each candidate for selection. Rule 7 of the rules provides the qualifications, namely, pass in the Matriculation or Higher Secondary Examination; knowledge in Hindi and Punjabi upto the Middle Standard and good knowledge of rural economy and culture. The educational qualifications are apparent from record and need no interview in this regard. It could be seen that candidates normally hailing from rural backgrounds had presumptively good knowledge of rural economy and culture. Therefore, there is no need for special emphasis to ascertain their knowledge of the rural economy or culture. Under those circumstances much time need not be spent on each candidate for selection except asking some questions on general knowledge and aptitude for work as Patwari etc.

It is then contended that the written test, conducted by the previous Service Selection Board, was abandoned and only oral interviews were conducted. The selection, therefore, is illegal. Normally it may be desirable to conduct written test and in particular hand writing that which is vital for a Patwari whose primary duty is to record clearly entries in revenue records followed by oral interview. The rules do not mandate to have both. Options were given either to conduct written test or viva voce or both. In this case the Committee adopted for viva voca as a method to select the candidates which cannot be said to be illegal.

It is next contended that the appellants have now become over-aged and that they are 22 in all. Therefore, directions may be given to the Government to relax their age qualification and given appointments to them. We find no justification to give such a direction. Admittedly, the appellants have taken the chance for selection and they were not selected on the basis of comparative merits. Therefore, merely because appellants are carrying on the litigation, there cannot be any justification to give direction to the Govt. to consider their cases by relaxing the age qualification for appointment as Patwari. It is not in dispute that hundreds of candidates who could not be selected would in that event seek similar relief. Under these circumstances we do not find any cause to add to the selection and appointment of the candidates as Patwaris. The High Court, though for different reasons, has rightly dismissed the writ petitions. The appeals are accordingly dismissed, but without costs.

R.P. Appeals dismissed.