

ALLAHABAD HIGH COURT

Banarsi Das

Vs.

State of U.P

Civil Misc. Writ No. 45 of 1954

(Malik, C.J. and Chaturvedi, J.)

24.08.1954

ORDER

Chaturvedi, J.)

1. This writ petition has been filed on behalf of 734 applicants who have impleaded as opposite parties the State of Uttar Pradesh, Minister for Revenue and Agriculture, U.P., Land Reforms Commissioner, Uttar Pradesh, Lucknow, Collector of Meerut, Collector of Muzaffarnagar, ten Sub-Divisional Officers of various sub-divisions in Meerut, Muzaffarnagar and Ghaziabad as also 609 persons who have been appointed Lekhpals.

2. A preliminary objection was raised by the learned Standing Counsel that an application by 734 petitioners against 609 Lekhpals would give rise to confusion as the facts may not be same in every case and the considerations that might have weighed in each case might have been different.

3. It is, however, not necessary to go into the preliminary objection as Mr. Pathak has stated that he will not go into the individual cases of the 734 petitioners or the 609 Lekhpals but would confine himself to general questions which affect them all.

4. In the State of Uttar Pradesh there was a class of Government servants who were known as Patwaris. Their number was about twenty-eight thousand. They were appointed under the rules made under Section 234, Land Revenue Act (3 of 1901). The relevant portion of Section 234 reads as follows:

"234. The State Government may make rules consistent with this Act in respect of matters under clauses.....

(a)

(b) regulating the appointment and transfer of Kanungos and patwaris, their salaries, qualifications, duties, removal, punishment, suspension, and dismissal."

Section 21 of the Act provides that the Collector with the previous sanction of the State Government may arrange the villages of the district in halkas and may, from time to time, alter the number limits of such 'halkas'. Section 23 then lays down that "The State Government shall appoint a Patwari to each 'halka'."

5. It is not necessary to deal here with the duties of the Patwaris. They are contained in the Land Revenue Act and the Land Records Manual. Their main function, however it may be mentioned, was to maintain village records and make periodical entries therein as to the person in possession of the holdings and in what capacity, the crops grown therein, the conditions of the crops and other similar information. The salary drawn by the Patwaris was Rs. 25-1-40 and ten per cent. of the total cadre could be given the special grade of Rs. 40-1-45 plus of course the usual dearness allowance.

6. The Patwaris were dissatisfied with the salary paid to them and their conditions of service and they formed a Provincial Patwaris Association which was recognized by the Government in the year 1940. From time to time they made demands for improvement of those conditions of service and the rate of pay fixed by the State Government. In the first week of June, 1952, they held a Provincial Conference at which they passed certain resolutions which are contained in Schedule A to the affidavit of Banarsi Das and sent them to the authorities concerned. The demands mostly were for improvement in their conditions of service and an increase in the emoluments of the Patwaris. A reply was received that the demands will be placed before the Government. On 24-12-1952, a reminder was sent for an early reply. On 8-1-1953, a letter was sent to the Land Reforms Commissioner pressing the demands already made. On 9-1-1953, there was a pen down strike. Thereafter on 11-1-1953, an emergent meeting was held of the Working Committee of the Association to consider the situation arising on account of the publication of the new Land Records Manual in Hindi which it was said had made their conditions of service still worse. On the 25th and 26th of January, 1953, there was an emergent meeting of the Association at which it was decided that, as the Government had not acceded to their demands, the Patwaris had no other choice but to resign and between the 2nd and the 4th of February, 1953, resignations were sent by 26,134 Patwaris. A copy of the resignation letter is Schedule B to the affidavit of Banarsi Das. The relevant portion of the letter of resignation may be translated as follows:

"I am, therefore, sending this my letter of resignation to you with a request that you may kindly accept it by 3-3-1953, and relieve me of my responsibilities, otherwise after the expiry of the said date I shall consider myself free of the responsibility of my office."

On 5-2-1953, the Land Reforms Commissioner sent out a circular letter that no pourparlers should be held with the Patwaris, that it was not necessary to wait till 4-3-1953, and that the resignations might be accepted forthwith, except in cases where disciplinary proceedings were

pending against any Patwari. Mr. Pathak, learned counsel for the petitioners, 734 in number, has informed us that the petitioners had tendered their resignations which were accepted on various dates before 4-3-1953, and the petitioners had not withdrawn their resignations before that date. On 7-3-1953, a G.O. was published by the State Government which provided for the recruitment of Lekhpals as a result of the re-organization of the service of Patwaris. It provided that-

- "(1) This class of functionaries would now be known as Lekhpals and not Patwaris.
- (2) The cadre of the service of Lekhpals would be two-thirds of the present strength of Patwaris in each district and out of this two-thirds strength, three-fourth would be recruited on a permanent basis and the remaining one-fourth on a temporary basis for future adjustments. The temporary appointment would be made on the clear understanding that they would be terminable at one month's notice from either side.
- (3) The cadre would be made as follows:
 - (a) All Patwaris who did not resign would be absorbed provided they do not attain the age of 60 years on 31-3-1953.
 - (b) Of the Patwaris who resigned but withdrew their resignations by 4-3-1953.
 - (i) Before they were accepted or before they were ordered to hand over charge.
 - (ii) After the acceptance of their resignations only those will be reabsorbed who have had an excellent record of work, and who have not taken an active part into agitation.
 - (c) Fresh recruits.
- (4) The service will be permanent and pensionable
- (5).....
- (6).....
- (7).....
- (8) The scale of pay will be Rs. 35-1-55 and fifteen per cent. of the posts will be in the selection grade of Rs. 55-2-65.
- (9) Dearness allowance would be admissible at Rs. 12/- per month."

Paragraphs Nos. 10 and 11 of the Order provided for certain travelling and stationery allowance. It is not necessary to quote the other portions of this Order. After the publication of this Order the petitioners wrote on 27-3-1953, withdrawing their resignations which had already been accepted. We have not been able to check up the facts whether every one of these petitioners had purported to withdraw his resignation on 27-3-1953, as it did not seem to be necessary in view of the admission made by learned counsel, Mr. Pathak, that all the petitioners had tendered their resignations, that they had not withdrawn their resignations before 4-3-1953, and that their resignations had been accepted before that date.

7. Mr. Pathak has urged that the petitioners should have been allowed to compete for reappointment along with the fresh recruits, under paragraph 3(c) of the Government Order, and the letter of the Land Reforms Commissioner dated 16-3-1953, appended as Sch. IV to the supplementary affidavit of Banarsi Das, filed on 25-2-1954, to the effect that the Patwaris who

had resigned and whose resignations had been accepted and who had not withdrawn their resignations by 4-3-1953, were not eligible for appointment as fresh recruits under paragraphs 2 and 3(c) of the Government Order, dated 7-3-1953, and the circular letter,, dated 30-3-1953, Sch. H to the affidavit of Banarsi Das, issued by the Land Reforms Commissioner on the subject of recruitment of Lekhpals, reproducing more or less the Government Order mentioned above, and dividing the candidates into four categories, those who had not resigned, those who had resigned but had withdrawn their resignations before 4-3-1953, and those who had resigned but had not withdrawn their resignations before the due date, and fresh recruits, and providing that those who had resigned and had not withdrawn their resignations by 4-3-1953, would not be eligible for appointment as Lekhpals, was discriminatory.

8. The contention of learned counsel is that this exclusion was contrary to the provisions of Article 16 of the Constitution as it deprived the petitioners of their fundamental right of equality of opportunity in matters relating to employment or appointment to any office under the State. Learned counsel has urged that it was permissible to the Patwaris to form themselves into an association, that their association had been recognised by the Government in the year 1940, that every citizen of the State has a right to agitate for improvement of his conditions of service, so long as the agitation is carried on peaceful lines, that every citizen has a right to tender his resignation if he does not wish to work and that the exclusion of the petitioners from fresh appointment amounted to discrimination and deprivation to them of equal opportunities of employment.

9. On behalf of the State it is not denied that those Patwaris who had tendered their resignations and had not withdrawn the resignation before 4-3-1953, and whose resignation had been accepted were ineligible for appointment as Lekhpals, but learned Advocate General appearing for the State has urged that Article 16 of the Constitution does not take away the right of the State to lay down the qualifications for appointment to Government service so long as the qualifications laid down do not contravene any provision of the Constitution. Article 16 provides that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State but it cannot mean that the State cannot lay down the qualifications for a post. The qualifications would include not only educational qualifications but age, character, fitness for the post etc. It is no doubt true that the salary that the Patwaris were drawing was very low and there may have been some justification for their carrying on propaganda for the improvement of their conditions of service and their emoluments but it cannot be denied that the sudden tendering of resignation, by 26,134 Patwaris, early in February, 1953, soon after the abolition of the zamindari, when the Government was taking over the estates of the intermediaries, was intended to put such pressure on the Government that it would yield to their demands, which learned counsel has characterised as just demands.

10. The question before us is not whether the demands of the Patwaris were just or unjust. The point is whether Article 16 of the Constitution prohibits the State Government from making rules

that persons, whom they consider to be agitators or people who, according to Government, lack sense of discipline and had once resigned from Government service, should not be eligible for re-appointment.

11. Mr. Pathak has urged that if these Patwaris were efficient in their work a day before their resignation the mere fact that they had sent in their resignations did not make them inefficient and there was, therefore, no nexus between the rules as regards their exclusion and the efficiency of the service. He has also urged that the mere fact that some of the Patwaris had withdrawn their resignations before 4-3-1953, did not show that they were more efficient or were in any way better men than those who had stuck to their original resignations.

12. A person who had resigned but had before the due date withdrawn his resignation may be allowed a 'locus paenitentiae' and it may be, to our minds, a relevant consideration which may prompt the State Government to overlook their past conduct. We do not think that Article 16 was intended to prevent the State Government from laying down the qualifications for a service, within which term we would include not only educational qualifications but also physical fitness, age, character, sense of discipline etc. What are the qualifications that are required and what should disqualify a person from Government service are matters in which we think the discretion should vest in the State Government and unless there has been a flagrant abuse of power, or there has been discrimination which has contravened any provision of the Constitution, the Courts should not lightly interfere. In our view the State was entitled to lay down that it would not re-appoint those who had taken part in the mass agitation with the object of putting undue pressure on the State Government and, if they made any such rule excluding those Patwaris who had resigned and who had not withdrawn their resignations by 4-3-1953, such a rule, to our minds, would not be contrary to the provisions of Article 16.

13. Learned counsel, as we have already said, wanted that all those who had resigned, irrespective of the fact whether some of them had or had not withdrawn their resignations, should be placed on the same footing. This, again to our minds, is not of much substance as the fact that some of those who had resigned and had before the due date withdrawn their resignations was a relevant factor which might have influenced the State Government in deciding to re-appoint them provided their character rolls were good and they had not attained a particular age.

14. Some argument was also advanced on the basis of Article 14 of the Constitution that there was discrimination. We do not think that it can be said that there was any discrimination if there was some reasonable basis for excluding the Patwaris who had resigned 'en masse' and had not withdrawn their resignations.

15. Learned counsel for the petitioners have made a grievance of the fact that in the counter-affidavit filed on behalf of the State the reasons have not been set out which prompted the State Government to exclude the petitioners. We do not think it was necessary to set out the reasons. If

any state of facts can reasonably be conceived to sustain a classification, the existence of that state of facts must be assumed. (See Willis on Constitutional Law, 579). In - '*Charanjit Lal v. Union of India*¹, Fazl Ali J. quoted this passage from Willis with approval.

16. In our view, therefore, this petition has no force and it is dismissed. In view, however, of the fact that the petitioners have suffered greatly in being deprived of their means of livelihood by reason of the fact that they had foolishly resigned and were not considered for re-appointment, we do not think we should allow counsel for the State any costs.

Petition dismissed.

¹ AIR 1951 SC 41 at p.44