



IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA

ON THE 22nd DAY OF AUGUST, 2022

BEFORE
HON'BLE MR. JUSTICE AJAY MOHAN GOEL

CIVIL WRIT PETITION No.1393 of 2020

Between:

1. KULDEEP KUMAR SON OF
SH. SHANKAR DASS,
RESIDENT OF VILLAGE ASAN,
P.O. JASANA, TEHSIL
BANGANA, DISTRICT UNA,
H.P.

2. JOGINDER KUMAR, SON OF
NANAK CHAND, RESIDENT OF
VPO CHATARA, TEHSIL AND
DISTRICT UNA, H.P.

3. SURYA PARKASH SON OF
SH. AMAR NATH, RESIDENT
OF VILLAGE RAKKAR
COLONY, P.O. TABBA NEAR
SUVIDA FARM BASSI
COLONY, TEHSIL AND
DISTRICT UNA, H.P.

4. KAMAL DEV, SON OF SH.
HARI CHAND, FIELD
KANUNGO DULEHAR, SUB
TEHSIL DULEHAR, DISTRICT
UNA, H.P.

5. SATISH KUMAR, SON OF
SH. PREM CHAND, RESIDENT

OF VPO NANGRAN, SUB
TEHSIL MEHATPUR,
DISTRICT UNA, H.P.

6. BALJEET SINGH, SON OF
SH. JAGIR SINGH, RESIDENT
OF VPO SANTOSHGHAR,
WARD NO.1, SUB, TEHSIL
MEHARPUT, DISTRICT UNA,
H.P.

7. ASHWANI KUMAR, SON OF
SH. RIKHI RAM, RESIDENT
OF VPO BASSAL, TEHSIL AND
DISTRICT UNA, H.P.

....PETITIONERS.

(MR. NITIN THAKUR, ADVOCATE)

AND

1. STATE OF H.P. THROUGH
F.C.-CUM-PRINCIPAL
SECRETARY, (REVENUE)
GOVERNMENT OF
HIMACHAL PRADESH, H.P.
SECRETARIAT, SHIMLA-2.

2. THE DEPUTY
COMMISSIONER-CUM-
COLLECTOR, UNA, DISTRICT
UNA, H.P.

3. SHRI SANTOSH DHIMAN,
S/O SHRI KISHAN
CHAND, AGED 57
YEARS, R/O VILLAGE
SAKON, TEHSIL
BANGANA, DISTRICT UNA
(H.P.) PRESENTLY WORKING

AS KANUNGO,
TEHSIL OFFICE
BANGANA, TEHSIL
BANGANA, DISTRICT UNA
(H.P.)

4. SHRI VIJAY KUMAR S/O
SHRI KISHAN CHAND, R/O
VILLAGE NARHUN,
TEHSIL BANGANA, DISTRICT
UNA (H.P.) PRESENTLY
WORKING AS RECORD
KANUNGO, TEHSIL OFFICE
BANGANA, DISTRICT UNA
(H.P.)

5. SHRI TILAK RAM, S/O
SHRI AMAR NATH, R/O
VILLAGE MACHHALI,
TEHSIL BANGANA,
DISTRICT UAN (H.P.)
PRESENTLY WORKING
AS KANUNGO IN DISTRICT
UNA (H.P.)

6. SWAROOP CHAND, S/O
SH. NAND LAL,
AGED 58 YEARS,
PRESENTLY POSTED AT
VILLAGE KANGO,
CIRCLE YOL, TEHSIL
DHARAMSHALA, DISTRICT
KANGRA, H.P.

7. AJAY SINGH, AGED 56
YEARS, S/O LATE SH.
BHIKHAM SINGH,
R/O VILLAGE AN
P.O. MALNU, SUB-
TEHSIL BHAWARNA,
TEHSIL PALAMPUR,
DISTRICT KANGRA,

H.P. AND PRESENTLY
POSTED AT KANGO
PANCHRUKHI, TEHSIL
PALAMPUR, DISTRICT
KANGRA, H.P.

....RESPONDENTS.

(BY MR. ASHOK KUMAR, ADVOCATE GENERAL, WITH
M/S SUMESH RAJ, DINESH THAKUR & SANJEEV SOOD,
ADDITIONAL ADVOCATES GENERAL, MR. AMIT KUMAR
DHUMAL, DEPUTY ADVOCATE GENERAL & MR. MANOJ
BAGGA, ASSISTANT ADVOCATE GENERAL, FOR
RESPONDENTS NO.1 AND 2.)

(M/S ONKAR JAIRATH & SHUBHAM SOOD, ADVOCATES,
FOR RESPONDENTS NO.3 TO 5)

(MS. SEEMA GULERIA, ADVOCATE, FOR THE
APPLICANTS/PROPOSED RESPONDENTS IN CMP NOs. 7296
AND 7297 OF 2022)

Whether approved for reporting?¹ Yes

Reserved on: 08.08.2022

This petition coming on for orders this day, the Court passed the following:

J U D G M E N T

By way of this petition, the petitioners have prayed for
the following reliefs:-

*“i) That in view of the above mentioned facts and
circumstances, the impugned letter dated 20.2.2020
(annexure P-4) may kindly be quashed and set aside and
the respondents may kindly be directed not to disturb the*

seniority of the petitioners as kanungo in District Una, in the interest of justice and fair play.

ii) That the executive instructions dated 30.6.1997 being in contravention to the statutory service rules of 1992, may also kindly be quashed and set aside as the said instructions have overruled the statutory rules notified in the year 1992.

iii) issue a writ of mandamus directing respondents not to implement Annexure P-5 i.e. seniority list issued on 08.05.2020: and /or

iv) Issue a writ of certiorari quashing and setting aside Annexure P-5 i.e. seniority list issued on 08.05.2020.”

2. The case of the petitioners is that they were appointed as Patwaris in the respondent-Department in the year 1998 in terms of Recruitment & Promotion Rules, 1992. Thereafter, the seniority of the petitioners was maintained by the respondent-authorities as per the said Rules more so in terms of Rules 15 (A) and 15 (B) thereof. According to the petitioners, the procedure for maintaining seniority in the 1992 Rules clearly postulates that a register is required to be maintained on the basis of merit selection test for the post of Patwari from amongst the candidates sponsored by the Employment Exchange. Rule 15 (B) provides that after completion of Patwari training and passing of Patwari examination and practical training, the appointments will be given to the incumbents in accordance with the merit selection test and roster formed by the respondent-

authorities. According to the petitioners, the relevant procedure was duly followed by the Department and the petitioners were also promoted to the post of Kanungo in between December, 2016 to May, 2019. It is further the case of the petitioners that the Revenue Department of the Government of Himachal Pradesh has issued Executive Instructions dated 30.06.1997. As per these Executive Instructions, the procedure prescribed in the 1992 Recruitment & Promotion Rules for determining seniority of Patwaris was altered. These Executive Instructions are not sustainable in law for the reason that the same cannot supplant the Recruitment & Promotion Rules. The 1992 Rules were repealed vide notification dated 10.08.2009. Appointment of the petitioners was as per the 1992 Rules. Since, the appointment of the petitioners till December, 2016, the seniority of the petitioners was duly maintained as per the 1992 Rules. Impugned instructions were not implemented earlier. However, vide Annexure P-4, i.e. communication dated 20.02.2020, issued from the office of respondent No.1, addressed to respondent No.2, direction was issued that seniority of Patwaris/Kanungos of District Una be maintained as per the Executive Instructions dated 30.06.1997. According to the petitioners, communication issued to this effect vide Annexure P-4, as well as Executive Instructions dated 30.06.1997 are bad in law and not sustainable for the reason that the seniority of the petitioners vis-a-vis their initial recruitment has

to be determined as per the 1992 Recruitment & Promotion Rules and the same cannot be determined in terms of the Executive Instructions or subsequent directions dated 20.02.2020.

3. It is pertinent to mention that during the pendency of the Writ Petition, CMP No.3925 of 2020 was filed by the petitioners, seeking amendment of the petition, which was duly allowed by the Court in terms of order dated 21.05.2020.

4. The petition is opposed by the State, who as per its reply has taken the stand that instructions dated 30.06.1997 are not contrary to the 1992 Recruitment & Promotion Rules as alleged and these instructions are supplementary and only clarificatory and explanatory in nature. It is also mentioned in the reply that the revised final seniority list of Patwaris as on 12.03.2020 and revised final seniority list of Kanungos as on 08.05.2020 have been issued to rectify and to bring the previously issued defective seniority lists in conformity with the mandate of the 1992 Recruitment & Promotion Rules, read with instructions dated 30.06.1997. It is further the stand of the State that the issue being raised in the present Writ Petition is no more *res integra* and the same has already been decided by the State Administrative Tribunal in terms of order dated 24.10.2018, passed in OAD No.391 of 2017, titled as Rajesh Kumar and others Versus State of Himachal Pradesh.

5. During the pendency of the petition, private respondents were impleaded. They were also given due opportunity to put forth their stand before the Court. Proposed respondents in CMPs No.7296 and 7297 of 2022 were also heard. Formally, these applications are allowed by impleading the applicants as party respondents.

6. Learned counsel for the petitioners has argued that the initial selection of the petitioners as Patwari candidates and their subsequent appointment as such was as per the Recruitment & Promotion Rules issued by the Revenue Department to the Government of Himachal Pradesh dated 03.03.1992, i.e. the Recruitment & Promotion Rules, 1992, for the post of Patwari, Mohal (Class-III Non Gazetted), copy whereof is appended with the petition as Annexure P1. Learned counsel argued that these Rules were framed in exercise of the powers conferred under the proviso to Article 309 of the Constitution of India. Rules 15 (A) and 15 (B) of the Rules which deal with the selection for training of Patwari candidates and direct recruitment for the post of Patwari clearly provide as to how the seniority of a Patwari candidate and of a Patwari upon his direct recruitment has to be maintained and there is no ambiguity or grey areas in the Rules in this regard. Learned counsel further argued that the Executive Instructions (Annexure P2) dated 30.06.1997, issued by the Financial Commissioner-cum-

Secretary (Revenue) to the Government of Himachal Pradesh on the subject “appointment of Patwaris from the executive Patwari candidates” are bad in law as the same supplant the provisions of 1992 Recruitment & Promotion Rules with regard to determination of the seniority of Patwaris, which is not permissible in law. Learned counsel argued that as the said Executive Instructions, overreached and annuled the provisions of the Recruitment & Promotion Rules with regard to the determination of seniority, therefore, these instructions are *per se* void and are liable to be declared as such and quashed. He has further argued that the impugned seniority lists which have been now issued by the respondent-Department by placing reliance upon the said Executive Instructions are also thus not sustainable in the eyes of law and are liable to be quashed and set aside.

7. Mr. Ashok Sharma, learned Advocate General, while opposing the petition and defending the act of the respondent-Department, argued that the Recruitment & Promotion Rules, 1992 only governed the recruitment of a Patwari candidate as well as the appointment of a Patwari candidate, but neither Rules 15 (A) nor Rule 15 (B) of the said Rules governs or provides as to how the seniority of a Patwari, who is freshly recruited, is to be determined. Learned Advocate General thus argued that in the absence of their being any mechanism in the Recruitment & Promotion Rules for

determining the seniority of the newly recruited Patwaris, Executive Instructions dated 30.06.1997 only supplement the 1992 Recruitment & Promotion Rules. He submitted that these instructions do not supplant the Recruitment & Promotion Rules as has been argued by the learned counsel for the petitioners and further as they only filled up the vacuum, which exists in the Recruitment & Promotion Rules, therefore, there is nothing wrong either in the issuance of the Executive Instructions or in the issuance of the subsequent seniority lists which were so issued on the basis of the objections which were received from the aggrieved parties. No other argument was raised on behalf of the State in defence of the impugned Executive Instructions.

8. Mr. Onkar Jairath, learned counsel appearing for respondents No.3 to 5 and other learned counsel appearing for the private respondents while adopting the arguments of learned Advocate General argued that the subject matter being argued by the petitioners is no more *res integra* and the same is squarely covered by the judgments of this Court passed in *CWP No.1906 of 2009*, titled *Praveen Kumar and others Versus State of H.P. & others alongwith other connected matters*, decided on 26.11.2010; *LPA No.345 of 2010*, titled *Prakash Chand and others Versus State of H.P. and others and other connected matters*, decided on 06.10.2015; *CWP No.295 of 2001*, titled *Shri Karan Singh and others Versus State*

of H.P. and another, decided on 06.01.2010 and thus argued that the matter being no more *res integra*, the present petition be dismissed.

9. I have heard learned counsel for the petitioners as well as learned Advocate General and also learned counsel for the private respondents. I have also carefully gone through the pleadings as well as documents appended therewith and the case law cited.

10. It is not in dispute that the petitioners herein have been recruited against the posts of Patwaris in the year 1998. It is also not in dispute that the Recruitment & Promotion Rules which were in vogue at the time when they the petitioners were initially appointed for training as Patwari candidates and then as Patwaris, were the Himachal Pradesh Revenue Department (Mohal Class-III, Non- Gazetted) Recruitment & Promotion Rules, 1992. The moot issue which this Court thus has to answer is as to whether Rule 15 (A) and Rule 15 (B) provided for the determination of the seniority of Patwaris post their initial selection for training as Patwari candidates and thereafter their direct recruitment for the post of Patwari or not? It is relevant to mention at this stage that whereas as per the petitioners, the mechanism of determining the seniority available in Rules 15 (A) and 15 (B) of the 1992 Rules, according to the State, this mechanism is not provided in Rules 15 (A) and 15 (B) and therefore, the instructions dated 30.06.1997 supplement the Rules to this effect.

11. Before proceeding further, I will like to refer to the 1992 Rules, at this stage. In terms of the 1992 Rules, Annexure P-1, the post of Patwari is a Class-III (Non- Gazetted) post. The minimum educational qualification required for direct recruits in terms of 1992 Rules is matriculation or Higher Secondary Part-I or its equivalent from a recognized University. Clause-10 thereof, which deals of method of recruitment provides that the post is to be filled in 100% by direct recruitment from qualified Patwar candidates. Rule 15 (A) deals with the selection for training of Patwari candidates and Rule 15 (B) thereof deals with direct recruitment for the post of Patwari. The same are quoted hereinbelow:-

“ 15(A) Selection for training of Patwari candidate:-

(1) Selection for training to Patwari from amongst the candidates sponsored by the Employment Exchanges in HP. shall be made on the basis of written test and Viva-Voce test, the standard/syllabus etc. of which shall be prescribed by the F.C. (Revenue).

(2) The maximum number of persons to, be selected by each District Collector, as Patwari candidates shall be 25% of the cadre strength or vacancies likely to occur in the next five years within the District which ever is less.

(3) The District Collector shall maintain a register of Patwari candidates selected for training in accordance with merit obtained in the selection test as prescribed in sub-rule (1) supra. (4) Selected candidates shall have to undergo Patwari training as laid down in the Land Records

Manual at their own expenses. On the completion of training, the candidates shall have to qualify the Patwari examination by such standard and syllabus as may be prescribed by F.C.(Revenue) from time to time.

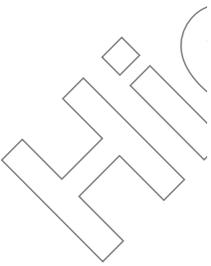
(5) A candidate who for reasons to be recorded in writing by the Distt. Collector for. not being able to successfully complete the patwari training, the District Collector with the approval of the F.C. (Revenue) may allow him to undergo fresh training in the same Distt. in the next batch and in case there is not training for the next batch during the next year in the same Distt., the F.C. (Revenue) may allow him to undergo the patwari training as a fresh candidate in other districts.

(6) On passing of Patwari Examination, the candidate will be considered as "Qualified Patwari Candidate."

Provided that a candidate who does not qualify the patwar examination in the first attempt, he can qualify the same in two subsequent successive examinations, which shall be held for the purpose as prescribed by F.C. (Revenue).

Provided further that the candidate who do not qualify in the first attempt, their names will appear in the patwari candidates register below the candidates who have qualified in the first attempt in their own original order after, striking off their names from previous original place.

Provided further that the candidates who do not qualify in the second attempt, their names shall appear in the patwari candidates register below the candidates who have qualified in the second attempt in their own original order after striking off their names from the previous



original places assigned to the candidates passing the said examination in second attempt:

Provided further that the candidates who fail to qualify the examination in third attempt, their names shall be struck off from the register maintained by the concerned District Collector."

15(B) Direct Recruitment for the post of Patwari:-

A "Qualified Patwari Candidate" shall be offered the post of Patwari strictly in accordance with the seniority maintained in the patwari candidate register under role 15 (A) as per roster prescribed by the State Government for filling up of vacancies reserved for the candidates belonging to Scheduled Castes/Scheduled Tribes/ Backward Classes/other categories of persons from time to time.

Provided that if a qualified candidate does not accept the offer of appointment excepting the cases where the reasons are given to the satisfaction of the Appointing Authority, his name shall be struck off from the aforesaid register."

12. A perusal of Rule 15 (A) demonstrates that selection for training to Patwari from amongst the candidates sponsored by the Employment Exchange is to be made on the basis of written test and viva voce. The District Collector is to maintain a register of Patwari candidates selected for training in accordance with merit obtained in the section test as prescribed in sub-rule (1) of Rule 15 (A). Rule 15(A) (4) further provides that selected candidates have to undergo Patwari training and on completion of training, the candidates have

to qualify Patwari examination by such standard in syllabus as may be prescribed from time to time. In terms of sub-rule (5), a candidate who is not able to successfully complete the Patwari training may be allowed to undergo fresh training in the same district in the next batch and in case there is no training in the next batch during the next year in the same district, then the F.C. (Revenue) may allow him to undergo Patwari training as a fresh candidate in other district. Sub-rule (6) thereof says that on passing of Patwari examination the candidate will be considered as '**qualified Patwari candidate**'. Rule 15 (B) provides that a '**qualified Patwari candidate**' shall be **offered the post of Patwari strictly in accordance with seniority maintained in the Patwari candidate register under Rule 15 (A)** as per the Roster prescribed by the State Government for filling up the vacancies reserved for various categories from time to time.

13. Thus, this Court is of the considered view that there is no ambiguity in the language of Rule 15 (B) that offer of post to the Patwari has to be strictly in accordance with **seniority maintained in the Patwari Candidate Register under Rule 15 (A) from amongst qualified Patwari candidates**. Now, sub-rule (3) of Rule 15 (A) clearly lays down that District Collector shall maintain a register of Patwari candidates selected for training in accordance

with merit obtained in the selection test as prescribed in sub-rule (1) (supra). This, according to me is the seniority maintained in the Patwari Candidate Register under Rule 15 (A) and thus, after a Patwari candidate becomes a qualified Patwari candidate, he has to be offered the post of Patwari strictly in accordance with the seniority maintained in the Patwari Candidate Register under Rule 15 (A). Rightly or wrongly, in terms of the provisions of Rules 15 (A) and 15(B) of the 1992 Rules, read together harmoniously the appointment to the post of Patwari of a qualified Patwari candidate is not dependent upon the merit gained by a Patwari candidate in the process of his undertaking Patwari examination, but the same is determined on the basis of seniority maintained in the Patwari Candidate Register, i.e. Rule 15 (A) (3) to be precise. Therefore, in view of above, there is merit in the contention of the petitioners that Rules 15 (A) and 15 (B) of the 1992 Rules, clearly provide as to how the seniority of Patwari is to be determined once they are offered the said post after becoming a qualified Patwari candidate.

14. Now, in this backdrop, let us peruse the impugned instructions (Annexure P2), dated 30.06.1997. The substituted Clause lays down that the seniority of the appointed Patwari candidate from accepted Patwari candidates is to be determined in the order of merit determined on the basis of Patwar Examination and practical training. Before proceeding further, it is necessary to

juxtapose the amended Para 3.6 of the H.P. Land Records Manual, 1996-1997 with the unamended one. The Para as it stood before amendment reads as under:-

“Appointment of Patwaris:-

3.6 The Deputy Commissioner, Settlement Officer and Director, Consolidation of Holdings, shall appoint Patwari candidates in accordance with the Rules contained in Appendix 1, III and V of this Manual and instructions issued by the H.P. Government in this behalf from time to time.”

The Para after amendment reads as under:-

“Appointment of Patwaris:-

3.6 The Deputy Commissioner/Settlement Officers/ Director of Consolidation of Holdings, shall appoint Patwari candidates from the accepted Patwari candidates in order of merit determined on the basis of patwar examination and practical training prescribed under the Rules contained in Appendix, 1, III and V of the H.P. Land Records Manual and instructions issued by the Govt. of Himachal Pradesh from time to time.”

15. At this state, it is also necessary to take into consideration the scope of the H.P. Land Record Manual. The purpose of this Manual is to explain the laws and practices with reference to making and maintenance of record-of-rights and other related records in land. The manual itself has been divided into 5 Sections with 21 Appendices. First Section, deals with duties and

functions of various revenue functionaries right from village Chowkidar to the Director of Land Records. Second Section, deals with the maintenance and updating of land records. New Chapters on Consolidation of Holdings, Demarcation of Boundaries, Land Revenue Assignments, Prevention of Encroachments on Government Lands and Computerisation of Land Records have been added in this Section. Third Section, relates to Revenue Statistics. Fourth Section, deals with Agricultural Census and Live Stock Census. Fifth Section, contains miscellaneous topics. In this Section, new Chapters on 'Procedure for Issuing of Various Certificates, and 'Training and Refresher Courses' have been added.

16. Incidentally, the H.P. Land Record Manual has nothing to do with the recruitment of Patwaris *per se*, because said recruitment obviously cannot be governed by the Land Record Manual as the recruitment is to be governed by the relevant Recruitment & Promotion Rules framed under the proviso to Article 309 of the Constitution of India by the Government of Himachal Pradesh. Once, recruitment to the posts of Patwari is governed by the relevant Recruitment & Promotion Rules, it is not understood as to how the seniority of the newly appointed Patwaris can be governed by some Para of the H.P. Land Record Manual, 1997.

17. Now, if one again peruses the unamended Para 3.6 of the H.P. Land Record Manual, the same simply provided that the

concerned Revenue Officer shall appoint Patwari candidates in accordance with the Rules contained in appendix 1, 3 and 5 of the said Manual and instructions issued by H.P. Government in this behalf from time to time. Qua this, there cannot be any dispute. However, when one peruses the amended Para 3.6, the same provided that the concerned Revenue Officer shall appoint Patwari candidate from the accepted Patwari candidates in order or merit determined on the basis of Patwar examination and practical training prescribed under the Rules contained in appendix 1,3 and 5 of H.P. Land Record Manual and instructions issued by the Government of Himachal Pradesh from time to time.

18. This Court is of the considered view that the amendment which has been carried out in Para 3.6, to the effect that the concerned Appointing Authority has been called upon to appoint Patwari from amongst Patwari candidates in order or merit determined on the basis of Patwar Examination an practical training prescribed under the Rules, is not the spirit of the relevant Recruitment & Promotion Rules with regard to determination of seniority. This amendment is bad in the eyes of law as the same not only supplants the 1992 Recruitment & Promotion Rules, but, otherwise also it adds something in Para 3.6 of H.P. Land Records Manual, which cannot be put in the Land Record Manual. This is for the reason that the Court again reiterates that recruitment to the

post of Patwari is not done as per the H.P. Land Record Manual, but is done as per the Recruitment & Promotion Rules in vague at the relevant time.

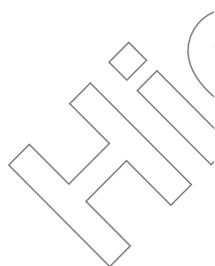
19. At this stage, it is also relevant to refer to the 2009 Recruitment & Promotion Rules appended with the petition as Annexure P3, i.e. Recruitment and Promotion Rules for the post of Patwari Mohal (Class-III, Non-Gazetted) in the Department of Revenue, Himachal Pradesh, which repealed the 1992 Rules. Rule 15 (6) of the 2009 Rules provides as under:-

“15 (6) On passing of Patwari Examination, the candidate will be considered as “Qualified Patwari Candidate.”

Provided that a candidate who does not qualify the patwar examination in the first attempt, he can qualify the same in two subsequent successive examinations, which shall be held for the purpose as prescribed by F.C. (Revenue).

Provided further that the candidate who do not qualify in the first attempt, their names will appear in the patwari candidates register below the candidates who have qualified in the first attempt in their own original order after, striking off their names from previous original place.

Provided further that the candidates who do not qualify in the second attempt, their names shall appear in the patwari candidates register below the candidates who have qualified in the second attempt in their own original order after striking off their names from the previous



original places assigned to the candidates passing the said examination in second attempt:

Provided further that the candidates who fail to qualify the examination in third attempt, their names shall be struck off from the register maintained by the concerned District Collector.”

20. Now, when one juxtaposes the provisions of Rules 15 (A) and 15 (B) of the 1992 Rules against Rule 15 (6) of the 2009 Rules, it can be made out from the *ex facie* reading of the 2009 Rules itself that in terms of this Rule, the offer of the post of Patwari from amongst qualified Patwari candidate has to be made strictly in accordance with the seniority maintained in the qualified Patwari Candidate Register, in which seniority of the qualified Patwari candidate is fixed in accordance with the merit determined on the basis of Patwari training and practical training. This demonstrates that what was intended to be done by instructions Annexure P-2, has now become a part of the Recruitment & Promotion Rules since the year 2009. In other words, after the coming into force of the 2009 Rules, but obvious the seniority of Patwaris has to be determined as per Rule 15 (6), in which both the merit determined on the basis of Patwar examination and practical training gain prominence. But, fact of the matter remains that before the 2009 Rules came into force, the seniority of Patwaris was not to be determined on the basis of

Patwar Examination and practical training and it was to be determined solely on the basis of merit obtained in the selection test as prescribed in Rule 15(A) (1) for Patwari candidate.

21. Hon'ble Supreme Court of India in *K. Kuppusamy and Another Versus State of T.N. and Others, (1998) 8 Supreme Court Cases 469* has held that rules framed under the proviso to Article 309 of the Constitution are statutory rules and statutory rules cannot be overridden by Executive Instructions or Executive practice. Hon'ble Supreme Court held that till the rule is amended the rule applies.

22. In *Bimlesh Tanwar Versus State of Haryana and others (2003) 5 Supreme Court Cases 604*, Hon'ble Supreme Court held that seniority is not a fundamental right and is merely a civil right. *Inter se* the seniority of the candidates who are appointed on the same day would be dependent on the rules governing the same and only in the absence of any statutory rules, the general principles may be held to be applicable.

23. In *Dhananjay Malik and others Versus State of Utranchal and others, 2008) 4 Supreme Court Cases 171*, Hon'ble Supreme Court after placing reliance upon the Constitutional Bench judgment of the Hon'ble Supreme Court in *Sant Ram Sharma Versus State of Rajasthan, AIR 1967 Supreme Court 1910* reiterated that the Government cannot amend or supersede

statutory rules by Administrative Instructions, but if the rules are silent on any particular point, the Government can fill up the gaps and supplement the rules and issue instructions not inconsistent with the rules already framed. ◇

24. Hon'ble Division Bench of this Court in *CWPOA No.51 of 2019*, titled *Jitender Singh Rangta and others Versus State of Himachal Pradesh and another*, decided on 10.07.2020, after relying upon the judgments of the Hon'ble Supreme Court held that corrigendum issued by an Executive Authority cannot substitute the provisions contained in the Recruitment & Promotion Rules framed under provision to Article 309 of the Constitution of India.

25. In *CWP No.1906 of 2009*, titled *Praveen Kumar & others Versus State of HP & Others and other connected matters*, decided on 26.11.2010, the vires of the Executive Instructions dated 30.06.1997 was neither a subject matter of the Writ Petition nor the same has been answered by this Court. A careful perusal of the judgment demonstrates that in the above mentioned judgment no finding has been returned by this Court holding that the Executive Instructions under challenge in the present Writ Petition were 'intra vires'.

26. Similarly, in *LPA No.345 of 2010*, titled *Prakash Chand & Ors. Versus State of H.P. & anr. and other connected*

matters, decided on 06.10.2015, which LPA arose out of the judgment passed by this Court in *CWP No.1906 of 2009*, titled *Praveen Kumar & others Versus State of HP & Others and other connected matters*, again there was neither any challenge nor any discussion or nor any adjudication on the legality of the Executive Instructions dated 30.06.1997. In fact, it is pertinent to mention that primarily the prayer of the petitioners in *CWP No.1906 of 2009*, titled *Praveen Kumar & others Versus State of HP & Others and other connected matters*, as it appears from the record, was for declaration that the amendment of the Rules in the year 2009 was ultra vires and as the petitioners had been selected as Patwari candidates in the year 2005, therefore, their service conditions are to be governed after their recruitment as Patwaris in terms of the Rules under which they were appointed and not under the 2009 amended Rules. Therefore, this Court is of the considered view that these judgments relied upon by the respondents have not decided the issue which has been urged by way of present Writ Petition by the petitioners.

27. Coming to *CWP No.295 of 2001*, titled *Shri Karan Singh and Ors. Versus State of H.P. & arr*, decided on 06.01.2010, wherein this Court was dealing with the recruitment of Patwari candidates and their appointment under the Himachal Pradesh Patwar Service Rules, 1949 and in the said Writ Petition also,

there was no challenge to the Executive Instructions subject 
matter of the present Writ Petition.

28. Therefore, in view of the above discussion, this Writ Petition is allowed and disposed of. The Executive Instructions dated 10.07.1997 are held to be bad in law and ordered to be quashed as they supplant the provisions of 1992 Recruitment & Promotion Rules and not supplement the same. The seniority list subsequently issued on the basis of said Executive Instructions are also ordered to be set aside with direction to the respondents to redraw the fresh seniority as was being done earlier without referring to the annulled Executive Instructions. The promotions which have been conferred upon the private respondents etc. on the basis of their seniority as determined on the basis of the Executive Instructions which have been struck down by this Court are also ordered to be quashed and set aside with direction to the respondents to hold Review Departmental Promotion Committee, if so required and make promotions after determining the seniority in terms of this judgment. No order as to cost. Pending miscellaneous applications, if any, stand disposed of. Interim order, if any, stands vacated.

(Ajay Mohan Goel)
Judge

August 22, 2022
(Rishi)