

CASE NO.:
Appeal (civil) 4562 of 2007

PETITIONER:
Ram Avtar Patwari and Ors

RESPONDENT:
State of Haryana and Ors

DATE OF JUDGMENT: 28/09/2007

BENCH:
Dr. ARIJIT PASAYAT & D.K. JAIN

JUDGMENT:
J U D G M E N T

CIVIL APPEAL NO. 4562 OF 2007
(Arising out of SLP (C) No.18772 of 2005

WITH
(Civil Appeal No. /07 @SLP (C) 18768/2005,
Civil Appeal No. 4564 /07 @SLP (C) 18765/2005,
Civil Appeal No. 4565 /07 @SLP (C) 18769/2005,
Civil Appeal No. 4566 /07 @SLP (C) 18261/2005,
Civil Appeal No. 4567 /07 @SLP (C) 18771/2005,
Civil Appeal No. 4568 /07 @SLP (C) 18766/2005,
Civil Appeal No. 4569 /07 @SLP (C) 18770/2005,
Civil Appeal No. 4570 /07 @SLP (C) 18373/2005,
Civil Appeal No. 4571 /07 @SLP (C) 18767/2005,
Civil Appeal No. 4572 /07 @SLP (C) 20014/2005,
Civil Appeal No. 4573 /07 @SLP (C) 8270/2006.

Dr. ARIJIT PASAYAT, J.

1. Leave granted.
2. Challenge in these appeals is to the judgment of Punjab and Haryana High Court allowing the Civil Writ Petitions filed by non official respondents.
3. Background facts in a nutshell are as follows:

The Subordinate Services Selection Board (hereinafter referred to as the 'Board') issued an advertisement dated 7.11.1992 calling for applications for filling up 1248 posts of Patwar candidates to be deputed to the Patwar Training School and on completion of training, for appointment as Patwaris. Appellants had applied for the said posts. The list of the selected candidates was finalized and displayed from which it transpired that against the advertised posts 2395, candidates had been recommended by the Board for admission to the Patwar Training School. One of the writ petitioners filed an application to the Board asking for the supply of details of the performance of the selected candidates, but those were not given. The selection was impugned in the writ petitions on several grounds. It was pointed out that the selection beyond the advertised posts was bad in law, the marks for performance in the interview were to be restricted to 15% whereas in the present case 25 marks were allotted for the interview and 10 marks were given for handwriting. It was submitted that a similar provision made for selection for Patwari candidates was quashed by the High Court in Satpal Singh and Ors. v. State of Haryana (1995 (3) SLR 787) and the judgment was affirmed by this Court in Satpal and Ors. v.

State of Haryana and Ors. (1995 Supp (1) SCC 206). It was emphasized that the criteria for selection was not only designed to give undue weightage to viva voce and to bye-pass the observations in Satpal Singh's case (supra), it was even otherwise unsustainable as the guidelines were framed on 19.5.1993, whereas the process of interview had started on the very next date. There was room for manipulation as the records pertaining to all candidates were with the Board well before 19.5.1993. The then Chief Minister Ch. Bhajan Lal on 26.5.1994 in a meeting held in his Assembly Constituency of Adampur had clearly stated that promise of one post of Patwari to each family has been made possible. This had influenced the selection which is clearly reflected from the fact that large number of candidates were selected from the Adampur and Kalka Assembly constituencies represented by Ch. Bhajan Lal and his son Sh. Chander Mohan.

4. Stand of the Board was that though 1248 posts were advertised, 485 candidates who had been earlier selected as a consequence of the advertisement dated 19.3.1987 out of which 377 candidates had cleared the course had been given appointment. It was also pointed out that this selection had been challenged in Satpal Singh's case (supra) and the selection and appointment had been quashed and SLP Nos. 2944-45 of 1993 filed by the State of Haryana had been dismissed by this Court by judgment dated 14.9.1993 with liberty to the 485 candidates to participate in a fresh selection. Therefore, after the advertisement 485 posts were available. It vacant every year and the advertisement was issued in the year 1992. The projected demands for two years i.e. 1993 and 1994 were taken note of. Further, as a substantial percentage of Patwaris candidates could not clear the Patwar Training School course, therefore, the same was also taken into account and ultimately the total number of candidates was fixed. It was pointed out that selection pursuant to the advertisement made in 1987 was quashed on the ground that 85% of the marks was reserved for interview, which was considered excessive. The Board had revised the criteria to bring it within the framework of Satpal Singh's case (supra) and had accordingly reduced the marks for the interview from 85% to 25%. It was also stated that the allegation about the then Chief Minister influencing the selection was unfounded. It was also pointed out that it is not a fact that nearly 500 candidates from Adampur and 300 candidates from Kalka had been selected, as only 350 candidates from district Hisar which included Adampur constituency and 150 candidates from Ambala of which Kalka constituency was a part amongst the first 1200 candidates and this was because of the large number of applications from that area i.e. about 19000 from Hisar and 6000 from Ambala district.

5. A separate reply was filed by the Chief Minister who stated that his speech was being read out of context.

6. The High Court found that perhaps there was no serious flaw in the fact that candidates beyond the advertised 1248 posts had been selected. But it was found that the other points had merit.

7. It was held that in view of what has been stated by this Court in Ajay Hasia etc. v. Khalid Mujib Sehravardi and Ors. etc. (AIR 1981 SC 487) fixing 25% marks for interview and another 10 marks for handwriting on the face of it was unjustified. It was held that the guidelines indicated in Satpal Singh's case (supra) were not followed.

8. It was held that allotment of marks was designed in a way to bye-pass the order of the High Court in Satpal Singh's case (supra) and pre-eminence was given to viva voce. Further, there was doubt about the sanctity of the selection. Accordingly, it was held that the selection was bad and there was no equity in favour of the selected candidates. There were mala fides involved in selection. However, time was granted to appear in a fresh selection and the 1248 Patwaris who are presently in position were allowed to continue till the end of July 2007.

9. Challenge was made by some others to the non-appointment of some candidates who were selected in terms of advertisement No.4/97. The writ petitioners in those cases claimed that though they were successful in the selection they were not issued appointment letters.

10. Stand of the State Government was that the Government had decided not to appoint the selected candidates on account of financial problems. The High Court found that they had option to appear in subsequent selection when subsequently any fresh selection process is initiated and their writ petitions will be considered but it was made clear that there should be relaxation of conditions of eligibility particularly with regard to the age of the selected candidates.

11. In support of the appeals, learned counsel for the appellants submitted that the approach of the High Court is clearly erroneous. The High Court failed to notice that the position in Satpal Singh's case (supra) was different. In fact various other decisions which were clearly applicable to the facts of the present cases had not been taken note of. Reference in this case was made to the decisions of this Court in Anzar Ahmad v. State of Bihar and Ors. (1994 (1) SCC 150), Kiran Gupta and Ors. v. State of U.P. and Ors. (2000 (7) SCC 719), Lila Dhar v. State of Rajasthan and Ors. (1981 (4) SCC 159) and Vijay Syal and Anr. v. State of Punjab and Ors. (2003 (9) SCC 401). Board supported this stand.

12. Learned counsel for the State supported the judgment of the High Court and learned counsel for the respondents-writ petitioners on the other hand submitted that the High Court was justified in its view.

13. The criteria for selection as fixed by the Board was as follows:

Academic record	60 marks	
Sports curriculum		5 marks
Handwriting		10 marks
Interview		25 marks

14. For the process of interview, seven different Committees were appointed which functioned between 20.5.1993 to February, 1994. About 1.10 lakhs candidates were interviewed who were short listed from amongst 1.25 lakhs candidates. The final result was declared and 2395 candidates were selected for appointment in terms of Haryana Revenue Patwaris (Group 'C') Service Rules, 1981. It is to be noted that the decision in Satpal Singh's case (supra) was rendered on 14.9.1993 whereas the criteria had only been framed on 19.5.1993. In Anzar Ahmad's case (supra) it was held that 100% marks can be ear-marked for the interview, if there was no composite test. In para 20 it was held as follows:

"In the instant case, we find that the State Government in its letter dated September 20, 1990 has clearly stated that selection should be made on the basis of interview. On the basis of this letter the Commission could have made the selection wholly on the basis of marks obtained at the interview. But in accordance with the past practice, the Commission has made the selection on the basis of interview while keeping in view the academic performance and with that end in view the Commission has allocated 50% marks for academic performance and 50% marks for interview. It cannot be held that the said procedure adopted by the Commission suffers from the vice of arbitrariness. By giving equal weight to academic performance the Commission has rather reduced the possibility of arbitrariness."

15. The Anzar Ahmad's case (supra) was followed by this Court in A.P. State Financial Corporation v. C.M. Ashok Raju (1994 (5) SCC 359). In para 9 it was observed as follows:

"We respectfully agree with the ratio in Anzar Ahmad's case and hold that the High Court was not justified in setting aside the allocation of 25% marks in the viva voce test."

16. In Kiran Gupta's case (supra) it was noted in para 25 as follows:

"In Anzar Ahmad v. State of Bihar (1994 (1) SCC 150) for appointment to the posts of Unani Medical Officer the Government prescribed that the Public service Commission shall select the candidates on the basis of interview. The Commission allocated 50% marks for academic qualification and 50% for interview. This Court, after referring to the aforementioned cases and relying upon Lila Dhar case (1981 (4) SCC 159) upheld the method of selection by interview alone. That decision was followed in A.P. State Financial Corporation v. C.M. Ashok Raju (1994 (5) SCC 359). In that case also selection of candidates by interview without a written test was upheld by this Court. The posts of Managers in the A.P. Financial Corporation were to be filled by interview without a written test. The Corporation approved the promotion criteria by viva voce without a written test and allocated marks under various heads; among them for interview 25% and for length of service 15% marks were prescribed. A Division Bench of the High Court while upholding the allocation of marks under various heads, reduced the percentage of marks for interview from 25% to 15% and increased percentage of marks for length of service from 15% to 25%. On appeal this court held that the High Court fell into patent error in reaching the conclusion that 25% marks for interview were, in the facts of that case, excessive. It was observed that there was no dispute that no written test was

prescribed for promotion to the post of Manager and above and the selection/promotion was only by viva voce test, so no limit could be imposed for prescribing the marks for interview."

17. The view was re-iterated in *Jaswinder Singh v. State of J & K* (2003 (2) SCC 132) and *Vijay Syal's case* (supra).

18. Emphasis laid by the High Court on the speech of Ch. Bhajan Lal appears to be not wholly appropriate in view of what has been stated by this Court in *Satpal Singh's case* (supra) in para 5.

19. Pursuant to the directions, the marks secured at the interview and in the handwriting by the selected candidates were filed. It appears that so far as the marks obtained for handwriting are concerned, in no case any selected candidate has secured more than 5 marks. The number of candidates and the marks secured by them are as follows:

	No. of Candidates	Marks obtained
8	1	
258	2	
508	3	
300	4	
55	5	

20. Learned counsel for the Board stated that records of 119 candidates were not available.

21. So far as the marks obtained by the selected candidates (2395) at the interview are concerned, the details are as follows:

	No. of Candidates	Marks Obtained
5	10	
7		11
15	12	
11	13	
22	14	
38	15	
129	16	
306	17	
381	18	
475	19	
410	20	
239	21	
100	22	
31	23	
6		24
	1	25

22. It is stated that the records of 219 candidates were not available.

23. These details and the records therefore do not appear to have been considered by the High Court. Further, the distinguishing features noted by this Court vis-à-vis those in *Satpal Singh's case* (supra) were also not noticed.

24. Since the High Court has not examined the materials in detail, it would be appropriate for the High Court to reconsider the matter in the light of decisions referred to above.

25. Learned counsel for the appellants have submitted that *Satpal Singh's case* (supra) is factually distinguishable. It

should also be considered by the High Court.

26. Since the matter is pending since long, we request the High Court to dispose of the matter as early as possible preferably within six months from the receipt of copy of our judgment. The appellants who are continuing to function as Patwaris in terms of the order passed by the High Court and continued by this Court, shall continue till the disposal of the matter by the High Court. It shall be open to the High Court to pass such interim orders as it may deem appropriate in accordance with law. The appellants were not parties before the High Court. If they apply for impleadment, necessary orders shall be passed by High Court.

27. The appeals are disposed of with no order as to costs.

JUDIS