

“equal to a particular number” means not less than that particular number as also not more than that particular number. It conveys the idea that it must be exactly the same. Thus it cannot be said that section 271(1)(i) does not prescribe the lower limit for imposing the penalty. When this section says that the quantum of penalty imposed must be equal to 2 per cent of the tax for every month during which the default continued, it means that it cannot be less than 2 per cent of the tax for every month during the default continues because it cannot be more. There is also an upper limit which is that, irrespective of the months of default, it cannot exceed 50 per cent of the tax.”

(20) Therefore, the answer to the third question is that the rate of 2 per cent per month under section 271(1)(a) is absolute and it cannot be reduced.

(21) The question referred to us are, therefore, answered as indicated above. In the circumstances of the case, we make no order as to costs.

JAIN, J.—(2) I agree.

N. K. S.

CIVIL MISCELLANEOUS

Before R. S. Narula, J.

CHHOTE LAL PATWARI,—*Petitioner.*

versus

THE STATE OF HARYANA, ETC.,—*Respondents.*

Civil Writ No 72 of 1968

January 31, 1972.

Punjab Revenue Patwaris, Class III Service Rules (1966)—Rule 14—Patwari working on probation for more than three years against a post not made permanent—Whether can claim confirmation—Presumption of automatic confirmation—Whether applies.

Chhote Lal Patwari v. The State of Haryana, etc. (R. S. Narula, J.)

Held, that it is clear from language of rule 14(3(ii) and (iii) of Punjab Revenue Patwaris, Class III Service Rules, 1966, that proviso (c) to sub-rule (1) of the Rule overrides the proviso to clause (b) of sub-rule (3) to the extent that though the total period of probation including any extension in service cannot exceed three years, and though the entire period of probation may not have been spent against a permanent post, a Patwari cannot claim confirmation even after the successful completion of the maximum period of probation if he was neither appointed against a permanent vacancy, nor has the vacancy against which he is serving become permanent before or after the expiry of his period of probation. If the vacancy against which a Patwari is serving becomes permanent, he is entitled to reckon even service rendered against a temporary vacancy in an officiating capacity to complete the period of three years and claim confirmation under rule 14(3) (a) (ii) on completing the maximum period of probation satisfactorily. In the face of the specific statutory provision contained in proviso (c) to rule 14(1), the presumption of automatic confirmation cannot apply to the case of a Patwari who may continue to officiate for more than three years in a temporary vacancy. (Para 8).

Petition under Articles 226 and 227 of the Constitution of India praying that a writ in the nature of certiorari, be issued quashing the impugned order dated 23rd December, 1967 passed by respondent No. 2 contained in Annexure 'A'.

Baldev Singh Khoji, Advocate, for the petitioner.

Naubat Singh, District Attorney, (Haryana), for the respondents.

JUDGMENT

NARULA, J.—Seven connected writ petitions (Nos. 69, 72, 421, 1178, 1179 and 1223 of 1968, and 2110 of 1969) filed by Patwaris serving in the State of Haryana against the orders of their reversion to mere candidature are being disposed of by this common judgment, as the relevant facts leading to the filing of the petitions are very similar and the questions of law to be answered in all these cases are identical. The facts of the case of Chhote Lal (Civil Writ 72 of 1968) which was the first case to be admitted out of the cases disposed of by this judgment may be noticed in the first instance.

(2) The name of the petitioner is admittedly borne on the register of Patwari candidates. He was appointed an officiating Patwari on February 11, 1958. He was reverted to candidature on May 2, 1962, on account of his conviction in a criminal case. Consequent on the conviction having been subsequently set aside by the High Court, the petitioner was reinstated as Patwari on June 10, 1964 (there is some

difference between the relevant dates given in the writ petition as compared with the dates given in the written statement filed by the Collector. Both sides have agreed that the dates mentioned in the Collector's written statement should be treated as correct for the purpose of deciding this writ petition. The dates given by me above are, therefore, those mentioned in the State's return). For all practical purposes, therefore, the petitioner continued to officiate as a Patwari till he was reverted to candidature by the impugned order, dated December 23, 1967 (Annexure 'A' to the writ petition).

(3) As many as 39 postings and transfers of Patwaris in Gurgaon district were notified by the impugned order. 21 of those resulted in reversions. The name of Chhote Lal petitioner occurs at serial No. 39 in that order. His writ petition was filed on January 8, 1968. The Motion Bench (A. N. Grover and D. K. Mahajan, JJ.), while admitting the petition on January 9, 1968, stayed the operation of the order of reversion. The name of Raghbir Parshad, who filed Civil Writ 69 of 1968; on the same day (January 8, 1968), occurs at serial No. 27 in the impugned order. The name of Kishan Chand (petitioner in Civil Writ 421 of 1968) is at serial No. 24 in the same order. Out of the remaining four writ petitions three are directed against the order of the Deputy Commissioner, Gurgaon, dated March 16, 1968. Copy of that order has been filed as Annexure 'A' to each of those petitions (Civil Writs 1178, 1179, and 1223 of 1968). Civil Writ 2110 of 1969 is directed against the order of the Collector, Gurgaon, dated August 13, 1969. The petition of Ram Bhajan (Civil Writ 1178 of 1968) was directed to be heard with the earlier two petitions (Civil Writs 69 and 72 of 1968). and the subsequent petitions were thereafter connected with the previous cases. The operation of the impugned orders of reversion was stayed *ad interim* in all the cases. There is no material distinction between the relevant facts of these cases except for the case of Raghbir Parshad (Civil Writ 69 of 1968) which will be dealt with separately. In all the seven cases the relevant dates are given in the respective written statements filed in those cases which have been admitted to be correct by the counsel for the petitioners.

(4) The written statements have been filed in all the seven cases in almost identical terms except for the difference in the relevant dates and the details of the replies to the specific allegations regarding the alleged discrimination in the matter of retention of persons

Chhote Lal Patwari v. The State of Haryana, etc. (R. S. Narula, J.)

junior to the respective petitioners in service while passing the impugned orders of reversion. Replication has been filed by the writ-petitioner only in one case, i.e., in Civil Writ 69 of 1968, and that is why it is being dealt with separately.

(5) The common argument advanced in all these petitions is that the impugned orders are liable to be quashed as those are violative of Article 311(2) of the Constitution on the ground that the petitioners have become permanent Patwaris by operation of rule 14 of the Punjab Revenue Patwaris, Class III Service Rules, 1966 (hereinafter called the 1966 Rules), and, therefore, their reversion amounts to reduction in rank, if not to removal from service. At the time of the initial appointment of the petitioners, they were admittedly governed by the rules contained in Chapter 3 of the Punjab Land Records Manual. During the course of this judgment, I will refer to those rules as the "old rules". Under rule 3.11(1) of the old rules, the appointment of patwaris rested with the Collector. Sub-rule (2) of rule 3.11 prescribed that the office of Patwari in any circle was to be filled, whether temporarily or permanently, by a selection from the register of candidates. Sub-rule (3) is not relevant for our purposes. Sub-rule (4) of rule 3.11 provided that priority of entry in the register of candidates, or of the date of passing the Patwar examination should be taken into account, but the Collector may select any qualified candidate whom he considers most suitable for the vacancy, bearing in mind the circumstances of that vacancy and also those of the villages of the circle. Rule 22 of the 1966 Rules expressly repealed the old rules. Proviso to rule 22 states that "any order made or action taken under the rules so repealed shall be deemed to have been made or taken under the corresponding provisions of these rules (1966 Rules). The 1966 Rules apply to the posts specified in Appendix 'A' to those rules (rule 1(3)). Rule 3 states that the Service shall comprise the posts shown in Appendix 'A' to the rules. The mode of acceptance of Patwari candidates is detailed in rule 4. Rule 9 empowers the Collector to make appointments to the Service. Rule 10(1) (a) authorises the appointment of Patwaris to be made either by promotion from amongst Assistant Patwaris or by direct appointment from amongst the accepted Patwari candidates, or by transfer of an official already in the service of the State Government. Rule 11 in contradistinction to rule 3.11(4) of the old rules directs that appointments from amongst Patwari candidates shall be made in the order in which their names appear in the register of Patwari candidates. Rule 14 deals with probation. The relevant extract from the rule is quoted below :—

"14. Probation—(1) Persons appointed to the Service shall remain on probation for a period of two years, if recruited

by direct appointment, and one year if recruited otherwise:

Provided that—

(a) & (b) * * * * *

(c) any period of officiating appointment in the Service shall be reckoned as a period spent on probation but no member who has thus officiated shall, on the prescribed period of probation, be entitled to be confirmed, unless he is appointed against permanent post.

(2) * * * * *

(3) On the completion of the period of probation of a person, the appointing authority may,—

(a) if his work or conduct has, in its opinion, been satisfactory,—

(i) confirm such person from the date of his appointment, if appointed against a permanent vacancy; or

(ii) confirm such person from the date from which a permanent vacancy occurs, if appointed against a temporary vacancy; or

(iii) declare that he has completed his probation satisfactorily, if there is no permanent vacancy; or

(b) if his work or conduct has not been, in its opinion, satisfactory,—

(i) dispense with his services,

(ii) extend his period of probation and thereafter pass such orders as it could have passed on the expiry of the first period of probation:

Provided that the total period of probation including extension if any, shall not exceed three years.”.

Chhote Lal Patwari v. The State of Haryana, etc. (R. S. Narula, J.)

(6) The submission of the learned counsel for the petitioners is that the petitioners having admittedly been recruited to the Service "by direct appointment from amongst the accepted Patwari candidates" were required to remain on probation for a period of two years under rule 14(1), and even though the service rendered by them was in an officiating capacity, proviso (c) to rule 14(1) does not permit the authorities to exclude that part of their service from the period of probation because officiating appointment in the Service has to be reckoned as period spent on probation. It is on that basis that Chhote Lal has claimed that having been recruited directly in February, 1958, and having continued to work in officiating capacity right up to December 23, 1967, he should be deemed to have become a permanent Patwari as he had rendered service in officiating capacity as a statutory probationer for more than the maximum prescribed period of probation, that is more than three years. The State's reply to this argument, as brought out in the Collector's return, is three-fold, viz., (i) that the petitioner has not been in service continuously for three years after the enforcement of the 1966 Rules, as he was ordered to be reverted on December 23, 1967, within less than two years of the coming into force of those rules which were enforced from January 7, 1966; (ii) that the petitioner was never appointed against a permanent post, but was employed in temporary stop-gap vacancies, and, therefore, he was never a probationer, but was a mere Patwari candidate who was officiating against the post of a Patwari on a purely temporary basis; and (iii) the petitioner not having been appointed against a permanent vacancy, he has been reverted merely on the basis of seniority and, therefore, the provisions of Article 311(2) of the Constitution are not applicable to his case.

(7) The correctness of the statements made in the affidavit of the Collector has not been disputed by way of any counter-affidavit filed by any of the petitioners except Raghbir Parshad (petitioner in Civil Writ 69 of 1968).

(8) Mr. Naubat Singh, the learned counsel for the State of Haryana, presses all the three defences referred to above into service. His first argument has been sought to be met by Mr. B. S. Khoji on the basis of the judgment of this Court in *Shri Ram Rattan Patwari v. The State of Punjab and others* (1). It was held in that

(1) 1967 L.L.T. 127 (Revenue Rulings).

case that by operation of the proviso to rule 22 of the 1966 Rules, appointment of the petitioner should be deemed to have been made under rule 11 of the 1966 Rules, and their conditions of service in spite of their appointment having been made prior to 1966 have to be determined according to the 1966 Rules. The provisions of rule 14 have been invoked by the petitioners in that manner. Counsel for the State contends that the only officiating appointment in the Service which entitles a Patwari to claim confirmation is service which is rendered against a permanent post as proviso (c) to rule 14(1) specifically states that no member of the Service who is officiating shall on the completion of the prescribed period of probation be entitled to be confirmed unless he is appointed against a permanent post. There is no averment in the writ petition about the petitioner having been appointed against a permanent post. The statement of the Collector in his affidavit about the petitioner having been appointed against temporary posts as stop-gap arrangement has not been denied in any rejoinder or counter-affidavit in the six cases. I think proviso (c) to sub-rule (1) of rule 14 overrides the proviso to clause (b) of sub-rule (3) of rule 14 to the extent that though the total period of probation including any extension in service cannot exceed three years, and though the entire period of probation may not have been spent against a permanent post, a Patwari cannot claim confirmation even after the successful completion of the maximum period of probation if he was neither appointed against a permanent vacancy, nor has the vacancy against which he is serving become permanent before or after the expiry of his period of probation. This is clear from the language of rule 14(3) (ii) and (iii). If the respective vacancies against which the petitioners were serving had become permanent, they would have been entitled to reckon even service rendered against a temporary vacancy in an officiating capacity to complete the period of three years and claim confirmation under rule 14(3) (a) (ii) on completing the maximum period of probation satisfactorily. But in the six out of the seven cases with which I am dealing in this judgment, there is nothing to show that any of the concerned Patwaris was working against a permanent vacancy even at the time of his reversion. In the face of the specific statutory provision contained in proviso (c) to rule 14(1), the presumption of automatic confirmation referred to in the *State of Punjab v. Dharam Singh* (2), cannot apply to the case of a

Chhote Lal Patwari v. The State of Haryana, etc. (R. S. Narula, J.)

Patwari who may continue to officiate for more than three years in a temporary vacancy. Since I am assuming the statement of the Collector to be correct that in all these six cases, the petitioners were appointed against temporary vacancies from time to time even though they were adjusted against such vacancies in such a manner as to continue in officiating service for long periods, I am unable to hold that these petitioners had become permanent Patwaris. That being so, the first argument of the learned counsel for the petitioners must fail except in the case of Raghbir Parshad (Civil Writ 69 of 1968). In that case, the petitioner has filed a counter-affidavit with the leave of the Court. In that counter-affidavit it has been denied that the petitioner was appointed only on officiating basis, and it has further been stated that at the time of his reversion a large number of other persons junior to the petitioner were retained in service, and the record of service of those persons was no better than that of the petitioner. It has been sworn by the petitioner in paragraph 6 of his replication that he was appointed "against a regular permanent post and it is denied that the petitioner was appointed on temporary basis in the stop-gap vacancy." It has been further stated by him that at the time of his reversion even non-Scheduled Caste Patwaris like Hari Chand and Nur Mohd. were retained in service. Though that counter-affidavit was filed as long ago as in January, 1970, no counter-affidavit has been filed by the Collector or by anybody else on his behalf controverting any of the above-mentioned material statements made by the petitioner. In these circumstances I assume that at the time of signing his written statement, the Collector has probably not appreciated the difference in the case of Raghbir Parshad. In the absence of any evidence in rebuttal I presume his statements contained in his affidavit to be correct. That being so, Raghbir Parshad having continued to officiate for more than three years before the passing of the impugned order against a permanent vacancy should be presumed to have been confirmed according to the rule laid down by the Supreme Court in *Dharam Singh's case* (2) (supra). Since he was reverted without compliance with the requirements of Article 311(2) of the Constitution, his reversion cannot be sustained.

(9) The allegation of the juniors having been retained while reverting the petitioners in the other six cases has been successfully met

with by the State in its return and the reasons of retention of each of the persons named by those petitioners have been ascribed in the written statement. I am unable to find any invalidity in those reasons.

(10) For the foregoing reasons Raghbir Parshad's petition (Civil Writ 69 of 1968) is allowed, and all the remaining six petitions are dismissed though without any order as to costs in any of the cases. Nothing stated in this judgment will effect the rights of the six unsuccessful petitioners to continue in service as Patwaris or to be confirmed as such with effect from any particular date if it is found that no case is made out for reverting them again at this stage.

N.K.S.

REVISIONAL CIVIL

Before Prem Chand Pandit, J.

CHARAN SINGH,—Appellant.

versus

DEWAN SINGH, ETC.,—Respondents.

Civil Revision No. 151 of 1971.

January 31, 1972.

Code of Civil Procedure (Act No. V of 1908)—Section 99—Order 5, Rules 12, 14 and 28—Order 9, Rule 13—Defendant in a suit serving in the Army—Service on such defendant—Whether has to be under Order 5, Rule 28—Requisites for effecting service under order 5, rule 14—Stated—Ex parte decree passed against a defendant not properly served—Court—Whether bound to set it aside on that score alone.

Held, that the moment the trial Court is made aware of the fact that a defendant in a suit is serving in the Army, it should take recourse to the provisions of Order 5, rule 28 of the Code of Civil Procedure which is a specific provision meant for effecting service on a defendant who is a soldier, sailor or airman. Serving such a defendant under order 5, 14 is improper.