

PESHAWAR HIGH COURT, MINGORA BENCH
(DAR-UL-QAZA), SWAT

FORM OF ORDER SHEET

Court of

Case No..... of.....

Serial No. of order or proceeding	Date of Order or Proceedings	Order or other Proceedings with Signature of Judge and that of parties or counsel where necessary.
1	2	3
	<u>05.04.2022</u>	<p style="text-align: center;"><u>W.P No.130-M/2022 with Interim Relief</u></p> <p>Present: <u>Mr. Sabir Shah, Advocate for the petitioners.</u></p> <p style="text-align: center;">***</p> <p><u>MUHAMMAD NAEEM ANWAR, J.-</u> All the six petitioners are the residents of District Swat they, after completion of their Patwar course, have applied for the post of Patwari (BPS-09), in pursuance to the advertisement of respondent No.5 (Deputy Commissioner/District Collector, Swat) dated 16.11.2020, by which, applications were invited for the post of Patwari, with basic qualification i.e. (i) <u>Intermediate or equivalent passed;</u> (ii) <u>Passed Patwar examination;</u> (iii) <u>being enlisted in the Patwar Register Candidate;</u> and (iv) <u>Age limit of 18-35 years.</u> They appeared in the examination/test and the Departmental Selection/ Promotion Committee in its meeting held on 05.01.2021 in the office of respondent No.5, recommended thirty-one (31) candidates, who appeared in test and qualified the same, for their appointment and</p>

accordingly they were appointed by respondent No.5 through office order dated 14.01.2021 bearing endorsement No.1625-57/1/4DK. The petitioners are aggrieved from advertisement dated 25.01.2022, whereby three posts of Patwari (BPS-09) have recently been advertised from District Swat, they filed instant petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, with the following prayer:

“It is, therefore, very humbly prayed that, by acceptance of the instant writ petition:

- a) **Impugned advertisement dated 25.01.2022 by respondent No.5, may kindly be declared null and void upon the fundamental rights of the petitioners, be struck down.**
- b) **Respondents may kindly be directed to appoint the petitioners in accordance with the provisions of Land Record Manual and list already prepared of the passed candidates”**

2. Learned counsel for the petitioners contended that in the merit list, the candidates at serial No.1 to 4, 7 to 25, 27 & 36, 38 to 42, 44 & 45 have qualified the test & interview including the present petitioners, who were at serial No.39 to 42, 44 & 45, whereas the candidates at serial No.6, 26 & 43 could not qualify the test. Similarly, the candidates at serial No.5, 23, 30 & 37 were overage, as such they were dropped from the contest. He further contended that the petitioners were included in the list of

38 eligible candidates, wherefrom 31 were appointed, thus, the three vacant/advertised posts were required to be filled up by appointment amongst the petitioners, who being high in merit position, as such, the advertisement dated 25.01.2022, for the recruitment of Patwaris is illegal, unlawful, against the provisions of Land Record Manual and established norms of justice, hence, it is ineffective upon their rights. He added that the advertisement for recruitment of Patwaris while going through test/interview, is violative of the provisions of Land Record Manual and West Pakistan (Northern Zone) Patwar Subordinate Service Rules 1963, as such, ineffective upon the rights of the petitioners. He also contended that the revenue authorities/ respondents No.1 to 5, being based upon the advertisement, are conducting test and interview for appointment of Patwaris in District Swat, as per their whims and wishes, which is violative to the Rules framed under chapter 3, Part-II of the Land Record Manual, consequently it would amount to extreme injustice and discrimination to the petitioners as they are already enlisted in the Patwari Register in the chronological manner and have also passed the test/interview in connection with the process initiated through advertisement earlier to the disputed one. He

vociferated that once the petitioners were enlisted in the Register maintained under chapter 3 of the Land Record Manual, according to the amended rules of 2015 for test and interview, have passed the test and interview then compelling them to go through same process afresh, is nothing but maladministration on part of the respondents. In support of his submissions, he placed reliance on the judgment of this Court 30.10.2018 rendered in W.P No.4785-P/2016 titled "Ainullah etc Vs. Government of Khyber Pakhtunkhwa and others".

3. Arguments heard and record perused.

4. It appears from the grounds of the instant petition that the petitioners have based their claim upon the provision of Chapter 3 of Land Record Manual and the amendment made therein in the year 2015 for the purpose of test/interview by alleging that they have went through the process of test/interview for the post of Patwari applied by them, in pursuance to the earlier advertisement, therefore, the fresh advertisement until the petitioners, whose names are in the waiting list, are appointed, is violative to their right. Ground No. (iii) of the petition is of worth perusal, which reads as under:

"iii. That, once the petitioners enlisted in the registered maintained under chapter 3 of the Land Record Manual and according to the amendment made in 2015 for test and interview, passed the test/interview, then

compelling them to go through the same test/interview process would not only be waste of time and worst form of the maladministration but also in violation of the law on the subject.”

5. The mode of the recruitment of Patwaris in the revenue department remained controversial and this Court in **W.P No.278 of 2012** (D.I Khan Bench) issued writ in term of directing respondent for appointment of Patwaris according to the position and seniority in the Register of Patwari Candidates, whereas in **W.P No.129 of 2012**, this Court has held that appointment of Patwari (s) shall be made after conducting test/interview and after dispatching the merit list. Thus, the Assistant Secretary Establishment submitted through a letter addressed to the Registrar of this Court requesting therein that the controversy arising out of the two judgments of this Court may be resolved, upon which, the then Hon’ble Chief Justice has constituted a Larger Bench for determination as to whether the appointment of Patwari is to be made in accordance with Para 3.6 of Land Record Manual or otherwise? The Hon’ble Larger Bench vide its judgment dated 04.02.2015 rendered in **W.P No.3398 of 2014** decided that **“till the amendment in the rules, respondents are bound to make appointments, in accordance with the existing rules and policy, which governs the appointment of Patwari.”** Accordingly, the

new amendment in the Rules were notified on 25th of November, 2016, which were assailed in two writ petitions No.4785-P/2016 and 1984-P/2017, but both the petitions were dismissed on 30.10.2018, thereafter Review Petition No.247-P of 2018 was filed, which was decided by this Court on 22.01.2019. The operative part of the said order is reproduced as under:

“4. The issue decided by this Court in Writ Petition No.4785 of 2015 was that till now rules are not framed by the Government, the respondents/government was bound to make appointment of Patwari in regard to the old policy, so inadvertently the writ petitions were dismissed. As such, the instant petition are disposed of in term that the last paragraph of the impugned judgment is rectified as “Consequently, both the writ petitions referred to above were disposed of accordingly.”

6. It is pertinent to mention here that the law relating to the recruitment of Patwari had already been amended and was notified through notification dated 25.11.2016, earlier to the decision of referred Writ Petitions and in that background, a meeting of Standing Service Rules Committee convened prior to amending the rules, within the mandate of Chapter No.VI of Establishment Code Khyber Pakhtunkhwa, “(Estacode)” which provides the Constitution of Standing Service Rules Committee, which reads as:

“Constitution of Standing Service Rules Committee.

Under the provision of rule 3 (2) of KPK Civil Servant (Appointment, Promotion and Transfer) Rules, 1989, the Provincial Government is pleased to consider it with

immediate effect and in supersession of services and General Administration Department Notification No. SOR-II (S&GAD) 2 (a) / 97 dated 12th September, 2001, the Standing Service Rules Committee with the following composition.”

The formation of the committee was as under:

1.	Administrative Secretary concerned	Chairman
2.	Additional Secretary (Regulation) E&A Department	Member
3.	Additional Secretary Finance Department	Member
4.	Additional Secretary Law Department	Member
5.	Head of attached Department concerned	Member
6.	Deputy Secretary (Admn) of the Department concerned	Member/ Secretary

7. Consequently, in the light of Standing Service Rules Committee (SSRC), the Government of Khyber Pakhtunkhwa, Revenue and Estate Department, on 26th of December 2008, issued a notification, which was published in the official Gazette Part-III, on 4th February, 2009, which reads as;

“No. 32102-61/Admn:/135/SSRC. - In pursuance of the provisions contained in sub-rule (2) of rule 3 of the North West Frontier Province Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 read with the Cabinet Division Notification No. SRO,

457(1)/ 2001 dated 28th June, 2001 and in supersession of all previous rules issued in this behalf, the Revenue and Estate Department, in consultation with the Establishment and the Finance Department, hereby lays down the method of recruitment, qualification and other conditions specified in column 3 to 7 of the Appendix to this Notification and applicable to posts born on the cadre strength of Revenue and Estate Department specified in column 2 of the said appendix”

The notification was issued by the Government of Khyber Pakhtunkhwa Revenue and Establishment Department, in consultation with the Establishment and the Finance Department, Peshawar, regarding the method of recruitment, qualification and other conditions as specified in columns No.3 to 7 of the Appendix to the said notification, whereby serial No.8 pertains to Patwari BPS-05 (as then it was), which reads as under:

1	2	3	4	5	6	7
8	Patwari-BPS-5	District Officer (Revenue & Estate)/ Collector”	Intermediate or equivalent qualification, who have passed the Patwari Examination having one year diploma in information technology from any institution recognized by Board of Technical education	18 to 30	By initial recruitment	By initial appointment from amongst the Patwari passed candidates entered in Register maintained by the District Collector of the District concerned having one year diploma in information technology from any institution recognized by Board of Technical education. The condition of diploma will be applicable after three years from the date of issuance of Notification

8. It is also significant to note that earlier to the amendment, Patwaris were appointed in BPS-05, however, the Board of Revenue, Government of Khyber Pakhtunkhwa, upgraded the post of Patwari from BPS-05 to 07 and thereafter, from BPS-07 to 09. Before framing

of the Rules, the basic qualification for Patwari was matric with Patwar passed course, but consequent upon the upgradation of post from BPS-05 to 07 and, thereafter from BPS-07 to 09, the qualification was accordingly enhanced i.e., with computer literate. The rules, thereafter, were amended to meet the object of the computer record with regard to revenue administration post, as such, the notification was issued and the amendment was made, in the Appendix, against serial No.8 of column No.7, for existing entry, the following shall be substituted; "By initial recruitment from amongst the Patwar passed candidates Register of Tehsil or District concerned on the basis of Test and Interview to be conducted after advertising the posts. Thus, at the time of the decision of W.P No.4785-P/2016, amended rules were in filed, whereafter for the purpose of appointment of Patwari, test and interview with basic qualification was one of the pre-conditions and this amendment is in consonance with Para 3.6 of the Land Manual Record, which for ready reference is reproduced as under:

"3.6. List of Patwar Pass persons: -

1) For each Sub-Division, a list of all Patwar Pass persons shall be maintained by the Sub Divisional Collector/ Political Assistant in Form P-1 given in Appendix "G" with a view to have ready information about the availability of

		<p>eligible persons in the sub-Division to facilitate filling up the vacancies. However, the appointment of Patwaris shall be made strictly in accordance with Service Rules and the Recruitment Policy as may be applicable at the relevant time.</p> <p>2) Maximum Education qualification for the Patwari is F.A/ Intermediate. The name of only those persons shall be enrolled, who are bona fide residents of the concerned Sub Division.</p> <p>3) The name of the eligible persons shall be added to the list and when the result of the Patwar Examination is received and no eligible person shall be refused enrollment</p> <p>4) The aforesaid list shall be verified and up-dated by the Collector concerned at least once in a year so as to exclude the names of those, who have become un-available on account of death, migration, employment on any other post, etc.”</p> <p>9. Accordingly, sub-Para 1 of Para 3.6 of the Land Record Manual provides that “<u>appointment of patwari shall be made strictly in accordance with service rules and the recruitment police, as may be applicable at the relevant time</u>”. This was the background of the procedure for the appointment of Patwari in accordance with Khyber Pakhtunkhwa Civil Servant (Appointment, Promotion and Transfer) Rules, 1989 read with Para No.3.6 of the Land Record Manual, whereas the grievance of the petitioners is that they had appeared in test/interview and were enlisted in list of 38 candidates, wherefrom 31 were appointed, thus, the impugned advertisement is violative to their fundamental as well as statutory rights.</p> <p>10. Moreso, neither it was categorically mentioned by</p>
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the petitioners that the respondents have maintained a waiting list nor any such list was annexed with the petition, however, the Departmental Selection/ Promotion Committee in its meeting held on 05.01.2021 in the office of respondent No.5 has recommended the appointment of 31 candidates on the following grounds:

“Out of the above 45 patwar candidates, S. No.1,2, 3, 4, 7, 8, 9, 10, 11, 12, 13, 13, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 44 and 45 have qualify the test/ interview but S. No.06, 26 and 43 have does not qualify the test/interview and S.No.05, 23, 30, and 37 overage. The committee decided to drop them from the subject posts and the committee scrutinized all the relevant educational documents of the Patwar candidates and decided to fill up 31 candidates for the post of Patwari (BPS-09) amongst the passed candidates recommended them for the appointment as Patwaries (BPS-09) subject to verification of the documents.”

11. Even otherwise, the object of maintaining of the waiting list has properly been dealt with by the Government of Khyber Pakhtunkhwa Establishment Department (Regulation Wing), Peshawar, Pursuant to the judgment of the Apex Court, through Notification **No. SOR VI(E&AD)1-10/2010 dated 19.03.2013,** which reads as:

"Subject: - CHANGE IN THE RECRUITMENT POLICY REGARD IN MAINTENANCE OF WAITING LIST OF THE ELIGIBLE CANDIDATES- JUDGMENT OF THE SUPREME COURT OF PAKISTAN

Dear Sir!

I am directed to refer to this department circular letter No. SOR VI/E&AD/1- 10/05/Vol. IV dated 31.12.2008, and to state that the maintenance of the waiting list of eligible candidates for a period of 06 months in initial

recruitment were stopped in pursuance of judgment of the Supreme Court of Pakistan in case titled Musa Wazir and others v. N.W.F.P. Public Service Commission and others.

2. However in pursuance of a recent judgment of the Supreme Court of Pakistan in case titled Naimatullah and others v. NWFP Public Service Commission and others dated 05.10.2010, the said policy has been reviewed and it has been decided by the competent authority that from now onwards, the Public Service Commission or Departmental Selection Committee as the case may be, may maintain a waiting list of eligible candidates in the respective zones up to the commencement of the pre-service training of the candidates of the same selection or till expiry of 03 months, where no such pre-service training is prescribed. The Public Service Commission or the Departmental Selection Committee may in case of non-joiners recommend the next eligible candidate on top of the merit list from the respective zones up to the commencement of the training of the appointees of the same selection or for three months where no such training is prescribed provided that the process does not in any way affect the right of any other selectee or appointee.

3. I am, therefore, directed to request that above policy decision may kindly be brought into the notice of all concerned for strict compliance".

Record reflects that on 14.01.2021, thirty-one (31)

Patwaris were appointed whereas the impugned advertisement was published on 25.01.2022, almost after a period of one year. Reliance: Civil Petition No.1697/2010, titled "Naimatullah and another vs. N.W.F.P., Public Service Commission, Peshawar and others" dated 05.10.2010, "Tahsin Ullah Versus Chairman Khyber Pakhtunkhwa, Public Service Commission and 6 others" (2021 PLC (CS)1611), "Saiful Haq Versus Government of Khyber Pakhtunkhwa through Secretary and 4 others" (2020 PLC (CS) 276).

12. Therefore, recruitment from qualified individuals from all eligible candidates would be an endeavor to achieve the best selection which could be determined solely on the basis of relative ability, knowledge, and skills, after fair and open competition which assures that all eligible candidate should receive equal opportunity and in essence, the fresh process through advertisement for recruitment of Patwari is an opportunity to keep the recruitment process fair and open. The petitioners can compete with others in the fresh process of recruitment of the Patwaris, however, by no stretch of imagination they could be held entitled for appointment on the basis of the process, which was started somewhere in the year 2020 and on the basis of said process 31 candidates, who were high in merit position, were appointed, thus, neither the respondents could be restrained from initiating fresh process till exhausting the list from the waiting candidates of the earlier process nor the fresh eligible candidates can be deprived of, however, all the fresh and new candidates, within the prescribed criteria including the age limit, can compete with each other, for their appointment.

13. Learned counsel for the petitioners has not been able to point out any contravention of law, statute or

procedure adopted and initiated by the respondents for appointment through impugned advertisement. When so, we do not feel persuaded to admit this petition to regular hearing and, as such, instant being without any merit is hereby dismissed in *limine*.

Announced
05.04.2022


JUDGE


JUDGE

Office
11/4/2022

Sabz Ali* (D.B)

HON'BLE MR. JUSTICE MUHAMMAD NAEEM ANWAR
HON'BLE MR. JUSTICE MUHAMMAD IJAZ KHAN