HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

WP(C) No.2669/2023
CM Nos.6342-43/2023

Reserved on: 18.10.2023
Pronounced on: 07.12.2023

Mir Ehsaan UlHaq and others …Petitioner(s)/Appellant(s)

Through: Mr. R. A. Jan, Sr. Advocate, with
Mr. Nabeel Ayoub Khawja, Advocate.

Vs.

UT of J&K and others. ...Respondent(s)

Through: Mr. MohsinQadiri, AAG, with
Ms. MahaMajeed, Advocate.
Mr. Z. A. Qureshi, Sr. Advocate, with
Ms. Razia Amin, Advocate.
Mr. AltaqHaqani, Sr. Advocate, with
Mr. Asif Wani, Advocate.
Mr. Bhat Fayaz Ahmad, Advocate.

CORAM:

HON'BLE THE CHIEF JUSTICE
HON'BLE MS. JUSTICE MOKSHA KHAJURIA KAZMI, JUDGE

O R D E R

N. Kotiswar Singh- CJ

01. The present petition has been filed by the petitioners being aggrieved by the decision of the Central Administrative Tribunal, Srinagar Bench, dated 27.09.2023 passed in O.A. No.921/2022, by which the prayer of the applicant-petitioners for determining their seniority in the post of Patwari on the basis of the select list dated 13.08.2012 prepared as per results of the initial entrance examination conducted by the J&K Board of Professional

Entrance Examination (BOPEE) for the purpose of selecting Patwar Trainees pursuant to the advertisement No.20-BOPEE of 2012 dated 09.05.2012 and in terms of Rule 24 of the J&K Classification, Control and Appeal Rules, 1956, (CCA Rules) which provides for determining the seniority on the basis of the merit obtained in the competitive examination was rejected. The plea of the petitioners is that the seniority should not be based on the Departmental Examination conducted before they were appointed as Patwaris as had been done.

BASIC FACTS:

02. Before we examine the rival contentions of the parties, it would be appropriate to refer to the basic facts of the case which are briefly summarized as under.

03. An advertisement was issued by the BOPEE vide Notification no. 20-BOPEE of 2012 dated 09.05.2012 for conduct of Common Entrance Test for selection of 1500 Patwar Trainees by laying down the eligibility criteria as mentioned in the said notification, namely, that the candidate must be permanent resident of J&K State (as then), must have passed B.A./B.Sc./B.Com/BCA/BBA/ or other Graduate Degree from a recognized university, must have working knowledge of Urdu and not below 18 years and not above 37 years, with age relaxation provided for reserved candidates. It may be mentioned, though not very relevant for our purpose, that such Entrance Test/Selection Test was to be conducted by the Jammu and Kashmir Service Selection Recruitment Board (SSRB), but the State Cabinet took a decision vide its Decision No. 62/10/2012 dated 09.04.2012 that instead of the SSRB the Jammu and Kashmir Board of Professional Entrance Examination, (BOPEE) would conduct the said test. There is no

dispute with regard to the eligibility of the contesting parties or the conduct of the said test, and as such, it may not be necessary to dwell upon in much detail about those aspects.

However, there is a very important part of the advertisement which would be highly relevant for determining the issues raised in this appeal. The said advertisement contains a note at the bottom under the heading "IMPORTANT NOTE" which reads as under:

> *"Selected candidates after completion of training of nine months shall have to qualify the Patwar Examination to be conducted by the Financial Commissioner (Revenue) and the qualified candidates shall have to apply to SSRB for being selected as Patwari as and when these posts are advertised by SSRB. The selection of the candidates for Patwar training and subsequent passing of the Patwar Examination shall confer no right for being appointed as Patwari."*
>
> *(emphasis added)*

04. Pursuant to the said advertisement, the written test was duly held and results declared vide Government order No.201 REV(NG) of 2012 dated 13.08.2012, in which the list of selected candidates as Patwar Trainees as per their merit for undergoing the Patwar training in different districts was published. It appears that the present petitioners were placed higher than the private respondents in the select list of the Patwar Trainees.

05. After being selected as Patwar Trainees, the selected candidates underwent requisite training and took part in the Departmental Examination conducted by the Department (i.e., Revenue Training Institutes at Jammu and Srinagar) and the results of the same were declared vide order No. FC(A) 233 of 2013 dated 25.11.2013. In the said list prepared on the basis of the results of the Departmental Examination, petitioners were figuring below some of the private respondents, though they were placed higher in the merit list in the select list prepared at the time of selection as Patwari

Trainees in the examination conducted by the BOPEE in 2012 as mentioned above.

06. After these Patwari Trainees had successfully completed their training and passed the departmental examination, they became eligible for appointment as Patwaris, for which they were required to go through another selection process. As also mentioned in the initial advertisement dated 09.05.2012, the qualified candidates were required to apply to the SSRB to be selected as Patwaris, as and when these posts are advertised by SSRB. As mentioned above, it was categorically specified in the advertisement that the selection of the candidates for Patwari training and subsequent passing of the Patwar examination shall not confer any right for being appointed as Patwari.

07. However, it appears that a Cabinet decision was taken on 24.07.2013 to dispense with the subsequent selection process, and to proceed to make appointment as Patwaris directly of those who had successfully completed the Patwar Training course and passed the Departmental Examination purportedly on the ground that the procedure adopted for making initial selection of Trainees was carried out by BOPEE in a transparent manner and would also save time. It was also decided that the Patwar Trainees who do not qualify the training in the first attempt shall be given a second chance to qualify and upon doing so, they shall be appointed as Patwaris.

08. Based on the aforesaid Cabinet decision, sanction was accorded for appointment of 945 candidates as Patwaris who had successfully completed Patwar Training course from the Revenue Training Institutes, Srinagar/Jammu in the Revenue Department as per the district-wise breakup, vide Government Order No. Rev/NG/314 of 10.12.2013.

09. Thereafter, the seniority list of the Patwaris was prepared, in which the petitioner-appellants were shown to be junior to some of the Patwaris who were placed below them in the Select List prepared for selecting Patwari Trainees in 2012, on the basis of the merit in the Departmental Examination in which the private respondents were placed above the petitioner appellants in merit.

10. From the above, it appears that a candidate seeking appointment as a Patwari has to go through three phases of competition. In the *first competition*, he must clear the test to be selected as a Patwar Trainee. The *second competition* occurs after he is selected as a Patwar Trainee, as he has to successfully complete the training course for which he has to pass the Departmental Examination. He then becomes eligible for appointment as a Patwar. The *third competition* happens when the actual recruitment process takes place to select Patwaris amongst the eligible Patwar Trainees which is generally conducted by the SSRB, as also mentioned in the Advertisement.

11. In the present case, as mentioned above, the third competition was skipped by a Cabinet decision and the Government proceeded to appoint the Patwar Trainees who had successfully completed the training course on passing the Departmental Examination, as Patwaris. Thus, the third competition never took place in the present case, in spite of categorical announcement in the Advertisement that the selection of the candidates for Patwar training and subsequent passing of the Patwar Examination shall not confer any right for being appointed as Patwari.

SUBMISSION OF THE PETITIONERS:

12. According to Mr. R. A. Jan, learned Senior Counsel for the petitioners, the same is not permissible as the same is contrary to the

Cabinet decision as well as Rule 24 of the J&K Classification, Control and Appeal Rules, 1956 (in short, CCA Rules) which provides for determining seniority and as per the aforesaid Rule 24, the seniority is to be based on the merit list in terms of the initial competitive examination conducted by the BOPEE in 2012 and not based on the subsequent Departmental Examination.

13. Ld. Senior Counsel submitted that in the Cabinet Memorandum it has been clearly mentioned that the selected trainees have already gone through a screening process which was carried out by BOPEE in a transparent manner,and hence it was to be decided as to whether the procedure adopted for making selection of trainee can be considered for their appointment as well, or the normal process of selection through J&KSSRB was to be followed. The Memorandum also mentioned that the number of Patwaris trained was almost equal to the number of vacancies existing in the Department of Revenue, PHE, I&FC, Forest Department and only those candidates can qualify for these posts who would qualify the examination to be conducted by the Revenue Training Institutes. It was also mentioned therein that in view of the process already adopted for selection of trainees, the procedure for making recruitment through SSRB in respect of Patwaris can be dispensed with and accordingly, the following resolution was submitted to the Cabinet for consideration and approval:

> *"Sanction is hereby accorded to the appointment of Patwaris against the available vacancies, out of the candidates selected for undergoing Patwari Training through Board of Professional Entrance Examination and who have successfully qualified from the respective Revenue Training Institutes."*

14. According to Mr. Jan, learned Senior Counsel, the said resolution submitted to the Cabinet was subsequently approved by the Cabinet vide

Cabinet Decision No.165/22/2013 dated 24.07.2013 and it was notified as follows:

> *"……..*
> *Proposal Approved. It was also decided that the PatwarTrainees, who do not qualify the training the first attempt, shall be given a second chance to qualify and upon so doing, shall be appointed as Patwaris."*

15. According to Mr. Jan, learned Senior Counsel, in view of the aforesaid Cabinet Decision, the competent authorities had dispensed with the requirement to again refer the qualified Patwar Trainees to the SSRB for appointment as Patwaris and accordingly, those Patwar Trainees who had successfully completed their training and passed the Departmental Examination were to be straightway appointed as Patwaris without going through the selection process to be conducted again by the SSRB.

16. It was further submitted that the said Cabinet Decision was given effect to and all the candidates including the present petitioners and private respondents who had qualified the Departmental Examination were appointed as Patwaris vide Government order No.Rev/NG/314 of 2013 dated 10.12.2013. In the said appointment order it has been clearly mentioned that 945 candidates who have successfully completed Patwar training course from Revenue Training Institutes at Srinagar/Jammu after having been selected through J&K BOPEE during the session 2012-13, are appointed as Patwaris in the Revenue Department in the pay-scale of 5200-20200 + GP (2800). According to Mr. Jan, Ld. Senior Counsel, thus, the appointment order makes it very clear that the appointment was made on the basis of the result of the selection process undertaken by the BOPEE in the year 2012 and those who were subsequently found successful in the

Departmental Examination. Consequently, passing of the Departmental Examination was merely a qualifying test and, accordingly, the seniority of the Patwaris ought to have been fixed on the basis of the select list prepared by the BOPEE which reflected the true merit and not on the basis of the merit list issued in the Departmental Examination which was merely a qualifying examination. It was submitted that the Central Administrative Tribunal, unfortunately without appreciating the controversy in correct perspective upheld the decision of the Department and wrongly fixed the seniority.

17. The learned Senior Counsel further submits that the issue under consideration in the present writ petition had already been considered and decided on 26.09.2017 in ***LPASW No. 199/2016 c/w LPASW No.206/2016 titled Peerzada Altaf Ahmad Shah &Ors. v. State of JK and others***, in which the Division Bench had held as under:

> *"9. It is evident from the above extract that Rule 7(1) stipulates that persons appointed, whether directly or by promotion, are to be on probation for two years and that their confirmation in the class or category is to be regulated under the provisions of the Jammu & Kashmir Civil Services (Classification, Control and Appeal) Rules, 1956. Sub-rule (2) of Rule 7 of the 1973 Rules stipulates that during the period of probation, the probationer in class I shall have to qualify the prescribed departmental examination and, sub-rule (3) enables the Government, in case a person fails to qualify in the departmental examination within the prescribed period of two years, to extend the period of probation by a further one year. It also stipulates that a probationer, who does not pass the examination even during the extended period, shall be liable to be discharged from service.*
> *10. In the facts of the present case, all the Patwaris had cleared the departmental examination and completed their training. It is only that the private respondents had done so during the period of probation, whereas the appellants had done so during the extended period of probation/ after that period. The fact, however, remains that though the Government had the option to*

discharge some of them from service it did not do so and they were confirmed in their appointments as Patwaris.
11. ……

12. ……

13. In the result, the decision of the learned Single Judge which is impugned before us has to be set aside and the appeals have to be allowed. This is so because seniority is to be determined in terms of Rule 24 of the 1956 Rules notwithstanding any delay on the completion of the probation period. Therefore, the seniority as determined on the date of first appointment by the Revenue Department on the basis of merit of the select list prepared by the Service Selection Board shall prevail. The consequence of this would be that SWP No.1762/2015 and SWP 2275/2015 shall stand dismissed. The appeals shall stand allowed and the position of the seniority shall be the same as was obtaining prior to filing of the writ petitions."

18. Mr. R. A. Jan, learned Senior Counsel, accordingly, submits that the seniority has to be determined in terms of Rule 24 of the J&K Classification, Control and Appeal Rules, 1956, on the basis of the merit list prepared by the BOPEE as it was the first competitive examination before being appointed as Patwaris.

SUBMISSION OF THE RESPONDENTS:

19. Heard also Mr. Mohsin Qadiri, learned Sr. AAG, for the official respondents, Mr. Altaf Haqani, Mr. Z.A. Qureshi, Sr. Advocates, Mr. Bhat Fayaz, Advocate, appearing for the private respondents.

20. It has been submitted that Rule 24 of CCA Rules, 1956 has to be read in conjunction with Rules 12, 13 & 14 of the Jammu and Kashmir Civil Services Decentralization and Recruitment Rules, 2010,(Recruitment Rules of 2010). Only then the scope of the merit in open competition referred to in Rule 24 of the CCA Rules, can be understood.

21. It has been submitted that what Rule 14 of the Recruitment Rules of 2010 specifies is that the Service Selection Board shall hold written test for all eligible candidates who apply for the advertised post. Therefore, when

an open competition/ written test is conducted by the Service Selection Board for appointment as Patwaris, it will be conducting the test for only the eligible candidates, i.e., who has completed the training course and passed the Departmental Examination, and those who are ineligible for appointment of Patwaris cannot be considered.

22. In the present case, the open competition held by the BOPEE in 2012 was for selecting Patwar Trainees who were yet to be eligible for appointment as Patwaris. In fact, these Patwar Trainees become eligible for appointment as Patwaris only when they successfully pass the Departmental Examination.

23. The Rules also provide, as is also mentioned in the Cabinet Memorandum, that the selection for the post of Patwaris will be made only after the Patwar Trainees successfully complete the training course and pass the Departmental Examination. Thereafter, the selection will be made by the Board after the posts are advertised. It is therefore, clear that selection of Patwar Trainees is one process, though connected with appointment to the post of Patwaris, but does not amount to selection for the post of Patwaris. Appointment to the post of Patwaris is a separate process to be undertaken where only the eligible candidates can be considered and as such the same cannot be equated or confused with the selection process for selecting Patwar Trainees.

24. In the present case, what has happened is that because of the time involved in the recruitment process, which typically takes 6 to 8 months, the Government in order to expedite the process of appointment of Patwaris decided to do away with the said process of recruitment through the SSRB by taking a policy decision to appoint Patwaris from amongst the Patwar

Trainees who had successfully qualified the Departmental Examination conducted by the Department.

25. Accordingly, it has been submitted that the "merit" referred to in Rule 24 of the CCA Rules, has to be always read with Rule 14 of the Recruitment Rules of 2010, which pertains to eligibility of candidates. In the present case, it is evident that when the open test was conducted in 2012 by the BOPEE, none of the candidates were yet eligible for appointment as Patwaris and as such, that merit, which was determined for selecting Patwari Trainees and not for appointment of Patwaris, should not be the basis for determining seniority of Patwaris as contemplated under Rule 24 of the CCA Rules.

26. It has been submitted that in fact, the true merit of the candidates can only be ascertained through the examination conducted by the Department. This Departmental Examination truly reflects the *inter se* merit of the candidates. While in the screening test conducted by the BOPEE in 2012, the merit was prepared based on the knowledge of various subjects such as general studies, current affairs, functional Urdu, mathematics topics such as mensuration, geometry of Class 10^{th} standard, which do not have a direct bearing with the skills required for the role of Patwaris, whereas the syllabus prescribed for the Departmental Examination conducted by the Department have a direct relevance to the job and responsibilities discharged by the Patwaris.

27. It has been submitted that the test conducted by BOPEE in 2012 does not relate to the eligibility criteria for appointment of Patwaris but it is merely intended to select the Patwar Trainees. The examination faced by the Patwar Trainees conducted by the Department after selection is the

prerequisite for appointment as Patwaris, which should not be confused with the post appointment training provided in other services, such as in the case of Excise and Taxation Department or Police Department, who are required to undergo basic trainings after appointment.

28. The Departmental Examination conducted by the Department in respect of Patwar Trainees is part of the recruitment process, not a post appointment procedure and as such, this Departmental Examination should be the basis for determining the merit and seniority of the candidates and since it is also the most reasonable basis.

29. Mr. Altaf Haqani, learned Senior Counsel, also submits that a Cabinet Memorandum was prepared on 10.07.2013 and the said proposal was accepted by the Government on 24.07.2013. Consequently, all Patwar Trainees were aware that appointment would be made only in respect of those who successfully passed the Departmental Examination conducted on 02.09.2013 in terms of the said Cabinet decision. Thus, this examination which is based on a syllabus directly related to the duties and responsibilities of Patwaris should be considered to be the true test of the candidate's merit and therefore, it should serve as the foundation for determining the merit.

30. Mr. Z.A Qureshi, learned Senior Counsel for the respondents 11, 14 & 20 while supplementing the submissions advanced by Mr. Haqani, submits that in case of direct recruitment, seniority is to be determined from the date of appointment. Thus, seniority has a bearing to the date of appointment. The merit list prepared by the BOPEE in 2012, which was meant for selecting Patwar trainees, has no relevance as far as the seniority of Patwaris is concerned. Therefore, when the said merit list was prepared

by the BOPEE, none of the Patwar Trainees had yet been appointed as Patwaris. The appointment to the post of Patwaris is possible only after successfully passing the Departmental Examination conducted by the Department. Consequently, the merit list prepared and issued by the BOPEE has no bearing on the seniority of Patwaris as it was formulated before their actual appointments as Patwaris.

31. It has been further submitted that Rule 5 of the Recruitment Rules 2019, clearly states that a person cannot be appointed as Patwari unless he meets the qualification and eligibility criteria. The relevant service rules for Patwari specifies that 90 per cent of the Patwaris will be appointed through direct recruitment, specifically among those who are graduates with knowledge of Urdu and have completed Patwar training course from a Government institution. It is, therefore, a condition precedent for appointment as a Patwari that a person must have completed the Patwar training course. Therefore, without passing the Patwar training course, appointment as Patwari is not possible.

32. Further it has been submitted that the Cabinet had taken a decision to fill the Patwari posts urgently because they knew that going through the usual process of referring the matter to the SSRB for conducting a fresh selection process for Patwar trainees who had already passed the examination would take a considerable amount of time. In view of this time-consuming process, the Government decided to dispense with the said process and took the aforesaid Cabinet decision as a special measure. This special measure, however, is not in conformity with the service rules, which typically require the appointment of Patwaris through a recruitment process

that involves selecting candidates from the pool of Patwar Trainees who had successfully passed the examination.

33. Further it has been submitted that Cabinet decision was to the effect that the Patwaris against available vacancies would be appointed out of the candidates selected for undergoing Patwar Training through BOPEE, who had successfully qualified from the respective Revenue Training Institutes. However, in the appointment order, it has been mentioned that 945 candidates who had successfully completed Patwar training course from Revenue Training Institute of Srinagar/Jammu after being selected by BOPEE during the session 2012-13 will be appointed as Patwaris. This is not in tune with the Cabinet decision, as the BOPEE had not selected Patwaris during the 2012-13 session, but only Patwar Trainees. Therefore, the appointment order issued on 10.12.2013 does not align with the Cabinet's decision.

CONSIDERATION BY THE COURT:

34. The bone of contention between the contesting parties pertains to the fixation of seniority of Patwaris of District Cadre Bandipora, as is evident from the relief claimed in the OA No.921 of 2022 which was disposed of by the learned Central Administrative Tribunal, Srinagar Bench, Srinagar, vide order dated 27.09.2023. It is evident that the respondent authorities had fixed the seniority of the Patwaris of District Cadre Bandipora on the basis of the merit position in the Departmental Examination conducted by the Department before the appointment as Patwaris. On the other hand, it is the claim of the petitioners herein that the seniority should have been fixed on the basis of merit list prepared by the BOPEE in the year 2012 at the time of selection of the Patwar Trainees.

35. Before entering into the aforesaid controversy, we have to first ascertain as the relevant service rules and rules for fixation of the seniority.

RELEVANT SERVICE RULES:

36. There is no dispute amongst the contesting parties that Rule 24 of the Jammu and Kashmir Civil Services (Classification, Control & Appeal) Rules, 1956, will be applicable for determining seniority. Rule 24 of the of the CCA Rules reads as follows:

> *"24. Seniority.-(1) The seniority of a person who is subject to these rules has reference to the service, class, category or grade with reference to which the question has arisen. Such seniority shall be determined by the date of his first appointment to such service, class, category or grade as the case may be.*
>
> *Note 1. The rule in this clause will not effect the seniority on the date on which these rules come into force of a member of any service, class, category or grade as fixed in accordance with the rules and orders in force before the date on which these rules come into force.*
>
> ***Interpretation***.-*The words "date of first appointment" occurring in the above rule will mean the date of first substantive appointment, meaning thereby the date of permanent appointment or the date of first appointment on probation on a clear vacancy, confirmation in the latter case being subject to good work and conduct and/or passing of any examination or examinations and / or tests:*
>
> *Provided that the inter se seniority of two or more persons appointed to the same service, class, category or grade simultaneously will, notwithstanding the fact that they may assume the duties of their appointments on different dates by reason of being, posted to different stations, be determined,-*
>
> *(a) in the case of those promoted by their relative seniority in the lower service, class, category or grade;*
>
> *(b) in the case of those recruited direct except those who do not join their duties when vacancies are offered to them according to the positions attained by and assigned to them in order of merit at the time of competitive examination or on the basis of merit, ability and physical fitness etc., in case no such examination is held for the purpose of making selections;*
>
> *(c) as between those promoted and recruited direct by the order in which appointments have to be allocated for*

promotion and direct recruitment as prescribed by the rules.

Note 2. Any substantive appointments or permanent promotions made in any department prior to 15th May, 1953, will not be disturbed if otherwise in order unless such appointments or promotions are already the subject of any appeal, review or revision or otherwise pending decision.

(2) A member of a service, class, category or grade, unless he is reduced in seniority as a punishment shall retain seniority in such service or grade as determined by sub-rule (1) notwithstanding any delay in the completion of his probation or his appointment as a member of such service, class, category or grade.

(3) Where a member of any service, class, category or grade reduced to a lower service, class, category or grade he shall be placed at the top of the latter unless the authority ordering such reduction directs that he shall rank in such lower service, class, category or grade next below any specified member thereof."

37. It needs to be mentioned that Section 12 of the Jammu and Kashmir Civil Services Decentralization and Recruitment Act, 2010, provides that in every Department a separate seniority list shall be maintained for District, Divisional and State Cadres for all categories of posts included in the respective cadres.

38. Thus, if the post is a State Cadre Post, the seniority is to be maintained State-wise; in case of Divisional Cadre Posts, the seniority is to be maintained Division-wise and if the post is a District Cadre Post, the seniority is to be maintained District-wise. This is what is provided under the Jammu and Kashmir Civil Services Decentralization and Recruitment Act, 2010 and how the seniority is to be maintained is provided in Rule 24 of the CCA Rules, as quoted above.

39. In the present case, the dispute is about seniority inter-se district direct recruit Patwaris. From a reading of the aforesaid Rule 24 of the CCA

Rules for the purpose of determination of the seniority as far as the direct recruits are concerned, the following aspects to be kept into account:

(i) Seniority has to be with reference to *the same Service,* Class, Category or Grade of the employees.

(ii) Seniority shall be determined by *the date of first appointment* to such Service, Class, Category or Grade. What is therefore, important is to ascertain what constitutes the first appointment to a service to such Service, Class, Category or Grade as that will be the foundation for determining seniority.

(iii) Where two or more persons are appointed to the same Service, Class, Category or Grade, simultaneously the *interse* seniority will be determined on the basis of the position attained in or assigned to them in order of merit at the time of *competent examination.*

i) *Where such no competent examination was held,* seniority will be determined on the basis of merit or ability, or physical fitness by which the selection was made.

40. In the present case, it is not in dispute amongst the contesting parties that they all are Patwaris who have been appointed against the direct recruitment quota. Further, there is unanimity in the view of the contesting parties that seniority is to be determined as per Rule 24 of the CCA Rules, 1965, however, they have placed different interpretations on the meaning and scope of Rule 24of the CCA Rules.

The difficulty has been compounded by the fact that there were actually two examinations in which the contesting parties had taken part, first, the competitive examination conducted by the BOPEE in 2012 and the other is the Departmental Examination conducted bythe Department and the

parties have laid their respective claim on these two different examinationswhile claiming seniority.

Since the proper understanding of Rule 24 of the CCA Rules involves examination of the date of appointment to the service and the examination for the purpose of ascertaining the relative merit of the candidates before appointment as discussed above, it would be necessary to refer to the service rules also.

41. The post of Patwari is mentioned in Schedule II-A of the Jammu and Kashmir Revenue (Subordinate) Service Recruitment Rules, 2009. According to these service rules, the post of Patwari is to be filled up by way of direct recruitment and promotion in the ratio of 90:10. Thus, 90% of the posts of Patwaris are to be filled up by direct recruitment from amongst those who had undergone Patwar Training from any Government recognized Institutions and minimum qualification for direct recruitment has been prescribed as Graduation with knowledge of Urdu.For convenience the aforesaid Schedule A relating to the post of Patwaris is reproduced as under:

Class	Category	Pay scale	Designation	Minimum qualification for direct recruitment	Method of recruitment.
I	--	--	--	--	--
II	--	--	--	--	--
III	--	--	Patwari including i) Office Patwari ii) Consolidation Patwari lll) Settlement Patwari	Graduation with knowledge of Urdu	(i) 90% by direct recruitment from amongst those having undergone partwar training course from any Government recognized institution. (ii) 10% by promotion of Junior Assistants with minimum qualification of graduation (with knowledge of Urdu) and having undergone patwar training course from any Government recognized institution.

42. In view of the close nexus of seniority with the issue of first appointment to the service, it would be necessary for us to determine as to when the first appointment to the service of Patwari was made which will determine the *inter se* seniority of the Patwaris. As far as the aforesaid service rules, i.e., the Jammu and Kashmir Revenue (Subordinate) Service Recruitment Rules, 2009 are concerned, Rule 3 provides for constitution of service. Rule 4 provides for strength and composition of the service of which we are not directly concerned in the present case. Rule 5 provides for qualification and methodof recruitment; Rule 6 provides for Probation, Rule 7 for Reservation in appointments, Rule 8 for Training and Department Examination, Rule 9 deals with the Eligibility of Government servants for direct recruitment of which again we are not much concerned. Rule 10 provides for maintenance of seniority lists which shall be regulated under the Jammu and Kashmir Civil Services (Classification, Control and Appeal) Rules 1956. Thus, it will be appropriate to reproduce the Rules 5, 6, 8 and 10 which may have relevance in determining the case in hand.

> *"**5. Qualification and method of recruitment**. - (1) No person shall be eligible for appointment or promotion to any post in any class, category or grade in the service unless he/she possesses the qualifications as laid down in Schedule II and fulfils other requirements of recruitment provided in the rules and orders for the time being in force.*
>
> *(2) Appointment to the service shall be made:*
>
> *(a) by direct requirement: or*
>
> *(b) by promotion, or*
>
> *(c) partly by (a) and partly by (b) in the ratio and in manner against each post in Schedule-II.*
>
> *(3) Allposts to be filled by promotion/ direct recruitment shall be filled through Departmental Promotion Committee/Service Selection Board respectively.*
>
> *(4) The Department shall refer vacancies in direct/promotion quota to the Service Selection Board*

andDepartmental Promotion Committee as the case may be, in terms of SRO 166 dated 14-06-2005.

6.Probation. *-1) Persons appointed to the service either by direct requirement or by promotion shall be on probation or trial fora period of two years and their confirmation for class or category shall be made under the provisions of Jammu and Kashmir Classification Control and Appeal Rules, 1956.*

(2) The pay of persons appointed to the service under these rules shall be regularized us per the provisions of Jammu and Kashmir Civil Service Regulation; or general rules as issued from time to time.

7 ……

8.Training and Departmental examination. *- Persons appointed to the service by direct recruitment shall he required to undergo such training from time to time during the course of probation and to pass during the period of probation such departmental examination or training as the Government may prescribe.*

Provided that the Government may accept either wholly or partly from such training or departmental examination persons who have passed a departmental examination or undergo training declared by Government to be equivalent to a departmental examination or training prescribed under these rules.

9. ……

10.Maintenance of seniority lists: *- Seniority of the members of the service shall be regulated under the Jammu and Kashmir Civil Services (Classification, Control and Appeal) Rules, 1956. The Head of Department shall maintain an up to date and final seniority list of the members of service."*

ANALYSIS:

43. In terms of Rule 5 it is very clear that no person shall be eligible for appointment in any Service, Class, Category or Grade or unless he or she possesses the qualification laid down in Schedule II and fulfils the requirement as provided under the Rules for time being. Further, it has been provided under Rule 8 that a person appointed to the service by direct recruit shall be required to undergo such training from time to time during the course of probation and to pass during probation department examination or training as the Government may prescribe, provided the Government may exempt either wholly or partly from departmental examination the person who has passed departmental examination or

undergone training declared by the Government to be equivalent to the departmental examination or training prescribed under the Rules. Further, seniority of the members of the service shall be regulated as provided under Rule 10 as provided under CCA Rules 1956.

44. Thus, from the above, the following aspects emerges very clearly that no person shall be eligible for appointment as a Patwari under direct recruitment unless he fulfills the qualification mentioned in Schedule II A [Vide Rule5]. Thus, it goes without saying that a person can be appointed as Patwari only when he has undergone Patwar Training course successfully from any Government recognized Institution.

Such person has to undergo a probation for two years and his services shall be confirmed accordingly [Rule 6].

Such person appointed as Patwari by direct recruitment has to undergo training in course of probation and pass such departmental examination as the Government may prescribe. It has also been provided that if such appointee had passed departmental examination which is declared by Government equivalent to departmental examination or training required to undergo under Rules, such appointee may not be required to pass department examination [Rule 8]. In the context of the present case, it would mean that the Patwaris will be also required to pass the departmental examination in course of the probation. However, since, they had already passed the Departmental Examination conducted by the Revenue Training Institutes, at Srinagar/Jammu, perhaps the Patwaris may not be required to appear in the departmental examinations.

Further, as per the aforesaid Rule 10 of the Service rules, the seniority of the Patwaris has to be determined in terms of Rule 24 of the

CCA rules, which deals specifically with seniority of the members of the service.

45. The aforesaid provisions, therefore, make it clear that seniority of Patwaris has to be determined only after they entered the service on being appointed as such on fulfilling the eligibility qualification mentioned above.

46. Therefore, the question which arises for consideration is whether the competitive examination conducted by BOPEE in 2012 for the purpose of selecting the Patwar Trainees can be said to be the "competitive examination" for appointment as Patwar within the meaning of Rule 24 of CCA Rules 1956 which will be the basis for determining seniority or will the Departmental Examination which the petitioners and the private respondents passed which will be considered to be the "competitive examination".

47. As discussed above, it has been clearly provided under Rule 24 that seniority shall be determined by the date of his first appointment of his service and as per the position appointment or assigned to them in order of merit at the time of competent examination.

48. There can be no doubt that examination conducted by the BOPEE is also a "competitive examination", but the question is whether such examination conducted by the BOPEE in 2012 for selecting the Patwar Trainees can be said to be "competitive examination" within the meaning of Rule 24. In our view the "competitive examination" referred to in Rule 24 of the CCA Rules must have reference to first appointment in the services, i.e., appointment to the post of Patwari. If this Court has to take view that the competitive examination conducted by the BOPEE in the year2012 is the "competitive examination" for the purpose of first appointment as

Patwari certainly the merit position determined in the said examination can be considered for determining the seniority under Rule 24,otherwise not.

49. We, however, on consideration of the Rules as quoted above, are firmly of the view that said competitive examination conducted by the BOPEE in 2012 for the purpose of selecting Patwar Trainees cannot be the '*competitive examination*' for the purpose of first appointment in the services as Patwaris within the meaning of Rule 24 of the CCA rules. We hold so for the following reasons:

(i) First of all, the competitive examination held by the BOPEE in 2012, as also clearly mentioned in advertisement, was not for appointment as Patwar but only for selecting candidates for Patwar Trainees. The Advertisement dated 09.05.2012, on the basis of which the said examination was conducted, does not anywhere mention that the said examination is for appointment to the post of Patwar. It simply says that the applications are invited from the permanent residents of J&K State except Leh and Kargil Districts who are eligible and desirous to appear for common entrance test for selection of Patwar Trainees of J&K State. The advertisement does not say that this examination is for selection of Patwar Trainees for onward and subsequent selection or appointment as Patwaris. In fact, the said advertisement clearly mentions under the caption *"Important Note"* as quoted above that the selected candidates after completion of the training of nine months shall have to qualify the Patwar examination to be conducted by the Financial Commissioner (Revenue) and that the qualified candidates

shall have to apply to SSRB for being selected as Patwaris, as and when, these posts are advertised by the SSRB. The said advertisement further mentions that selection of candidates for Patwar Training and subsequent passing of the candidates shall not confer any right for being appointed as Patwari. From the above it is clear that purpose of issuing the said advertisement and conducting the competent examination was merely for the purpose of selecting Patwar Trainees and not for appointment as Patwaris.

(ii) Secondly, the said competitive examination conducted by the BOPEE was for the purpose of selection of Patwar Trainees and not Patwaris. By the said "competitive examination", there could not have been any appointment to the post of Patwari, as they were not yet eligible for appointment as Patwaris.

(iii) As per the practice of the Government and also as required under the relevant seniority Rules, as quoted above, only such persons who have completed Patwar Training course from any Government recognized institution can be appointed at Patwari, as such, merely because a person has successfully passed the competitive examination for selection of Patwar Trainees cannot amount to confer any appointment as Patwari for the reasons that for determining his seniority as in the post of Patwar, it has to have reference to initial appointment as provided under Rule 24. The selection of candidates as Patwar Trainees cannot by any stretch of imagination be considered to be initial appointment of Patwari even if they are successful in

the competitive test held by BOPEE I 2012 as mentioned above.

(iv) Thirdly, thus, by being selected on the basis of the said competitive examination conducted by the BOPEE, these persons were not yet members of any service, class or grade of employment, with reference to which the seniority has to be determined.

50. From the Cabinet decision which has been heavily relied upon by the petitioners, it is also clear that Government took a conscious decision to do away with the subsequent recruitment process or selection to be made by SSRB for appointment to the post of Patwaris after advertising the same by indicating the vacancies available in the districts. From the narratives in the said Cabinet decision, it is quite apparent that after the Patwar Trainees have successfully completed the training and passed the department examination, there will be another recruitment process for appointment as Patwari on regular basis. Thus, there would be another selection process or recruitment process for appointment as Patwari from amongst the eligible candidates (Patwar Trainees who successfully passed the training course). It is this competitive examination involved in the subsequent recruitment process which would be the “competitive examination” within the meaning of Rule 24 of the CCA Rules that would be the relevant criteria for determining seniority. The position attained or assigned to candidates in order of merit at the time of such competitive examination would be the basis for determining seniority. As mentioned in Rule 24, when no such “competitive examination” is held for making selection as Patwari, seniority

is to be based on the merit, ability and physical fitness for making selection to the post of Patwari.

51. In the present case, it is clearly evident that from the Cabinet decision and also from subsequent appointments made as Patwaris, no such "competitive examination" was held for appointment of Patwaris. Rather, by the Cabinet decision, the Government decided to appoint such Patwari Trainees who had successfully completed the training course and passed the departmental examination were appointed as Patwaris for reasons mentioned in the Cabinet decision quoted above. However, even if no such second round of "competitive examination" held through SSRB after advertising the post of Patwaris as also mentioned in the Advertisement dated09.05.2012 as discussed above, yet at the time of making selection for appointment of Patwaris it must have been based on certain criteria and such criteria must be based on merit, ability, physical fitness etc. In fact, the appointments as Patwaris was were made on the basis of passing the Departmental Examination and those who did not clear in the first attempt were appointed subsequently. The "Departmental Examination", in absence of any subsequent recruitment process through SSRB, which was the basis for appointment as Patwaris, would in our view will be the "competitive examination" within the meaning of Rule 24(1)(b) of the CCA Rules.

52. Rule 24(1)(b)provides that the seniority position in respect of direct recruits is to be based on the order of merit at the time of competitive examination and, if such competitive examination is held for the purpose of making selection if shall be based on the merit, ability, physical fitness etc. In our opinion, the basis for determining the seniority as provided under Rule 24(1)(b) where no such competitive examination is held at the time of

making appointment, still has to be based on some kind of merit which is to be determined for making the selection as Patwaris. As discussed above the competitive examination held by the BOPEE in the year 2012 cannot be considered to be "competitive examination" for the purpose of appointment of Patwaris it was only for the purpose of Patwar Trainees. Thus, if no such competitive examination within the meaning of Rule 24(1)(b) was held for appointment as Patwari, having been dispensed with by the Cabinet decision as referred above, what would be the basis for determining merit, ability and physical fitness which will in turn determine the seniority of such direct recruits? In our view such basis of determining merit will be the order of merit obtained in the departmental examination, since, it is only after passing such department examination a person can be appointed as Patwar. Passing of departmental examination after successful completion of probation course is *sine qua non* for appointment as a Patwari. Though, ordinarily, there ought to have been another selection process by the SSRB for appointment as Patwaris, which would have been the basis for determining seniority, the said process was dispensed with by a Cabinet decision. In absence of any such selection process, the departmental examination which was held before the candidates were appointed as Patwaris is to be treated as the "competitive examination" which will be the basis for determining seniority.

53. Thus, from the above, it is quite evident that the first competitive examination conducted by the BOPEE was to select the Patwar Trainees and they are yet to be appointed as full-fledged Patwaris inasmuch as they were yet to undergo the training and pass the Departmental Examination. A person can be said to be appointed as Patwari on a regular basis only when

he had undergone the Patwar training and having successfully completed the probation period and passed the Departmental Examination conducted by the department.

Thus, from the above it is clearly evident that a person who gets ultimately appointed as a Patwari has to go through more than one examination. First, to be selected as Patwar Trainee and, secondly, to pass the departmental examination after completing the training and lastly another examination/selection process for appointment as Patwari.

54. From the above, it is clearly evident that these competitive examinations are qualitatively different. The first one is for appointment as Patwar Trainee and the others for appointment as Patwari on regular basis.

For the purpose of selection by the Board as Patawar Trainees, the entrance test consisted of one objective type test having 100 Multi Choice Questions of one mark each of:

a) General studies/current affairs: 30 questions
b) Functional Urdu: 30 questions
c) Maths, Arithmetic, Mensuration, and Geometry of 10^{th} standard: 40 questions

and duration of 2 hours.

On the other hand, for the purpose of Departmental Examination, every Patwar Trainee has to appear in 5 papers of marks of 100 marks each and one practical test of 50 marks. Thus, totaling 550 marks and every candidate has to pass all the papers and marks are also assigned for all these papers.

In other words, the Departmental Examination conducted after successful completion of the training course is substantially and qualitatively superior to competitive examination carried out by the Board

for the purpose of selection of the Patwar Trainees. These two competitive examinations cannot be in any way be compared the department examination which is of a superior quality cannot be ignored totally for purpose of determination of merit.

55. The plea of the petitioners that the merit position obtained in the select list prepared at the time of selection as Patwar Trainees, should be the basis for determining seniority under Rule 24 of the CCA Rules 1956, therefore, cannot be accepted.

56. Having arrived at the conclusion that the Departmental Examination conducted by the Department before the appointment of the petitioners and the private respondents as Patwaris would be the basis of determining seniority of the petitioners and the private respondents, we will be required to deal with the decision of the Division Bench in LPASW Nos. 199/2016 and 206 /2016 relied upon by the learned Senior counsel Mr. R A Jan for the petitioners.

57. It has been submitted by Mr. Jan that the issue relating to the seniority has been decisively decided in the aforesaid case in which it was held that it would be the merit position obtained in the initial selection process prepared by the concerned selecting Body which would determine the seniority. In order to appreciate the submission, it may be necessary to dwell a deeper as regards the issues raised and decided in the said LPAs. From the reading of the aforesaid decision, it appears that the LPASWs arose out of a direction by the learned Single Judge which held that the seniority of Patwaris is to be decided on the basis of departmental examination. The operative portion of the direction issued by the learned Single Judge is as under:

"*13. For the above stated reasons, these writ petitions along with connected IAs are disposed of in the following manner:*

> *"a) The official respondents are directed to undertake the exercise to find out as to which, amongst the selected/ LPASW NO.199/2016 c/w LPASW No.206/2016 Page 2 of 9 appointed candidates, qualified their Patwar Training Course Examination within the probation period and thereafter determine their seniority in accordance with the merit secured by them in the selection/ merit list prepared by the Service Selection Board at the time of their initial selection. Those Patwaries, who qualified the Patwar Training Course Examination beyond the probation period, shall rank junior to those Patwaries, who qualified the said examination within the probation period, though they ranked below them in the initial Selection List prepared by the Service Selection Board.*
>
> *b) After framing of fresh seniority list, in view of the aforesaid direction, the concerned official respondents shall amend the promotion orders, already made, and grant promotion to the Patwaries on the basis of the seniority list so framed. The concerned official respondents shall also, while amending/ framing the seniority list, ensure that the Government order No. Rev(NG)-52 of 2015 dated 09th March, 2015, is complied with;*
>
> *c) The concerned official respondents to initiate and conclude the aforesaid exercise within eight weeks from the date copy of this order is received by them.*
>
> *d) Till the aforesaid exercise is completed, the promotion orders made, shall remain undisturbed. Interim directions in all these petitions, shall stand vacated."*

58. The Division Bench thereafter made observation in paragraph no. 2 of the decision that it is an admitted position that the appellants were ranked higher on merit as per the selection done by the Service Selection Board for the posts of Patwaris than the private respondents in these appeals. However, the appellants qualified the Patwar Training Course Examination subsequent to the private respondents. The appellants had also qualified the Patwar Training Course Examination beyond the prescribed period of probation. Thus, the entire controversy was as to how the inter-se seniority between the appellants and the private respondents therein was to be

determined. The Division Bench then noted the findings of the learned Single Judge under:

> *"11. The petitioners claim for their placement in the seniority list, at the appropriate place, would require to be determined. The petitioners, admittedly, rank junior to other selected candidates in the selection list prepared by the SSB. The petitioners are beneficiaries of the selection made by SSB. The selection has been made on the basis of merit of the competing candidates. The seniority of the appointed candidates, in the facts of these cases, in view of the mandate contained in rule 7 of the Rules of 1973, would depend on successful completion of the training course during the probation period. This view is taken in view of the mandate contained in rule 7 of the Rules of 1973 read with rules 22, 23 & 24 of the Rules of 1956. The appointed Patwaries, who have successfully qualified the Patwar Training Course Examination within the probation period, have to be assigned seniority on the basis of merit secured by them in the merit list prepared by SSB at the time of their initial selection. However, in view of the mandate contained in order of 1998, those Patwaries, who have qualified Patwar Training Course Examination after the period of probation, shall have to rank junior to the candidates, who have qualified it within the probation period but ranked junior to them in the selection list prepared by the SSB."*

The Division Bench in the said LPASWs held that the view of the learned Single Judge was based on an office note dated 08.05.1998 which was also reproduced in the said judgment, which we also reproduce as below:

> *"Subject: Appointment of candidates for the post of Patwaries and fixation of seniority.*
>
> *I am directed to refer you to your letter No.102/(III)/970 dated 18.01.1998 regarding the subject cited above and to say that the candidates appointed against substantive vacancies by the concerned Deputy Commissioners on the recommendations of the Service Selection Recruitment Board got their inter-se seniority fixed in accordance with the position assigned to them in the respective merit list issued by the service selection recruitment board. In the event of failure, a candidate in the examination his position in the seniority would depend upon the period of probation prescribed for him in the appointment letter. Since the Patwar candidates are probationers for utilizing the requisite chances for qualifying the examination in accordance with the J&K Patwari Examination instructions. In case, the*

candidate has qualified the examination after the probation of two years he shall figure junior most to his batch and in case of failure then one candidate they shall figure junior most in their batch in the order of their seniority in the selection list.

As regards the Patwaris who have been/ shall be appointed under the proviso of compassionate appointment Rules they shall be assigned the seniority on the basis of their date of joining/ appointment whichever is later."

59. After observing the findings of learned Single Judge and also the office order dated 08.05.1998, the question before the Division Bench was as to whether office order dated 08.05.1998 could supplant the service rules or not, to which the Division Bench held that it cannot, unless the Rules themselves give a specific power to the Financial Commissioner to do. Thereafter, the Division Bench proceeded to examine the relevant service rules to determine the seniority and referred to Rule 24 of the CCA Rules 1956. After having quoted in extenso the said Rule 24, the Division Bench observed as under:

"06. On a plain reading of the above mentioned rule, it is evident that seniority is to be determined by the date of "first appointment". The said expression has been interpreted in the provision itself to, inter alia, mean the date of first appointment on probation on a clear vacancy. Of course, in the case of probation, confirmation would be subject to good work and conduct and/or passing of any examination or examinations and or tests.

07. Rule 24(2) of the said Rules further stipulates that a member of a service, class, category or grade, unless he is reduced in seniority as a punishment, shall retain the seniority in such service or grade as determined by sub-rule (1) "notwithstanding any delay in the completion of his probation or his appointment as a member of such service, class, category or grade".

The Division Bench observed that Rule 7 of the service rules which deals with probation is not relevant thereafter made the following observations:

"10. In the facts of the present case, all the Patwaries had cleared the departmental examination and completed their

training. It is only that the private respondents had done so during the period of probation, whereas the appellants had done so during the extended period of probation/ after that period. The fact, however, remains that though the Government had the option to discharge some of them from service it did not do so and they were confirmed in their appointments as Patwaries.

11. In these circumstances, in our view, Rule 7 would not come to the aid of the private respondents nor work to the detriment of the appellants. In any event, the said Rule 7 of the 1973 Rules deals with probation and not with seniority. The specific rule which prescribes the mode of determining seniority is Rule 24 of the1956 Rules, which we have already extracted above. Unfortunately, the learned Single Judge did not give effect to these rules but gave priority to the office order dated 08.05.1998, which can never be the case. Going by the Rules themselves and, in particular, Rule 24 of the 1956 Rules, it is evident that the seniority is to be determined by the date of first appointment, which in the present case, would mean the date of first appointment on probation on a clear vacancy subject, however, to subsequent confirmation. It is an admitted position that appointments of all the parties, the appellants and the private respondents, were subsequently confirmed. Therefore, the only factor for determining the seniority would be the date of first appointment. This position is further fortified by sub-rule (2) of Rule 24 of the 1956 Rules which makes it clear that unless a person is reduced in seniority as a punishment, he shall retain the seniority in the service as determined by sub-rule (1) of Rule 24 notwithstanding any delay in the completion of his probation etc.

12. We may also notice a Division Bench decision of this Court in the case of Nirmal Singh Bali & others v. Mohd Yousuf and others : 2012 (II) SLJ 342, wherein it was held that the seniority of the members of the subordinate service is governed by Rule 24 of the 1956 Rules, in terms whereof, the date of first appointment to the service determines the seniority of the members of the subordinate service. The Division Bench also observed as under: -

> *"23. For all what has been said above, the Judgment and order passed by the learned Single Judge issuing directions to the State Respondents to settle the Seniority of the Members of the Jammu and Kashmir Excise and Sales Tax Service, on the basis of the passing of the prescribed Departmental Examination, cannot, therefore, be sustained and the respondents' Writ Petition, SWP No.921/2010, being devoid of merit deserves to be dismissed."*

13. In the result, the decision of the learned Single Judge which is impugned before us has to be set aside and the appeals have to be allowed. This is so because seniority is to be determined in terms of Rule 24 of the 1956 Rules notwithstanding any delay on the completion of the probation period. Therefore, the seniority

> *as determined on the date of first appointment by the Revenue Department on the basis of merit of the select list prepared by the Service Selection Board shall prevail. The consequence of this would be that SWP No.1762/2015 and SWP 2275/2015 shall stand dismissed. The appeals shall stand allowed and the position of the seniority shall be the same as was obtaining prior to filing of the writ petitions."*

60. Thus, from the above it is clear that the Division Bench was considering the issue as to whether office order dated08.05.1998 could have been invoked to determine the seniority of the Patwaris and whether Rule 24 should prevail, and it was held that seniority is to be determined in terms of Rule 24 of the CCA Rules 1956, notwithstanding any delay on the completion of the probation period. According to the Division Bench in the said case, the seniority is to be determined on the basis of first appointment in the Revenue Department on the basis of merit of the select list. Thus, in said case what can be seen is that the issue as to what amounts to "first appointments" was not dealt with at all, but the Division Bench also took the view that seniority should be determined as per rule 24 of the CCA Rules.

In the present case the issue as to when the petitioners and private respondent can be said to have been appointed as Patwaris for the first time is of the utmost importance as the same would be relevant for determining seniority *inter se* amongst them, and not when they were selected as Patwari Trainees, which was not dealt with in the said LPASWs.

Further, it is also not clear whether the selection process referred to by the Division Bench relates to the "competitive examination" conducted by the Selecting Body for selection as Patwar Trainees or the selection and appointment to the posts of Patwaris after the successful completion of the training.

Under these circumstances, we are of the view that the said decision may not be applicable to the present case.

CONCLUSION:

61. In the present case, as discussed above, we have taken the view that the seniority has to be determined with reference to the first appointment as Patwari. We have already noted that the competitive examination conducted by the BOPEE in the year 2012 was for the purpose of selection of Patwari Trainees and not for appointment as Patwaris. Thus, it cannot be the basis for determining seniority in the post/service of Patwari. The said examination is not in proximity to the appointment as Patwari but merely a step/process for training leading to the appointment of Patwaris, by conferring eligibility as candidates for subsequent appointment as Patwaris.

On the other hand, the Departmental Examination, which the Trainees had to pass was the immediate and proximate requirement for appointment as Patwari.

The first appointment as Patwaris took place only when the candidates (Patwari Trainees) completed the training course by passing the Departmental Examination, which is the turning point when the Patwari Trainees could legitimately be considered for appointment as Patwaris and not before that. Only after being appointed as Patwaris, they became members of the service, and not prior to it, with reference to which the seniority list is to be prepared.

62. Even if the Cabinet had taken a policy decision to dispense with the subsequent crucial and final selection process for appointment of Patwaris from amongst the eligible Patwar Trainees who have successfully completed the probation and passed the departmental examination, we

cannot ignore the provisions of service rules as discussed above. Rule 24(1)(b)of the CCA Rules, categorically mentions that the seniority amongst the direct recruits has to be determined on the basis of merit position attained or assigned to the candidates at the time of competent examination or incase where no such examination is held, seniority should on the basis of merit, ability and physical fitness etc. applied at the time of selection as Patwaris. The criteria of merit, ability and physical fitness contemplated under Rule 24(1)(b)of CCA Rules cannot be referred to the "competitive examination" conducted by the BOPEE for the purpose of selection of Patwar Trainees, unless the same is mentioned in the service rules. The service rules, namely, the Jammu and Kashmir Civil Services Decentralization and Recruitment Rules, 2010, do not provide that the selection for Patwari Trainees will be the basis for appointment as Patwar.

63. As discussed above, for the purpose of fixing of seniority merit has been given primacy as clearly evident from Rule 24. If merit is to be given primacy for the purpose of determination of seniority, merit of the candidates in a superior competitive examination and of more immediate relevance and proximate to the appointment as Patwari must be given preference than the merit in an examination of lesser quality and lesser relevance to the appointment as Patwari.

64. Therefore, we are firmly convinced that in absence of a selection process/competitive examination conducted by the competent authority for appointment as Patwari from amongst the eligible candidates, namely those Patwari Trainees who have successfully undergone training and passed the Departmental Examination, the merit position obtaining in such Departmental Examination has to be the basis for determining the seniority

and not on the basis of merit position obtained in initial selection as Patwar Trainees as this selection was only for the purpose of selecting candidates for undergoing training and not for the purpose of selection and appointment of Patwaris. If for any reason, as also happened in the present case, the selection process for appointment as Patwari could not be undertaken, since the selection and appointment was from the eligible candidates when they successfully completed the Training course and passed the Departmental Examination, the aforesaid Departmental Examination would be the basis for determining the merit position and consequent fixation of seniority.

65. In view of above position we have taken, we are of the opinion that the course of action adopted by the Department in fixing seniority based on the merit position obtained in the Departmental Examination cannot be said to be impermissible and illegal, rather, it stands to logic and is in conformity to the intent and purpose behind Rule 24 of the CCA Rules 1956 which gives premium and primacy to merit for determining seniority.

66. Accordingly, we agree with the conclusion arrived at by the learned Tribunal which does not warrant interference from us.

67. Under the facts and circumstances, and for the reasons discussed above, the writ petition, WP(C) No. 2669 of 2023 is dismissed along with all the connected applications.

(MOKSHA KHAJURIA KAZMI)
JUDGE

(N. KOTISWAR SINGH)
CHIEF JUSTICE

Jammu
07.12.2023
Abdul Qayoom, Secy.

To be Reported: Yes