

(2011) 09 P&H CK 0147

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 17534 of 2010

Prem Chand

APPELLANT

Vs

The State of Haryana and Others

RESPONDENT

Date of Decision: Sept. 28, 2011

Hon'ble Judges: Ranjit Singh, J

Bench: Single Bench

Judgement

Ranjit Singh, J.

This order will dispose of writ petition Nos. 23337 of 2010, 11630 and 13681 of 2011 as the common question of law and fact arises in these cases. The facts have been noticed from CWP No. 17534 of 2010.

2. The Petitioner was appointed as a Clerk in the Respondent-Department on 24.4.1976. The Petitioner was promoted to the post of Assistant on 23.10.1997. The Petitioner was then promoted as Taxation Inspector on 19.4.2006. He, accordingly, joined as such in the office of Deputy Excise and Taxation Commissioner, Kaithal. At the time of filing the writ petition, Petitioner was more than 54 years old.

3. The promotion in the department is governed by the Haryana Excise and Taxation Inspectorate (State Service Group-C) Rules, 1969 (hereinafter "the Rules). Rule 14 of the Rules provides that member of a service has to pass the departmental examination within two years from the date of his appointment/promotion to the post of Taxation Inspector. In case, the member fails to pass the examination, the appointing authority is given power to extend the period of probation by one year. As per the proviso under the Rule 14, the Government has even power to exempt any member from passing the whole or part of the examination. Rule 14 reads as under:

14(1) A member of the Service shall within two years from the date of appointment to the service, pass the prescribed departmental examination in accordance with the Regulations specified in Appendix "E" to these rules. If any member fails to pass the

departmental examination within the prescribed period of two years, his services shall be terminated or he shall be reverted to his former appointment, if any.

Provided that the appointing authority may for reasons to be recorded in writing extend the period for passing the departmental examination one year; Provided further that the Government may exempt any member of the Service from so passing he whole or any part of the departmental examination or may extend the period within which the member of the Service shall so pass the examination;

(1A)(i): If a member of the Service passes the departmental examination within the prescribed period of two years, from the date of his appointment, he shall be entitled to get the third increment after the completion of three years' service.

(ii) No increment shall be withheld until the period of two years prescribed for clearing the departmental examination is over.

(iii) In case a member of the Service is allowed extension in the period within which the said examination is required to be passed his next increment(s) for the period subsequent to that within which the departmental examination was to be passed shall be released only from the date following the last day on which the examination is completed. The increment shall be released with retrospective effect from the date if was otherwise due but no arrears shall be paid for the past period.

(iv) If a member of the service fails to pass the departmental examination or any part thereof, and is subsequently exempted by the Government or any part thereof, and is subsequently exempted by the Government or any part thereof, as the case may be his increment(s) for the period subsequent to that within which the departmental examination was to be passed, shall be released from the date he is given such exemption. The increment shall be released with retrospective effect from the date it was otherwise due but no arrears shall be paid for the past period.

(v) Further increments will normally be admissible on the dates on which they would have become otherwise due.

(2) The Government may as and when considered necessary, amend Appendix "E" subject to the condition that such an amendment is notified at least two months prior to the commencement of the next departmental examination.

4. Having been promoted as Inspector, the Petitioner appeared in the examination held on December 2006, June 2007, January 2007, June 2008, December 2008 and June 2009. The Petitioner, however, could not pass all the papers due to ill health and death of his daughter and daughter-in-law. Respondent No. 2 issued a show cause notice on 7.12.2009 to the Petitioner for his reversion to the post of Assistant on account of his having failed to pass the departmental examination. The Petitioner submitted a detailed reply on 6.1.2010 and prayed for grant of exemption from passing the departmental examination. Instead, he was served another notice on 30.3.2010 for his reversion. The Petitioner appeared before Respondent No. 2 on

7.4.2010 and prayed for one more chance to make an attempt to qualify the departmental examination. Without considering the request of the Petitioner, the impugned order reverting the Petitioner was passed on 25.8.2010. The Petitioner, accordingly, has approached this Court with two fold prayer that he be either exempted from passing the departmental examination or alternatively, he be given one more chance to clear the said examination. In support, the counsel has placed reliance on the Division Bench judgment passed by this Court in the case of I.D. Kaushik v. State of Haryana and Anr. CWP No. 5644 of 2002, decided on 8.4.2002, which is annexed with the petition as Annexure P-9.

5. The Respondents have filed reply. They would seriously oppose the prayer made in the petition. State counsel says that the petitioner has no right to seek exemption. The counsel further points out that even amendment of the Rule is under consideration, whereby the provision for grant of exemption is likely to be deleted from the rules as has been done in other rules of the same department.

6. Faced with this situation, counsel for the Petitioner is only able to refer to Annexure P-9, which is the judgment passed by the Division Bench of this Court. this Court had not considered it appropriate to grant exemption as was prayed for in the said case, but however given liberty to the Petitioner to file a detailed representation with the department.

7. I am even not inclined to adopt this course as prima facie I am of the view that the writ petition may not lie for issuing direction to the Respondent-Government to grant exemption to any one from appearing in the departmental examination, especially so when promotion was granted on the condition of passing the departmental examination. However, the counsel for the Petitioner has drawn my attention to some of the cases, where the Respondent-Government has considered and granted exemption. In the reply, the Respondents have justified the exemption granted in those cases. Two of the persons had cleared majority of the papers and were left to clear only one paper each. They had also crossed the age of 55 years and so it was considered appropriate by the Government to grant them exemption from qualifying the complete papers in those cases. In one of the case, the Petitioner was nearly 57 years and was exempted from clearing the papers because of sickness and because of the fact that he was in the last year of his service.

8. Counsel for the Petitioner says that the Petitioner is also in the last year of his service and as such at least the case for direction to consider the representation, which the Petitioner would file is made out. To this an extent, his prayer can be considered.

9. The writ petitions are, accordingly, disposed of with the observation that if the Petitioners file any representation either to seek exemption or to pray for any chance for appearing in the examination, the same shall be considered by the appropriate authority in accordance with law by taking all the facts into

consideration. I am not inclined to issue any other direction as no case for issuing any other direction is made out.