IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of Decision: July 25, 2016

1. CWP-13315-2015 (O&M)

Yogesh Mittal and others

...Petitioners

Versus

State of Punjab and others

...Respondents

AND

2. CWP-13336-2015 (O&M)

Rajpreet Singh Sidhu and another

...Petitioners

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE JASWANT SINGH

Present: Mr. Gurminder Singh, Senior Advocate, with
Mr. Raman Preet Singh Bara, Advocate,
for the petitioner(s).

Mr. Vaibhav Sharma, DAG, Punjab,
for the respondent(s)/State.

1. *Whether Reporters of local papers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the Digest?*

JASWANT SINGH, J. (Oral)

This common order shall dispose of both the aforesaid petitions as common questions of law and similar facts are involved.

Yogesh Mittal, Karanti Goyal, Jodhvir Singh, Sunil Kumar, Shaveen Jain, Jorawar Singh, Gurpreet Singh and Perminder Singh, i.e. petitioners in CWP No. 13315 of 2015; and Rajpreet Singh Sidhu and Surjit Singh, i.e. petitioners in CWP No. 13336 of 2015, were selected and appointed as Excise and Taxation Inspectors by way of direct recruitment in March, 2012. All the petitioners (of both petitions) submitted their joining on 28.3.2012.

The petitioner(s) have approached this Court aggrieved against the show cause notices, dated 20.4.2015/10.6.2015, vide which it is proposed to terminate their services as they have failed to qualify the departmental examination within 2½ years from the date they entered into service, as envisaged under Rule 8 of the Punjab Excise and Taxation Inspector (Group-C) Service Rules, 2008 (for short, 'the 2008 Rules').

The 2008 Rules prescribe that seven papers have to be passed by the employees within 2½ years of joining, by securing minimum of 50% marks in each paper, failing which the employee is liable to be removed from service or reverted to his former appointment. Since all the petitioners had cleared only six papers within stipulated period of 2½ years and had failed in Law of Crimes/Computer Management, show cause notices were issued for termination of their services.

It is averred that after joining of the petitioners in March, 2012 on the post of Excise and Taxation Inspector, departmental exams which are required to be held twice a year, i.e. in the month of April and November, as per Appendix 'C' of the Punjab Excise and Taxation Department (State Service Class-II) Rules, 1956 (for short, 'the 1956 Rules'), were however not held in November, 2014 and, therefore, the petitioners were entitled to one extra/mercy chance beyond the period of 2½ years.

In sum and substance it is not in dispute that the petitioners were permitted to take the departmental examination held between 4.5.2015 to 9.5.2015, which was beyond the period of 2½ years, show cause notices were issued without waiting for the result of said departmental examination. It is also claimed that after joining of the petitioners, the first departmental examination was held in November, 2012 and thereafter in June, 2013 and December, 2013. In the year 2014, the examination took place on 21.7.2014, but no exam was held in November, 2014 and, therefore, entitled to 5th chance to appear in Exams held in May, 2015, which has been rightly granted.

This Court while issuing notice of motion, vide order dated 7.7.2015 had stayed termination of services of the petitioners and the ad-interim order was subsequently extended.

Upon notice, the respondents have filed a reply in CWP-13315-2015, contesting the claim of the petitioners for grant of one mercy chance. Entire emphasis in the reply is that all the papers in the departmental examination, were not passed by the petitioners within stipulated period of 2½ years, however, there is no specific reply to the non-conforming of the schedule of conduct of the departmental examinations in the required months, as prescribed in the 1956 Rules.

A replication to the written statement filed in CWP-13315-2015, by way of CM-8485-CWP-2016, has been sought to be placed on record. Alongwith the replication, a notification, dated 17.9.2015 (Annexure P-18) has been filed, whereby the result of the departmental examination of the Excise and Taxation Inspectors conducted from 4.5.2015 to 9.5.2015, was declared. A perusal of the same shows that all the petitioners (in both the petitions) have been declared 'Pass' in their seventh paper, i.e. Law of Crimes/Computer Management. Civil miscellaneous application is allowed. Replication alongwith Annexure P-18, is taken on record.

Learned counsel for the petitioners contends that in view of the fact that all the petitioners having been permitted to undertake the exam and also having cleared it, the mere insistence on the strict interpretation of 2½ years is not warranted in equity.

Learned counsel for the State on instructions from Mr. Krishan Pal Sharma, Senior Assistant, does not dispute the contents of the result of exam held in May, 2015 (Annexure P-18) and concedes that all the petitioners have, as of now, cleared the departmental examination as stipulated under the Rules. He further very fairly and graciously concedes that as per the requirements of the Rules, the petitioners are required to clear seven papers by availing five chances within 2½ years, and in the facts of the case their 5th chance would be in May, 2015.

The stand of the respondents in the written statement that all the petitioners deemed to have availed five chances within 2½ years in April, 2015, is misplaced as the last date for applying for the departmental examination to be conducted in April, 2012, had lapsed on 22.3.2012, i.e. much before the petitioners joined as Excise and Taxation Inspectors on 28.3.2012. In lieu of that exam, the departmental examination undertaken by the petitioners in May, 2015, would qualify as the fifth chance, which they have successfully availed.

After hearing learned counsel for the parties, in view of the fair stand of the State, no further adjudication on merits is required.

Accordingly, both the aforementioned writ petitions are disposed of as having become infructuous with the direction that the petitioners would be considered to have qualified their departmental examination as envisaged under Rule 8 of the 2008 Rules.

(JASWANT SINGH)
JUDGE

July 25, 2016
Pkapoor/Gagan