

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Date of decision: 17.05.2016

CWP No.26523 of 2014

Davinder Singh

...Petitioner

Vs.

State of Punjab & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Yagyadeep, Advocate, for the petitioner.

Dr. Puneet Kaur Sekhon, Addl. AG, Punjab.

1. *To be referred to the Reporters or not?*
2. *Whether the judgment should be reported in the Digest?*

RAJIV NARAIN RAINA, J. (ORAL)

This petition is accepted only because of the delay in finding out and taking action against the petitioner for not having cleared the departmental examination within 2½ years of his appointment as Junior Engineer (Civil) in the Public Works Department (B&R), Punjab. He appeared in Departmental Professional Examination in August, 2005 and cleared Accounts Paper, but failed in Specifications Paper. Thereafter, the examination was held in February, 2007 and the petitioner complains that he did not know of the schedule and, therefore, did not appear in Specifications Paper by which time, the period fixed in the Rules had run out. He had crossed 2½ years of service and continued till he superannuated on 28.02.2013. The petitioner was granted extension for one year under the

Punjab Government policy and served till 28.02.2014. Four months thereafter, the impugned order was passed ordering recovery of a sum of Rs.3.5 lakhs and odd. The increments granted to the petitioner from 2005 till date were withdrawn by the Government because of lack of clearing the prescribed "Specifications" paper. Non-clearing of Specifications paper or the Departmental examination would inevitably have resulted in reversion to the lower post from where the promotion was earned as Junior Engineer (Civil).

It is somewhat difficult to believe the story of the petitioner that he did not know of the examination held in February, 2007. It will be assumed that being a Junior Engineer (Civil), he was aware of the rules and the tests and should have himself been eager to pass the departmental examination to secure his promotion by legitimate means. But he did not do that and has instead taken a firm stand that the schedule of the test was not conveyed to him and therefore he lost out by ignorance. Though this Court cannot pat the petitioner on his back and approve his act and conduct in not appearing for the examination within the period prescribed and falling foul of the rigours of the rule, but looking to the fact that he has superannuated and is a retired person and has willy-nilly worked on the superior post till retirement without being noticed or caught, then he does not deserve to be visited by an order directing him to regurgitate the large sum of money demanded from him.

The case stated in the replication is that there were six persons similarly situated, who did not clear the departmental examination, but have received pension on the basis of last pay drawn and no recovery has been effected from them is an argument which is ordinarily not countenanced under Article 14 of the Constitution. There is no negative protection in the

equality clause. It is well-settled that an order will not be passed to perpetuate an illegality. Therefore, the cases of the six officials cited will not come in aid of the petitioner when the motivations and foundations which impelled the department are not explicitly known on file. No gainsaying that it is for the Government to keep its house in order to maintain the purity of rule and that it should remain pure on its official record by proper implementation of the service rules while the court will not approve action unless brought to judicial review to specifically deal with how those persons obtained relief.

It may also be mentioned that after the petitioner superannuated, he was paid his due amount of leave encashment on his basic pay of Rs.22,920/- and dearness allowance of 90% based on the last pay drawn. This was just after retirement. Even the Vigilance Department gave its clearance in June, 2014 and the impugned action was taken on 21.07.2014.

Be that as it may, this Court is inclined to think that allowing this petition in toto may not be just and proper and would add premium to violation of rule prescribing passing of the departmental examination for confirmation. Accordingly, there are two aspects which deserve the attention of the court. One is recovery of money the other is pension. I have no doubt that recovery part is not sustainable for reasons recorded above, but that does not mean pension should be protected. As I see it, the petitioner cannot go scott free by court putting its imprimatur on the neglect in passing the examination on which clearance the right to confirmation on the promoted post was dependent. Therefore, I think the protection cannot extend beyond recovery by the fiat accompli of having worked on the higher post by oversight of the respondents and should deservedly impact on pension by

reducing it to the last pay drawn on the lower post. This appears to me to be striking a just balance of the competing interests of the State and the pensioner. His pension has to be reduced by his act of omission and commission in avoiding the departmental examination, the passing of which in the time prescribed was a condition precedent to retention of the promoted post.

As a result of the above discussion, I would partly allow this petition by quashing the recovery. However, the petitioner would have to suffer reduced pension as a necessary corollary to the breach of rule which was in the interest of the petitioner to tide over. The respondent department is at liberty to proceed against the petitioner accordingly so far as pension is concerned. The respondents are directed to re-fix the pension of the petitioner to the lower post after granting annual grade increments till retirement in accordance with the declaration given in this order.

17.05.2016
Vimal

[RAJIV NARAIN RAINA]
JUDGE