

promotion to the post of Executive Engineer, as per the provisions of the Haryana Service of Engineers, Group A, Public Works (Buildings and Roads) Department Act, 2010 (hereinafter referred to as – the 2010 Act).

In June 2010, the petitioner appeared in the departmental professional examination and on the declaration of the results of the same, the petitioner's score was as under :-

<u>Sr.No.</u>	<u>Name of Subject</u>	<u>Marks</u>
01.	<i>Transmission and Distribution</i>	60/100 (60%)
02.	<i>Material and Estimate</i>	51/100 (51%)
03.	<i>Accounts</i>	47/100 (47%)
04.	<i>Electricity Act</i>	26/50 (52%)
05.	<i>Aggregate %</i>	52.57%

The petitioner was declared to have failed the examination, which the petitioner assails through the present petition.

I have heard learned counsel for the parties and with their able assistance, have also gone through the record of the case.

The petitioner, in all the four subjects, which comprise the departmental professional examination, had scored at least 40% marks in each and more than 50% marks in aggregate. Learned counsel for the petitioner drew the attention of this Court to Rule 9(1) of the Rules for Departmental Examination, 1950 (hereinafter referred to as – the 1950 Rules), as amended in the year 1953, to urge that the prescribed pass

percentage was 40% in an individual subject and 50% in the aggregate and that being so, as per the 1950 Rules, which were applicable, the petitioner should be declared to have passed the departmental professional examination.

Per contra, learned counsel appearing on behalf of the State submitted that the 1950 Rules were not applicable. She drew the attention of this Court to the PWD Code, Punjab, 1961 (hereinafter referred to as – the 1961 Code), which, according to her, was applicable, wherein the minimum pass marks in each subject were 50% and aggregate of not less than 60% was required to be declared pass in the departmental professional examination.

The question to be determined is whether to the departmental professional examination, the 1950 Rules would be applicable or the 1961 Code.

It is not disputed that in the year 2009, the State of Haryana made its own PWD Code – Haryana PWD Code, 2009 (hereinafter referred to as the 2009 Code) and prior thereto, the State of Haryana was following the 1961 Code made by the State of Punjab. However, on the notification of the 2009 Code, which became applicable w.e.f. 01.11.2009, the applicability of the 1961 Code, became inapplicable. It is so because the Haryana PWD Code made in the year 2009 was on the same lines of the 1961 Code. Even otherwise, once the State of Haryana had made its own Code in the year 2009, there was no reason why the earlier Code of the year

1961 made by the State of Punjab would continue to be followed and applied by the State of Haryana. Even on first principles, there could not be two overlapping Codes applicable in a State especially when the State had itself made its own Code i.e. the 2009 Code.

The decks are now clear to refer to the relevant provisions of the 2009 Code pertaining to the departmental examination. Rule 7.7.4 reads as under :-

“7.7.4 The scheme of taking the examination by a candidate (whether in one go or in installments), number of chances that can be availed, and the ‘pass’ criteria shall be as per service rules or as may be prescribed by the Government.”

A perusal of the above quoted provision shows that as per the 2009 Haryana Code, ‘pass’ criteria in the departmental examination was to be as per the applicable service rules or as may be prescribed by the Government. Admittedly, the applicable service rules do not prescribe the ‘pass’ criteria and no pass marks have also been prescribed by the Government. In such a situation, when the 2009 Haryana Code is silent, so as to what would be the ‘pass’ marks, as per the stand taken by the respondents in the written statement, one has to fall back on the 1950 Rules. The relevant portion of the written statement is reproduced as under :-

“As far as 1950 rules are concerned,

it is submitted that there is no provision regarding revaluation in PWD Code but there is a provision in 1950 Rules that Bonafide Mistake in totaling or in not calculating the number of papers where a person is passed can always be corrected in terms of Rule 6.4. So when the PWD Code was silent on this point so the case of the petitioner alongwith other some similarly situated persons was referred to Govt. in view of the provision of 1950 Rules.

[Emphasis supplied]”

xx xx xx xx

“That in reply to sub para (viii) of para 11 of writ petition, it is submitted that there is no provision for re-evaluation in para 7.8.5 of chapter 7 of Haryana PWD Code – 2009. As far as 1950 rules are concerned, it is submitted that there is no provision regarding revaluation in PWD Code but there is a provision in 1950 Rules that Bonafide Mistake in totaling or in not calculating the number of papers where a person is passed can be always corrected in terms of Rule 6.4. So when the PWD Code was silent on this point so the case was referred as per provision of

1950 Rules. [Emphasis supplied]

From the aforesaid stand taken by the respondent State, it is clear that wherever the 2009 Haryana Code is silent, the provisions of the 1950 Rules are invoked.

Further, a perusal of the impugned order not only shows the applicability of the 1950 Rules, but also that the concerned Minister had also relied on the 1950 Rules while considering the case of the petitioner. It is another thing that those rules were relied to consider the plea of the petitioner to get his examination papers revalued. Nonetheless, reliance of the 1950 Rules was there. The State cannot be allowed to argue that the 1950 Rules would apply while deciding the petitioner's prayer for revaluation of papers of the departmental examinations but would be inapplicable for other issues pertaining to the same departmental examination.

It further was not denied on behalf of the State that the departmental professional examination consists of four subjects which also can be sourced only under the 1950 Rules as no reference to any of the four subjects, which comprise the departmental professional examination, are found either under the 2009 Haryana Rules or under the 1961 Punjab Rules.

Thus, in view of the aforesaid facts, the submissions made on behalf of the State with regard to non-applicability of the 1950 Rules cannot be accepted and once I draw that conclusion, then the pass marks, as given under the 1950 Rules (as amended in the year 1953) are 40% in each

subject and 50% in the aggregate, which the petitioner has secured. That being so, the petitioner is entitled to be declared to have passed the departmental professional examination.

It deserves notice that the aforementioned score of the petitioner was the originally declared result, which later, on the asking of the petitioner, was revalued but after revaluation, the petitioner was not allowed to avail the benefits of the revalued marks. The petitioner, in the alternative, had prayed that he be allowed to reap the benefits of the revalued score, but since the main issue, on the basis of his original score, is being decided in his favour, there is no necessity to opine on the alternate issue raised by him.

In view of the above, the petitioner is declared to have passed the departmental professional examination in terms of the original result declared on 10.12.2010, with all consequential benefits.

The writ petition stands allowed in the above terms.

(DEEPAK SIBAL)
JUDGE

Pronounced On : 28.01.2016

monika