IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

214 **CWP-17087-2014 (O&M)**
Date of decision: 23.03.2017

S.K.Pathania

....Petitioner

Versus

State of Haryana and others

.... Respondents

(ii) CWP No. 22525 of 2014 (O&M)
Date of decision: 23.03.2017

S.K.Pathania

....Petitioner

Versus

State of Haryana and others

.... Respondents

CORAM: Hon'ble Mr. Justice P.B. Bajanthri

Present: Mr.B.D.Sharma, Advocate for the petitioner.

Mr. Hitesh Pandit, AAG, Haryana.

P.B. Bajanthri, J. (Oral)

In CWP No. 17087 of 2014 the petitioner has questioned the validity of order dated 19.07.2014 vide Annexure P-10 by which he has been reverted from the post of Sales Tax Inspector to the post of Senior Scale Stenographer.

2. In CWP No. 22525 of 2014 the petitioner has questioned the

validity of order dated 08.10.2014 read with order dated 21.10.2014 vide Annexure P15 and order dated 31.10.2014 which are relating to reversion and asking the petitioner to join for reverted post of Senior Scale Stenographer instead of Taxation Inspector (order dated 22.08.2014- Annexure P13).

3. The petitioner while working as a Senior Scale Stenographer, he was promoted to the post of Taxation Inspector on 24.11.2009 under Rule 16 of the Haryana Excise and Taxation Inspectorate (State Services Group-C) Rules, 1969 read with 1980 Rules and Appendix D and E certain departmental test has been prescribed for the purpose of confirmation on the promotional post of Taxation Inspector. Relevant Rule for the purpose of present case is rule 14(1) which reads as under:

> *14(1) A member of the service shall, within two years from the date of his 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, the 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 department examination by one year*
>
> *Provided further that the Government may exempt any member of the service from so passing the 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 two increments, including those already earned by him, from the date, if any, following the last day on which the departmental examination is completed. However, 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 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 date on which the examination is completed. 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.

iv) If a member of the service fails to pass the departmental examination, or any part thereof, and is subsequently exempted by the government from passing the departmental examination 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 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."

Appendix 'E' reads as under:-

"*1. A departmental examination for the Excise Inspectors and Taxation Inspectors will be held thrice a year in the month of February, June and October or in such other months as are notified by the Commissioner or Government. The exact date and place of examination will be notified before hand, in the Haryana Government Gazette."*

4. The petitioner was promoted to the post of Taxation Inspector on 24.11.2009. As per the above Rule a Taxation Inspector who has been promoted is required to pass prescribed departmental examination within a period of 2 years having regard to the fact that such departmental examination would be held thrice a year in the month of February, June and October or in such other months as are notified by the Commissioner or Government. Admittedly, official respondents have not proceeded to hold departmental examination from time to time. Thus, the petitioner has been

extended one year from 23.11.2011 to 23.11.2012. Before, 23.11.2012. Six examinations were held in which the petitioner has not passed or he has not appeared for some of the examinations. Since the Taxation Inspector who has been promoted is entitled for 9 exams, official respondents are required to permit the petitioner to participate in 9 exams. 7th examination was conducted on 13.05.2015, 8th examination was conducted on 22.08.2013 and 9th examination was conducted on 10.05.2016. On 31.05.2016 the petitioner has attained age of superannuation and retired from service. In the meanwhile, the petitioner has been reverted from the post of Taxation Inspector to that of Senior Scale Stenographer on 19.07.2014 which was the subject matter of CWP No. 17087 of 2014. While ordering notice of motion this court has granted interim order staying the operation of the reversion order dated 19.07.2014. When things stood thus, the official respondents proceeded to pass further order reverting the petitioner to the post of Assistant which is subject matter of CWP No. 22525 of 2014. Due to non-compliance of the interim order passed by this court the petitioner preferred COCP No. 3135 of 2014. During pendency of the above petition, the petitioner has been put back to the post of Taxation Inspector in view of the interim order passed by this court. Thus, COCP NO. 3135 of 2014 do not survive for consideration. Hence these writ petitions.

5. Learned counsel for the petitioner submitted that petitioner has not been provided to participate in 9 examinations. He was permitted only 8 examinations. Before 9th examination was held on 10.05.2016 the respondents have passed reversion order. Thus, he has been deprived of

opportunity to participate in the examination held on 10.05.2016 and during pendency of this petition he has attained age of superannuation and retired from service on 31.05.2016. Consequently, the petitioner is not entitled for passing the departmental examination pursuant to the proviso to Rule 14(1) of the Haryana Excise and Taxation Inspectorate (State Services Group C) Rules, 1969 read with Rules, 1988. In support of examination in passing examination for the purpose of confirmation in the post of Taxation Inspector he relied on administrative orders/decision taken by the official respondents in respect of Kuldeep Chhibar, Moti Ram Kataria and Sheo Ram. They have been exempted in passing departmental examination for the purpose of confirmation on 31.05.2006, 31.05.2006 and 31.1.2012 respectively. Thus, in not extending identical benefit to the petitioner amounts to discrimination. Hence the petitioner is entitled for exemption in passing departmental examination. In view of the facts and circumstances order of reversion is liable to be set aside and the petitioner is entitled for confirmation in the post of Taxation Inspector. In support of the petitioner's claim he relied on decision passed by this court in

(i)CWP No. 1991 of 2012 disposed of on 18.02.2013 titled as ***Narender Kumar Malik veruss State of Haryana.***

(ii)CWP No. 18211 of 2014 dispoded of on 27.10.2016 titled as ***Sat Narain Versus State of Haryana and another***

(iii)CWP No. 8023 of 2015 disposed of on 19.12.2016 titled as ***B.D.Mathur versus State of Haryana and***

others. He has also relied on the decision passed by this court in his own case for consideration of the petitioner's grievance by the official respondent CWP No.19575 of 2015 disposed of on 19.09.2014.

6. Per contra, learned State counsel vehemently contended that the petitioner has been granted sufficient time for passing departmental examination. He has failed to pass the examination which were held on nine occasions before his retirement. It was further contended that in respect of exemption granted by means of administrative order in respect of Kuldeep Chhibar, Moti Ram Kataria and Sheo Ram are concerned, before their retirement 9 examinations were not held. Consequently, they have been extended benefit of passing of departmental examination. Whereas, in the petitioner's case even though petitioner was given 9 examinations i.e. prior to 23.11.2012 six examinations were provided thereafter on 13.05.2013, 22.08.2013 and 10.05.2016. The petitioner neither participated in the process of examination nor he has passed in the examination. Therefore, before date of his retirement i.e. on 31.05.2016 the petitioner has been provided 9 examinations as per the rules. Hence the petitioner has not made out a case so as to interfere with the order of reversion.

7. Heard learned counsel for the parties.

8. Perusal of the records requires whether the petitioners reversion order is in accordance with law or not and whether the petitioner is entitled for exemption from passing departmental examination or not. Rule 14(1) of the Haryana Excise and Taxation Inspectorate (State Services Group-C)

Rules, 1969 Rule read with Appendix E requirement is that promotee to the post of Tax Inspector is required to pass departmental examination. For certain reasons if a promotee is not able to pass departmental examination there is a proviso to Rule 14(1) by which the Government can exempt any member of the service from so passing the 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. Admittedly, the petitioner could have availed 9 times for the purpose of passing a departmental examination. All these 9 times was prior to the date of his retirement i.e. 31.05.2016. The petitioner had an opportunity to participate in the process of examination held on 10.05.2016 which is supposed to be 9th exam for the petitioner. He has not appeared for the examination held on 10.05.2016 on the score that the petitioner has been reverted from the post of Taxation Inspector to that of Assistant on 19.07.2014 read with subsequent order dated 31.10.2014. Even though petitioner was reverted however he was holding the post of Taxation Inspector as on the date of 9th examination held on 10.05.2016 by virtue of interim order passed in these writ petitions. The department on 18.01.2016 issued a general order for the purpose of appearing in the departmental examination to be held on 10.05.2016 which has not been availed by the petitioner. Even though petitioner could have availed such an opportunity and thereafter, he has attained age of superannuation and retired from service on 31.05.2016 without passing examination. Now assuming that the order of reversion dated 19.07.2014 has been passed prior to the date of examination dated

10.05.2016 (9th exam for the petitioner) however, the petitioner has not availed the opportunity of appearing in the 9th exam and he has not even made an attempt to appear in the examination therefore, the petitioner is not entitled for exemption in passing the departmental examination under second proviso to Rule 14(1) of Haryana Excise and Taxation Inspectorate (State Services Group C) Rules, 1969. Learned counsel for the petitioner relied on number of decisions of this court cited supra. None of the decision is relating to whether the petitioners therein had given or availed opportunity of 9 examination or not forthcoming. Therefore, cited decisions are distinguishable on factual aspects. The benefit of judgment passed in cited (supra) are not at all applicable to the present case having regard to the fact that the petitioner could have utilized 9th examination held prior to the date of his retirement. The Supreme Court in the case titled as ***Nair Service Society Vers. Dr. T.Beermasthan*** reported in (2009)5 SCC 545 in para 47 held that referring to any decision of a court first thing is to examine relevant rules. In the present case, Rule 14(1) of Haryana Excise and Taxation Inspectorate (State Services Group C) Rules, 1969 it is crystal clear that Taxation Inspector is required to pass departmental exam and the fact that petitioner has been provided with the examination and he has not utilized the 9th opportunity on 10.05.2016. Therefore, the petitioner cannot contend that he had been reverted to the post of Assistant. Consequently, he is not in a position to take up the examination held on 10.05.2016. Moreover, the petitioner had the benefit of interim order that the order of reversion dated 19.07.2014 and 31.10.2014 were stayed by this court.

Consequently he had filed COCP NO. 3135 of 2014 and he had the benefit of interim order and he has been continued in the post of Taxation Inspector as on 18.01.2016 the date on which the official respondents permitted to large number of Taxation Inspectors to avail the opportunity of writing departmental examination on 10.05.2016. The same has not been availed by the petitioner. In view of these factual aspects the petitioner has not made out a case so as to interfere with the order of reversion and consequently, he is not entitled for exam under 2nd proviso to Rule 14(1) for the purpose of confirmation for the post of Taxation Inspector. Even assuming that order of reversion is bad however, the petitioner status would be without confirmation he will be in the post of Taxation Inspector. Hence CWP stands dismissed.

9. At this stage, learned counsel for the petitioner submitted that he has sought for exemption for passing particular examination for the purpose of confirmation on 06.08.2014 with reference to his illness. The official respondent had granted time for passing examination from December, 2009 till 10.05.2016. If the petitioner was suffering from illness in the year 2014 that does not mean he can escape from passing of departmental examination held on 10.05.2016.

10. Accordingly, the said contention is rejected.

(P.B.BAJANTHRI)
JUDGE

23.03.2017
pooja saini

Whether speaking/reasons Yes/No

Whether Reportable: Yes/No