IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision : 26.11.2018

(1) CWP-14200-2012 (O&M)

Naresh Chander Sharma and others

...Petitioner(s)

Versus

State of Punjab and another

...Respondent(s)

(2) CWP-5594-2014 (O&M)

Mahesh Gupta

...Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

(3) CWP-5624-2014 (O&M)

Ram Dass and others

...Petitioner(s)

Versus

State of Punjab and another

...Respondent(s)

(4) CWP-7850-2014 (O&M)

Jagdish Singh

...Petitioner(s)

Versus

State of Punjab and another

...Respondent(s)

(5) CWP-6066-2014 (O&M)

Nachhatar Singh

...Petitioner(s)

Versus

State of Punjab and another

...Respondent(s)

(6) CWP-5944-2014 (O&M)

Baljinder Singh Sidhu

...Petitioner(s)

Versus

State of Punjab and another

...Respondent(s)

(7) CWP-8350-2016 (O&M)

Paramdeep Singh

...Petitioner(s)

Versus

State of Punjab and another

...Respondent(s)

(8) CWP-8269-2016 (O&M)

Randhir Singh

...Petitioner(s)

Versus

State of Punjab and another

...Respondent(s)

(9) CWP-8294-2016 (O&M)

Sham Lal Monga

...Petitioner(s)

Versus

State of Punjab and another

...Respondent(s)

(10) CWP-8295-2016 (O&M)

Dayal Chand

...Petitioner(s)

Versus

State of Punjab and another

...Respondent(s)

(11) CWP-8296-2016 (O&M)

Bhag Singh

...Petitioner(s)

Versus

State of Punjab and another

...Respondent(s)

(12) CWP-14302-2016 (O&M)

Jaspal Singh

...Petitioner(s)

Versus

State of Punjab and another

...Respondent(s)

(13) CWP-14321-2016 (O&M)

Gurcharan Singh

...Petitioner(s)

Versus

State of Punjab and another

...Respondent(s)

(14) CWP-29234-2017 (O&M)

Smt. Shakuntla Devi

...Petitioner(s)

Versus

State of Punjab and another

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Rajiv Atma Ram, Sr. Advocate,
with Ms. Sanah Sahni, Advocate,
for the petitioner(s) in CWP-14200-2012 and 5594-2014.

Mr. Satinder Paul Garg, Advocate,
for the petitioner(s) in CWP-29234-2017.

None for the petitioner(s) in CWP-7850-2014.

Mr. K.C. Singla, Advocate,
for the petitioner(s) in the remaining cases.

Mr. Vikas Mohan Gupta, Addl.A.G., Punjab.

JITENDRA CHAUHAN, J.

This is a batch of 14 writ petitions, as captioned above. In all these petitions, the petitioners were promoted to the post of Excise & Taxation Officer on different dates w.e.f. 1999 onwards. All of them were required to qualify the departmental examination within 2 years of promotion as Excise & Taxation Officer, wherein, they were given five chances. None of them could qualify the departmental examination. Accordingly, all the petitioners (except Shakuntla Devi, Excise & Taxation Officer, petitioner in C.W.P. No.29234 of 2017) were sought to be reverted to their earlier posts of Inspectors. They approached this Court and vide separate orders, operation of the impugned orders of reversion was stayed on different dates in different Writ Petitions. Resultantly, all the petitioners are continuing in service as Excise & Taxation Officers. It has been argued by learned counsel for the petitioners that initially, the Punjab Excise & Taxation Department (State Service Class-II) Rules, 1956 (for short, 'the 1956 rules') were applicable to the post of Excise & Taxation Officer which provided for filling up the said posts by the method of promotion from amongst Asstt. Excise & Taxation Officers. However, all the posts of Asstt. Excise & Taxation Officer were upgraded as Excise & Taxation Officer, vide Memo. No.3588-ET(III)-77/1998 dated 06.05.1977 and hence, the post of Asstt. Excise & Taxation Officer ceased to exist. Thereafter, the respondent-State framed draft Rules called the Punjab Excise & Taxation Department (State Service Class-I) Rules, 1990 (for short, 'the 1990 rules') and since then, the promotions to the post of Excise & Taxation Officer are being made from amongst the Inspectors under the said Rules. Further case made out is that the post of Excise & Taxation Officer was declared as a Class-I post vide Orders dated 13.12.1994 (Annexure P-5) and accordingly, the Class-II Rules, 1956 ceased to apply to the post of Excise & Taxation Officers. Rule 10 of 1956 Rules reads as under:-

> *"Rule 10. Departmental Examination - Every member of the Service shall, within three years of his appointment, pass the prescribed departmental examination in accordance with the Rules specified in Appendix "C" to these Rules; provided that-*
>
> *(a) Government may, as and when considered necessary, amend Appendix "C"; and*
>
> *(b) It shall not be necessary for a member to take this departmental examination if he has already passed a similar examination while a member of the Punjab Excise and Taxation Department (State Service Class*

> *III-A) or as an Excise & Taxation Inspector or Sub-Inspector.*
>
> *Note : If any member, who has not been exempted from this examination, fails to pass it within three years of his appointment, he shall be removed from the Service or reverted to his former appointment, if any, provided that the Government may exempt any member from so passing the whole or any part of the examination,"*

It has been brought to the notice of the Court by learned State Counsel that thereafter, the State of Punjab has framed the Punjab Excise and Taxation Department (Group 'A') Service Rules, 2014 (for short, 'the 2014 rules'), which now govern the post of Excise & Taxation Officer.

Be that as it may, in both the 1956 Rules as also the 2014 Rules, the requirement of passing the departmental examination within 2 ½ years continues. Rule 7 of the 2014 rules reads as under :-

> *"Rule 7. Probation - (1) A person appointed to any post in the service shall remain on probation for a period of two years, if recruited by direct appointment and one year if appointed otherwise :*
>
> *Provided that :*
>
> *(a) Any period, after such appointment, spent on deputation on a corresponding or a higher post shall count towards the period of probation;*
>
> *(b) In the case of an appointment by transfer, any period of work on an equivalent or higher rank, prior to appointment to the Service, may in the*
>
> *discretion of the appointing authority, be allowed to count towards the period of probation;*
>
> *(c) Any period of officiating appointment to he Service*

shall be reckoned as period spent on probation; and

(d) Any kind of leave not exceeding six months, during or at the end of period of probation, shall be counted towards the period of probation.

(2) If, in the opinion of the appointing authority, the work or conduct of a person during the period of probation is not satisfactory or if he has failed to pass the departmental examination, if any, prescribed in Service Rules within a period not exceeding two and a half years from the date of appointment, if any,-

(a) if such person is recruited by direct appointment dispense with his services, or revert him to a post on which he held lien prior to his appointment to the Service by direct appointment; and

(b) if such person is appointed otherwise-

i) revert him to his former post; or

ii) deal with him in such other manner as the terms and conditions of the previous appointment permit.

(3) On the completion of the period of probation of a person, the appointing authority may -

(a) if his work and conduct has in its opinion been satisfactory -

i) confirm such person, from the date of his appointment or from the date he

completes satisfactorily, his period of probation if he is not already confirmed; or

ii) declare that he has completed his probation satisfactorily, if he is already

confirmed; or

(c) if his work conduct has not been in its opinion, satisfactory or if he has failed to pass the departmental examination, if any, specified in the Service Rules --

i) dispense with his services, if appointed by direct *appointment or if appointed otherwise revert him to his former post, or deal with him in such other manner as the terms and conditions of his previous appointment may permit;*

ii) extend his period of probation and thereafter pass such order as it could

have passed on the expiry of the period of probation as specified in sub-rule (1):

Provided that the total period of probation including extension, if any, shall not exceed three years."

The Respondent-State also promulgated Punjab Civil Services (General and Common Conditions of Service) Rules, 1994, which have an overriding effect over all other Rules, for the time being in force, for regulating the recruitment and conditions of service for appointment to public service and posts in connection with the affairs of the State. Rule 7 of the 1994 Rules reads as under :-

"7. Probation -

(1) A person appointed to any post in the service shall remain on probation for a period of two years, if recruited by direct appointment and one year if

appointed otherwise:

Provided that -

• Any period after such appointment, spent on deputation on a corresponding or a higher post shall count towards the period of probation;

• In the case of an appointment by transfer, any period of work on an equivalent or higher rank, prior to appointment to the Service, may in the discretion of the appointing authority, be allowed to count towards the

periods of probation;

• Any period of officiating appointment to the Service shall be reckoned as period spent on probation; and

• Any kind of leave not exceeding six months, during or at the end of period of probation, shall be counted towards the period of probation.

(2) If, in the opinion of the appointing authority, the work or conduct of a person during the period of probation is not satisfactory or if he has failed to pass the departmental examination, if any, prescribed in Service Rules within a period not exceeding one and a half years from the date of appointment, it may,-

(a) if such person is recruited by direct appointment, dispense with his services, or revert him to a post on which he held lien prior to his appointment to the Service by direct appointment; and

(b) if such person is appointed otherwise -

• revert him to his former post; or

• deal with him in such other manner as the terms and conditions of the previous appointment permit.

(3) On the completion of the period of probation of a person, the appointing authority may,-

(a) if his work and conduct has in its opinion been satisfactory -

• confirm such person, from the date of his appointment or from the date he completes his period of probation satisfactorily, if he is not already confirmed; or

• declare that he has completed his probation satisfactorily, if he is already confirmed; or

(b) If his work or conduct has not been in its opinion, satisfactory or if he has failed to pass the departmental examination, if any, specified in the Service Rules -

• dispense with his services, if appointed by direct

> *appointment or if appointed otherwise revert him to his former post, or deal with him in such other manner as the terms and conditions of his previous appointment may permit;*
>
> *• extend his period of probation and thereafter pass such order as it could have passed on the expiry of the period of probation as specified in sub-rule (1):*
>
> *Provided that the total period of probation including extension, if any, shall not exceed three years."*

It is the contention of learned counsel for the petitioners that by efflux of time, the petitioners have completed the maximum period of probation (three years) and are, therefore, deemed to have been confirmed. Further, they were required to pass the departmental examination within a period of 2½ years from the date of promotion as Excise & Taxation Officer and the State ought to have taken action within three years therefore, which was not done. Rather, the impugned orders of reversion were passed after long gap viz. in C.W.P. No. 14200 of 2012, the promotions as Excise & Taxation Officer were made in the years 1999, 2001 and 2002, respectively, whereas, the reversion was ordered only on 24/25.07.2012 (Annexure P-10) on account of failure to pass the departmental examination prescribed in the 1956 Rules and the 1994 Rules supra). Accordingly, it is contended that after their deemed confirmation by virtue of serving the maximum period of probation prescribed in the 1994 Rules, the petitioners could not be reverted at such a belated stage. It has further been submitted that similar matter was considered by Division Bench of this Hon'ble Court in C.W.P. No.7449 of 2001 titled as ***Dr. Ravinder Singh Versus. State of Punjab*** decided on

28.07.2011, wherein, it was held that Rule 7 of the 1994 Rules would not constitute a basis to discharge a member of the service under Rule 7(2) on the ground that a member of the service has failed to pass the departmental examination within 2 ½ years after a person is deemed to be confirmed.

It has further been argued that the 1956 Rules provided for grant of exemption and also waiver of the condition of passing the departmental examination and also provided for dispensation and relaxation in hard cases. Similarly, the 1994 Rules also provided for relaxation. Exercising the powers of exemption/waiver/relaxation, the Respondent-State has passed orders of exemption dated 17.05.1985, 09.05.1988, 20.09.2000, 29.09.2000, 30.08.2001, 24.10.2001 and 29.03.2006, thereby, granting relief to the similarly situated officers prior to their retirement and in some cases, even after retirement. Some of these orders are on record as Annexure P-12. It is, therefore, submitted that similar relief be also granted to the present petitioners.

On the other hand, learned State counsel has argued that there is a statutory requirement of passing the departmental examination within a period of 2½ years, which the petitioners failed to qualify and accordingly, the orders of reversion are in terms of the statutory Service Rules. He further states that the exemption/waiver/relaxation granted to the persons mentioned by the petitioners were granted on the eve of their retirement and similar benefit, therefore, was not granted to the present petitioners, who were in service.

Heard.

It is to be seen that a large number of petitioners, as detailed below, stand retired from service :-

C.W.P. No. 14200 of 2012 :

(i) Sh. Naresh Chander Sharma, petitioner No. 1 retired on 30.06.2015.

(ii) Sh. Virenderjit Singh, petitioner No.3, retired on 30.09.2018.

(iii) Sh. Gurtej Singh Sidhu, petitioner No. 2's services terminated on 31.01.2015.

C.W.P. No. 5624 of 2014 :

(i) Sh. Ram Dass, petitioner No.1, retired on 31.08.2014.

(ii) Sh. Sat Pal, petitioner No.2, retired on 31.12.2014.

(iii) Sh. Sat Pal Bhagat, petitioner No.3, retired on 01.04.2014.

C.W.P. No. 5944 of 2014 :

(i) Sh. B.S. Sidhu, petitioner No.1, compulsorily retired on 19.08.2014.

C.W.P. No. 8269 of 2016 :

(i) Sh. Randhir Singh, petitioner No.1, retired on 31.05.2016.

C.W.P. No. 8294 of 2016 :

(i) Sh. S.L. Monga, petitioner No.1, retired on 30.06.2016.

C.W.P. No. 14321 of 2016 :

(i) Sh. Gurcharan Singh, petitioner No.1, retired on 31.12.2015.

Even the periods of extension have concluded in the cases of all the retirees (except Sh. Virenderjit Singh, petitioner No. 3 in C.W.P. No. 14200 of 2012). Thus, all the retirees are entitled to same consideration, as given to the retirees mentioned above, vide orders (Annexure P-12) and further, similar orders, whereby, they were granted exemption from passing departmental examination.

Even the remaining petitioners, who are still in service, have been promoted as Excise & Taxation Officers w.e.f. 28.12.2010 till 13.03.2013. All these petitioners, who are still in service, have also completed more than the maximum statutory period of probation of three years, and are deemed to be confirmed as Excise and Taxation Officer, as held by the Division Bench in Dr. Ravinder Singh's case (supra).

Keeping in view the above facts, it is directed as under:- .

(i) The Respondent-State will grant exemption/ waiver/ relaxation from qualifying the departmental examination to all the petitioners, who are retired from service as done in case of other E.T.Os., orders regarding some of whom are Annexure P-12;

(ii) Another chance to clear the departmental examination will be given to all the petitioners, keeping in view their long length of service as Excise & Taxation Officers and the fact that they are deemed to be confirmed in service in view of the maximum period of probation of three years, provided in Rule 7 of 1994 Rules. Hence, the Respondent-State is directed to conduct departmental examination after six months from today and give the serving petitioners one mercy chance to clear the said examination.

(iii) If any petitioner retires before the test is conducted, he shall also be granted exemption/ waiver/ relaxation.

Disposed of in the above terms.

However, the relief granted shall enure to the petitioners alone.

26.11.2018 **(JITENDRA CHAUHAN)**
atulsethi **JUDGE**

Whether speaking / reasoned : Yes No

Whether Reportable : Yes No