IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-1803 of 2013 (O&M)
Date of decision: 04.12.2018

Harinder Pal Singh Brar and others

...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
Mr. Arjun Pratap Atma Ram, Advocate and
Mr. Subey Sharma, Advocate for the petitioner(s).

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

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Jitendra Chauhan, J. (Oral)

The challenge is to the order dated 24.01.2013 (Annexure P-12 colly.) whereby the petitioners had been reverted from the post of Excise and Taxation Officer to the post of Excise and Taxation Inspector.

It is asserted that the petitioners would be deemed to be confirmed by efflux of time after having completed the maximum period of probation. The case of the petitioners is squarely covered by the ratio of law laid down by this Court in CWP-14200-2012 titled as **Naresh Chander Sharma and others** Vs. **State of Punjab and another**, decided on 26.11.2018.

Learned State counsel fairly concedes to the assertion raised on behalf of the petitioners.

Heard.

In **Naresh Chander's** case (supra) it has been held as under:-

"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."*

Keeping in view the prayer made and the admitted position, the present petition is allowed in terms of **<u>Naresh Chander's</u>** case (supra). The respondents are directed to release the admissible benefits in favour of the petitioners within a period of three months from the date of receipt of a certified copy of this order.

04.12.2018 **(JITENDRA CHAUHAN)**
sumit.k **JUDGE**

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No