

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

CWP-1811-1996 (O&M)
Date of decision : 10.05.2019

Devi Dayal

...Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. K.L. Arora, Advocate,
for the petitioner(s).

Mr. Navdeep Chhabra, DAG, Punjab.

JITENDRA CHAUHAN, J.

By way of the instant petition filed under Articles 226/227 of the Constitution of India, the petitioners, *inter alia* seek issuance of a direction to the respondents to promote the petitioner from the post of Clerk to the post of Senior Assistant

Learned counsel contends that the case of the petitioner is squarely covered by the ratio of law laid down by Hon'ble the Supreme Court in *Saroj Rani Vs. State of Punjab, 1999 AIR (SC) 3392*.

Learned State counsel does not dispute the assertion so raised by learned counsel for the petitioner.

Heard.

In *Saroj Rani's case (supra)*, it has been observed as under:-

*“15. The grievance is that they should not have
been reverted on account of the interim order as*

there was no such direction. According to the appellants on 5th January, 1996. the Government issued a letter for implementation of the interim order dated 4th December, 1995 passed by this Court but by this it never ordered any reversion of all those employees who have already been promoted as senior Assistant. It is significant that finally State took decision vide Notification dated 3rd March, 1998 to abolish Assistant Grade Examination, thus consequently issued a letter dated 9th March, 1998. On doubt being expressed the Government also issued a clarificatory letter dated 17th August, 1998. The case of the appellant is. that respondent itself misinterpreted the said clarificatory letter dated 17th August, 1998, and passed reversion order of the appellant on 26th November, 1998. It is this reversion order which is under challenge in the writ petition of the appellants, However, the High Court dismissed the writ petition against which this appeal is preferred.

In the aforesaid appeals the questions raised are;

- (a) Whether Rule 12 of the 19S4 Rule invalid?*
- (b) Whether the notification/order dated 21st January, 1991 is valid?*
- (c) Whether in terms of Full Bench decision in Surenderjit Singh (supra) on the facts and circumstances of this case, are the exemptees going to fill up to cent percent vacancies of Assistant in case yes, is it not necessary for the State Government to come out with some policy or guideline to redress the grievance of those who passed the examination prior to 21st January,*

1991?

(d) What meaning is to be given to the Full Bench decision in Surenderjit Singh (supra) according to which the exemptees have been placed at par with those who qualified in the examination?

(e) Whether a person who has passed the test in first five chances has preference over the persons passing the test in more than five chances?

(f) Whether exemptees who were promoted in view of Full Bench decision in Surenderjit Singh (supra) their reversion in terms of the interim order passed by this Court could be held to be valid?

(g) Whether, the reversion of qualifiers in the examination in view of interim order of this Court, who were promoted to the post of Assistants prior to 21st January, 1991 could be held to be valid?

16. Having given our consideration to the various arguments raised by learned counsel for the parties so far the question of validity of Rule 12, viz. Question number (a), we have perused the impugned judgment which considered this question in depth and concluded after due consideration by upholding its validity. It holds rightly, Rule 12 cannot be held to be without any guidelines or is unbridled. It hold, in effect there is in built check in the rule itself, as before exercising the power, certain conditions have to be fulfilled, viz. (a) State must form its opinion, (b) it pass an order in writing; and (c) it must record its reasons in writing. We have also examined similar submissions before us, to which we do not find any

merit, and hold impugned order was justified in upholding the validity of Rule 12 which does not require any interference. So far the validity of notification/order dated 21st January, 1991 the question numbers (b), (c) and (d) could be disposed of under one head. Countering the submissions for the respondents learned counsel for the appellants submits that test of validity; of this notification in the earlier Full Bench decision was confined to the question, whether reasons were recorded in this order or not in terms of Rule 12. The Full Bench held that granting an exemption to those who completed 18 years of regular service as clerk itself reveals the reason, viz, their experience for working this long period. The apart, records were placed before the Full Bench and it recorded that the relevant record reveals, there was protracted meeting, communications between the employees union demanding the abolition of the Assistant Grade Examination, with the Finance Secretary and the Government after due consideration issued the impugned Notification dated 21st January, 1991. In other words reasons were there on record. Thus, the court while upholding the order, rejected the contention that there were no reasons recorded. In this second leg of litigation an attempt is made by various learned counsel to challenge this order even on this ground but we feel the matter stands concluded by the decision of Full Bench in Surenderjit Singh (supra). Hence for this reason and also for the reason recorded in the impugned orders we do not feel it to be fit case to

interfere on this ground. However, learned senior counsel Mr. P.P. Rao submits with vehemence, in the present series of appeals the invalidity of the impugned order dated 21.1.1991 is raised on the ground which was neither raised nor was an issue earlier. Submission is, this order is passed even if reasons recorded, without application of mind, as its consequential effect on the other group of qualifier in the examination or on 1984 Rules were never considered. Submission is in granting exemption to those who completed 18 or more years in the regular service, whose number being very large and promotion being on seniority- cum-merit, the exemptees inevitably being senior, chances of promotion to this other group is completely eliminated. Promotion to this group can only be when eligible candidates in the exemption group is exhausted. Thus, practically in spite of qualifying and being eligible they will never be promoted hence the very base of 1984 Rules to give incentive to the qualifiers is eroded. Such exercise of power of granting exemption cannot be exercised to eliminate the other group or to invalidate any rule. In any case at least there should have been some guideline or such policy to project the interest of this other group. This order dated 21.1.1991 makes Rule 4 and the policy behind 1984 Rule redundant.

17. This submission which goes to the root and effect clerks of the State employees all over the State and were not raised in the first leg of litigation and on the facts and circumstances of this case, we proceed to consider this to bring to

an end, as far as possible this long drawn litigation.

18. However, unfortunately we find in the present case the appellants have not given any details except the figures which we have recorded above with respect to the Irrigation Department and there are some figures given by the interveners in their application. The contention for the appellants is, since the State has not chosen either to give any figures or even to file counter affidavit before the High Court in the appellants' writ petition, out of which arises the aforesaid appeal of Sony Rani and others, hence the averments and ground raised in the writ petitions should be accepted. Contention is, there is specific plea and ground that the resultant effect of the impugned Notification dated 21st January, 1991 makes 1984 Rules redundant. Since this issue touches the very foundation effecting large number of employees, we thought it proper in the larger public interest, to grant opportunity to the State to bring correct facts and figures on record and also to place State stand in this regard. Accordingly, learned counsel appearing for the State of Panjab took time to place on affidavit the relevant facts and figures and the stand of the State. One affidavit dated 3rd August, 1999 has been filed before us by the State, sworn by Shri Megh Raj, joint Secretary to the Government Department of Personnel. About this and question Nos. (b), (c) and (d), we shall be dealing in the later part of our judgment.

19. So far the question No. (e) regarding the

preference inter se between the candidates who passed the test within first five chances and the other who passed in more than five chances. We find the reasons given by the High Court in the impugned judgements including the Full Bench, Baldev Raj (supra) to be well considered, which does not call for any interference. It is not in dispute, the promotion to the post of Assistant from amongst the eligible candidate is seniority-cum-merit. Eligible candidate in this context means all those who passed the examination in less than or more than five chances. They constitute as one group. There is no division among the qualifiers either under the rules or any order. This one cohesive group has to wait for promotion till vacancy arises. The promotion from among these eligible candidates, when principle of seniority, cum-merit is to be applied, there cannot be any preference inter se among the said two groups. Thus impugned order has rightly concluded, no preference can be given to those who has qualified in first five chances over those who qualified in more than five chances.

20. In the appeal of Punjab Ministerial Qualified Assistant (C.A. No. 3316/ 97) the question raised is regarding inter se seniority for promotion between those who passed examination in five chances and another in more than five chances. In view of our finding recorded above we conclude, the decision of the High Court holding both the said class at par, is just and proper, which does not call for any interference. The appellants in these appeals are all those who

qualified and became eligible for promotion prior to 21st January, 1991 but in the absence of vacancies existing they were only promoted after this date. However, their right as against the exemptees would depend on our decision of questions No. (b) to (d) which we would be dealing later as aforesaid.

21. It is also relevant to refer that the aforesaid Full Bench, though upheld the validity of the notification/order dated 21st January 1991, but held it to be not retrospective in operation. This part of the order is not under challenge. The result is, it comes into operation only from 21.1.1991. Thus to any vacancy filled up prior to the said date, there could possibly be no dispute even as against the exemptees, as their right could only be on the vacancies occurring on or after 21.1.1991. Hence so far the appellants, viz., the qualifiers in the examination in Ravi Lamba and others (C.A. No. 3315/97) who were admittedly promoted prior to this date, their promotion would not be affected and so cannot be held to be illegal. So we hold these promotions to be valid. Thus the cancellation of their promotion and reversion by the respondent cannot be upheld. The stand that they were reverted because of the said interim order passed by this Court cannot be accepted. Firstly, there was no such direction by this Court to revert them, secondly, when the said Full Bench held the order dated 21.1.1991 not to be retrospective these appellants whose promotions were earlier to this date are placed outside the disputed area.

22. So far question number (f) which is in issue

in the appeal of Sukhdev Singh Sarpal (CA No. of 1999) @ SLP (C) Nos. 376-379 which relates to exemptees, who were promoted after the Full Bench decision of Surenderjit Singh (supra) on or after 21st January, 1995 but were reverted in view of the interim order passed by this Court. They challenged the reversion order. The High Court neither scrutinise nor adjudicate this question raised, which it should have. It only observed that the appellant may seek their remedy from this Court as reversion was based on the interim order passed by this Court. We do not find anything in the interim order of this Court which directed their reversion. This Court merely stayed the impugned order pending appeal. However, since the matter is before us, so far the claims of exemptees, we have no hesitation to hold, if exemptees are grouped with other group of qualifiers, the promotion of the exemptees invariably has to be first because of their seniority on the principle of seniority-cum- merit, for a vacancy occurring on or after 21.1.1991. Thus their reversion prima facie cannot be upheld. This of course is also subject to our decision on questions (b), (c) and (d). Similarly in the appeal of Dhanna Singh (C.A. No. 11661/95) the question raised is the same as in the case of Saroj Rani and others.

23. This takes us to the remaining questions, viz. (b). (c) and (d). This is the main thrust of submission which has been strenuously contended before us by the various learned counsel for the appellants. It is for this, we directed the State Government to file an affidavit. The questions (b),

(c) and (d) are inter linked, hence we are considering and adjudicating them under one head. The question raised under this head is truly the validity of Notification dated 21.1.1991, specially on account of the resultant aftermath of the decision in the Full Bench in Surenderjit Singh (supra). One of the question raised is, if on account of this exemption notification, all vacancies after 21.1.1991 are going to be filled only by the exemptees, does it not make Rule 8 redundant and if so then whether this notification is liable to be struck down, specially in the absence of any guideline or policy of the State to salvage this situation. The submission is that this notification could only be saved if State either has provided or is ready to provide respite to the qualifiers in the examination, by reopening the door of their promotion by dividing the quota inter se between the exemptees and qualifiers in some reasonable ratio. Further they submit, what meaning is to be given to the finding of the Full Bench that both exemptees and the qualifiers in the examination will be at par, Does at par mean exclude the qualifiers to give way only to the exemptees?

24. So far this last point which is under head (d) i.e., what meaning to be given when court said, place exemptees and qualifiers in the examination at par. In our considered opinion, it only means, the qualifiers at the examination and exemptees would form one coherent class as eligible for promotion to be considered when any vacancy arises, on the basis of the principle of seniority-

cum-merit. In other words there would be no preference to those who have qualified or become eligible earlier. All would be at par. Thus there cannot be any distinction or preference inter se between them. Next to test the validity of this impugned notification, its consequential effect is to be examined on the facts of this case, for which we gave opportunity to the State to place them on record. So, answer to question Nos. fb) and (c) would depend on the analysis of facts placed by the State. The case for the appellants is, by the grant of exemption, all vacancies occurring from 21.1.1991. until March 1998, when this aforesaid rule was withdrawn, would go to the exemptees alone, filtering out the qualifiers in the examination for all times. It is on this premise it is submitted that it makes Rule 4 redundant.

25. Prima facie after hearing learned counsels for the parties, we felt impressed by this submission. It is also settled, an exception to the rule cannot efface the rule itself, similarly exemption Clause in a rule cannot obliterate the very rule itself. When a clause exempts a class or category of person from application of any rule, the exemption itself denotes it to be of persons in a small circle out of the bigger circle. But can it be said that exemption can destroy the bigger circle from which it owes his own existence. Now we proceed to test this submission, whether it is true or not that the exemptees will occupy almost cent per cent vacancies and in case yes, whether there is any Government guideline or if not whether State feels to consider to lay down some principle

or guideline to save from this attack of the validity of the said notification.

26. The State has filed its affidavit dated 3rd August, 1999 as aforesaid, We have gone through the same and also its annexure. Its annexure gives clear picture of the number of employees who have completed 18 years of service, number of employees who have qualified in the examination the total number of vacancies to be filled from 21.1.1991 to 3.3.1998 in the various departments of the State Government. The States affidavit also gives its own conclusion in this regard. Relevant portion of the affidavit is quoted hereunder:-

"From the information received from various Heads of Departments in the State of Panjab transpires that in most of the cases, the number of exemptees were in excess as compared to the number of qualified persons/vacancies available.....had the promotions of exemptees not been stayed, the net effect of the exemptions order on promotions.... between 21.1.1991 and 3.3.1998 would have been that the maximum number of vacancies (except in a few Departments) which became available during the aforesaid period, would have gone to the exemptees."

27. We ourselves scrutinised the details given in the annexure, we find barring very few departments, almost in every department, the exemptees number is far more than the vacancies

during the said period. The annexure also reveals during 21.1.1991 to 3.3.1998 total number of exemptees are 7609 (Seven thousand six hundred and nine) and total number of vacancies available for promotion is only 3328 (Three thousand three hundred and twenty eight). In this figure, the affidavit almost admits that qualifiers in the examination would have no chance or very remote chance in only few departments for promotion. In other words, the sphere of exemption destroys the qualifiers of any chance to be promoted.

28. When this situation emerged, we asked learned counsel for the State as to what would be the State stand which has not been stated in this affidavit. For this, he sought further time to seek instructions from the State. On the other hand both learned counsels for exemptees and qualifiers fairly proposed and were agreeable for fixing the quota between exemptees and qualifiers in the ratio of 70% and 30% based on the approximate number of exemptees who were eligible for promotion and the approximate number of qualified persons who were eligible for promotion during the period 21.1.1991 to 3.3.1998. This would not only save the impugned Notification dated 21.1.1991 but will bring peace and amity to the concerned employees of the State. So we, without expressing any final opinion on the point in issue, adjourned this case for the State counsel to obtain the instruction. Subsequently, learned State counsel made the following statement based on the instruction.

"If the exemptees and those who have

passed the qualifying examination come to an agreement for a proportionate sharing of vacancies for promotion to the post of Senior Assistant in the ratio of 70 per cent for the exemptees and 30 per cent for the qualifying candidate for every year with effect from 21st January 1991, the State will not come in the way of such Settlement, if it receives the approval of the Court."

29. *As recorded earlier, which is reiterated again by the learned counsels appearing for all the parties, viz., exemptees and qualifiers that they are agreeable of this ratio of 70 per cent and 30 per cent for their promotion. It was expected from the State to have come out with its own clear policy decision as the present piquant situation is its own creation. First it decided to promote the incumbents only on the principle of seniority cum merit, then brought in 1984 Rules to promote only through examination who passes it and next by granting exemption to a class of employees, creating two channels for promotion which is subject matter of consideration and finally even dissolving this by withdrawing the Rule of promotion through examination. Of course, it is within the legitimate jurisdiction of the State to decide as policy on any situation emerging from time to time. But it is always better for the State to consider all pros and cons affecting the interest of all before laying down any policy. A short sighted policy or a policy without proper application of*

mind, brings parties in the litigating fray. However fortunately, in view of understanding reached between all interested contesting parties, the State has also agreed in this situation to accept and honour this consensus, which brings the curtain down of long two rounds of litigation. We commend the spirit shown by all the concerned employees. It is this spirit of give and take which not only creates good congenial atmosphere in the working field but also curtails long unfortunate innings in the courts of law.

30. For the aforesaid reasons emerging from the facts and circumstances of this case we issue the following directions :

(1) A vacancies on the post of Assistants/Senior Assistants prior to 21st January, 1991 are to be filled up by those who qualified by passing the examination and exemptees would have no claim on such vacancies.

(2) All vacancies after 21st January, 1991 shall be filled in the ratio of 70 per cent and 30 per cent between exemptees and qualifiers in the examination, respectively, for each year in question till all the existing qualifiers are absorbed.

(3) All promotions or reversions made has to be readjusted within the aforesaid frame work, irrespective of any interim orders then in force.

(4) Any incumbent who worked on the post of Assistant/Senior Assistant on account of promotion orders and in case they have to

be reverted or have been reverted, any salary or consequential amount paid to such employees for working on the post of Assistant/Senior Assistant shall not be taken back from them. Similarly, if any employee gets promotion to the post of Assistant/Senior Assistant from an earlier date, he/she will not be entitled to any arrears of salary.

(5) State shall complete this exercise of promotion on the above said formula on or before the 31 December, 1999; till then the existing arrangement shall continue.

(6) So far two appellants in the appeal of Ravi Lamba, since they were promoted prior to 21st January 1991, for which there is no dispute and their reversion order being held illegal, they may be promoted forthwith and they may not be asked to wait for the final exercise of promotion in all other cases.

In view of our aforesaid findings we dispose of the aforesaid appeals in terms of the said directions. Cost on the parties.”

In view of the stand taken by the parties that the matter in hand is squarely covered by the judgment rendered by this Court in ***Saroj Rani's case (supra)***, the instant writ petition is allowed in the same terms.

10.05.2019
atulsethi

(JITENDRA CHAUHAN)
JUDGE

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