

CWP-30386-2018 and other connected case

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

**Date of Decision: July 02, 2019
CWP-30386-2018**

Vinod Kumar

... Petitioner

vs.

State of Punjab and Anr

.. Respondents

CWP-30401-2018

Prem chand

... Petitioner

vs.

State of Punjab and Anr

.. Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Arun Jindal, Advocate, for the petitioner(s).

Ms. Ambika Bedi, A.A.G.Punjab.

ARUN MONGA, J.(ORAL)

Both the above referred writ petitions are being disposed of by this common order as the factual and legal aspects are similar. For brevity, facts are taken from CWP-30386-2018.

2. Impugned herein is an order dated 29.10.2018 (Annexure P-6) whereby, the petitioner has been reverted from the post of Audit Officer to the post of Senior Auditor on account of non-clearance of departmental examination as per Rule 7 (1) of the of the Punjab Civil Services (General & Common Conditions of Services) Rules, 1994.

3. The factual backdrop, which is not in dispute, very succinctly is that the petitioner on the verge of his superannuation, was promoted as Audit Officer, subject to his clearance of the departmental examination, as per Rule 7(1), *ibid*. Another co-employee, namely, Joginder Pal, who was also working as Senior Auditor, was also granted promotion on the same terms i.e. subject to clearance of the departmental examination. The

petitioner as well as said Joginder Pal were promoted on probation for a period of one year.

4. The petitioner originally joined the department of Cooperation and had worked diligently and had a good service record. During the service, he was promoted vide order dated 30.08.2016 (Annexure P-1) from the post of Senior Auditor to the post of Audit Officer and posted at Cooperative Societies, Gurdaspur. It is worthwhile to mention here that the petitioner submitted his joining report on 06.09.2016 as Audit Officer.

5. The petitioner was kept on probation for one year as per provisions of Rule 7(1) of the Punjab Civil Services (General & Common Conditions of Services) Rules 1994 and instructions mentioned in the said order. It is worthwhile to mention here that during the extended period of service beyond that date of retirement, the petitioner was not entitled to (i) promotion; (ii) Benefit of ACP; (iii) Annual Increment and (iv) Revision of pay Scales.

6. Before retirement, due on 30.04.2017, the petitioner was granted one year's extension of service vide order dated 24.04.2017 (Annexure P-2) and he was appointed as Auditor Officer, Cooperative Societies from 01.05.2017 to 30.04.2018.

7. Thereafter, vide order dated 20.04.2018 (Annexure P-3), the period of service of the petitioner was extended for another one year with effect from 01.05.2018 to 30.04.2019.

8. The petitioner was required to clear the Departmental Examination conducted by the Personnel Department for the respective department within the probation period.

9. Probation period of the petitioner was extended for six months vide order dated 14.11.2017 (Annexure P-4).

10. Petitioner, however, could not clear the departmental examination.

11. The petitioner again applied for and appeared in the departmental examination for Accounts held by the Departmental Examination Committee, Punjab. The result of the said examination has not been released by the concerned authorities, even as on date.

12. It is pertinent to mention here that one Joginder Singh, Audit Officer (Cooperative Societies), Hoshiarpur, who is similarly situated, has already been granted three years' extension in period of probation to qualify the departmental examination.

13. The petitioner has been reverted from the post of Audit Officer to Senior Auditor vide order dated 29.10.2018 (Annexure P-6) on the ground that he did not pass the departmental examination during the extended period of probation of six months. Hence the present writ petition.

14. In this background, the learned counsel for the petitioner would strenuously argue that once the petitioner had superannuated during the probation period, he could not have been reverted on the ground of non-clearance of the departmental examination. He contends that concededly, the time period granted for passing the departmental examination is 01 year at the first instance and extendable by 06 months.

15. Learned counsel for the petitioner would further argue that since petitioner had only 08 months left before superannuation, therefore, the period of 1½ years, as envisaged under Rule 7, *ibid*, could not be

availed by him. He further argues that merely because, petitioner had opted to seek extension as per amended Rule 3.26 of Punjab Civil Services Rules, Volume-I, Part-I notified vide notification dated 30.10.2015, the same cannot be put to his detriment. He would then argue that the extension in service is given on entirely different parameters as envisaged in Rule 3.26 of the notification, *ibid*. The said Rule is reproduced hereinbelow for ready reference.

“3.26 (a) Except as otherwise provided in this rule, the date of retirement of a Government employee shall be as follows, namely:-

(i) fifty-eight years in the case of Group 'A', 'B' and 'C' employees; and

(ii) sixty years in the case of Group 'D' employees:

Provided that if the State Government is of the opinion that it is necessary and expedient so to do in public interest, the Service of a Government employee or a class of Government employees, may be extended for a period of two years on yearly basis, subject, however, to giving an option within a period of three months before the date of retirement by the Government employee, who seeks extension:

Provided further that a Government employee, who is already on extension, shall also give fresh option within a period of one month from the date of publication of these rules:

Provided further that no Government employee, shall be retained in Service, after the completion of his extended period of Service. However under exceptional circumstances, if the State Government considers it necessary and expedient so to do in public interest, it may

extend the Service of a Government employee beyond the aforesaid limit, for the reasons to be recorded, in writing.

(b) Notwithstanding anything contained contrary in these rules or any other rules for the time being in force, during the extended period of Service under clause (a), the Government employee shall be entitled to pay equal to the pay last drawn by him, on attaining the age of fifty-eight years or sixty years including an employee, who is already on extension, as the case may be:

Provided that the Government employee, whose Service is extended shall not be entitled to,-

(i) promotion;

(ii) the benefit of Assured Career Progression;

(iii) an annual increment; and

(iv) any revision of pay made by the State Government:

Provided further that the pay of the Government employee already on extension, who has been given promotion or the benefit of Assured Career Progression during the extended period till the issue of this notification, shall be protected and he shall be given the retiral benefits on the basis of his protected pay”.

16. Relying on the above, learned counsel for the petitioner argues that once the petitioner had fulfilled the parameters seeking extension of the service, he could not have been reverted by invoking Rule 7 of Punjab Cooperative Audit (Group 'B'), Service Rules, 2016 as notified vide notification dated 15.10.2016. He further argued that even if said Rule 7 is to be applied to the petitioner compelling him to pass the

departmental examination during the period of extension, the same could not have been discriminately applied to the petitioner inasmuch as another similarly situated employee Joginder Pal was granted extension upto 03 years as against the period of 1½ years for the petitioner to clear the departmental examination as reflected from order dated 24.10.2017 (Annexure P-5). He further submits that had the petitioner also been given the opportunity to pass the departmental examination in 03 years as in the case of Joginder Pal, he would have had the advantage of an extended period for better preparation and clearing the said examination.

17. Per contra, learned State counsel relies on notification dated 10.03.2015 (Annexure R-3), whereby, it was notified that the time period for passing the departmental examination has been reduced from 2½ years to 1½ years under sub-Rule 2 of Rule 7 of the Punjab Civil Services (General & Common Conditions of services) Rules, 1994.

18. A perusal of the same, vis-a-vis enlarged time of three years given to said Joginder Pal, would reveal that the notification dated 10.03.2015 (Annexure R-3) was also in operation at the time of grant of extended period of 03 years to Joginder Pal and, therefore, the said argument of learned State counsel falls flat on the face of it.

19. Having gone through the pleadings and heard the learned counsels for the parties, I am in agreement with the arguments canvassed by learned counsel for the petitioner.

20. Qua discrimination, I am in agreement with the arguments of the learned counsel for the petitioner, as noted in the preceding paragraphs. That apart, it is not the case of the respondents that the work of petitioner is not satisfactory. The petitioner served the department after

promotion on the post of Audit Officer with effect from the date of his promotion till his retirement on 31.03.2017 and, thereafter, upto 31.03.2009 during the extended period as per the terms and conditions envisaged under Rule 3.26 of the notification, *ibid*.

21. A perusal of the same shows that after retirement on attaining the age of superannuation, an employee is not entitled to:-

- (i) promotion;*
- (ii) benefit of Assured Career Progression*
- (iii) increment; and*
- (iv) revision of pay.*

Going by the analogy above, I am of the opinion that if on one hand, an employee is not entitled to any of the above benefits, then, by necessary corollary, he cannot also be reverted. The extended period of service is on a particular post/position, on mutually agreeable terms, more in the nature of contract, therefore, any unilateral decision to revert would be violative of the said terms.

22. Infact, the petitioner has also taken a similar stand in Para 10 of the writ petition which is reproduced hereinbelow:

“That as per the instructions of the Punjab Government, the employees do not get any benefit i.e., (i) Promotion; (ii). Benefit of ACP; (iii). Annual Increment; and (iv). Revision of Pay Scales during the extended period of two-years after retirement on superannuation. Similarly, the Petitioner who was promoted as Audit Officer from the post of Senior Auditor, during service prior to six-months of his retirement, then the Petitioner during the extended period of service cannot be reverted from the post of Audit Officer to the post of Senior Auditor.”

In the return filed on behalf of respondents No. 1 and 2, the

above specific stand of the petitioner has been responded as below:

“that the contents of Para 10 of the petition is a matter of record.”

23. In the return, para 10 of petition has not been denied. On the other hand, there is an implicit admission by stating that the same is matter of record. I am, therefore, of the opinion that the petitioner could not have been reverted during the extended period of service keeping in view the stand taken by the respondents in their return as also my reasoning recorded above, particularly and keeping in view that the work of the petitioner has been satisfactory and he has had an unblemished extended period of service.

24. Even otherwise, had the petitioner been accorded the benefit of extension of time period on parity with co-employee, namely, Joginder Pal, he would have had a fair chance of clearing the departmental examination. The petitioner was fairly and reasonably justified in his understanding that since he had only 08 months of probation left before superannuation, he would, therefore, not have to undergo the departmental examination before his superannuation in view of the denial of the entitled full period of 1½ years as envisaged under Rule 7 of the of the Punjab Civil Services (General & Common Conditions of Services) Rules, *ibid*. Even if it is assumed that during the extended period, petitioner was expected to clear the departmental examination regardless of his having superannuated, one cannot lose sight of the facts that the petitioner has been discriminated, inasmuch, as not having been granted extension to clear the departmental examination on parity with his co-employee.

25. Further, on the fundamental principles of natural justice, the respondents ought to have put the petitioner under notice by issuing

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appropriate show cause notice before passing the impugned order of reversion especially when the respondents, otherwise, have no grievance against the petitioner in performance of his duties as Audit Officer and/or in respect of his work and conduct.

26. The only reason of reversion of the petitioner is his failure to pass the departmental examination. The said departmental examination was not a pre-condition of his service while he was granted extension as per notification dated 30.10.2015 (Annexure P-2). It would, therefore, be safe to hold that the petitioner, as per his understanding of the conditions of service mentioned in the said notification, would continue to as Audit Officer. The petitioner being on extension, the parameters of Rule 7 of the of the Punjab Civil Services (General & Common Conditions of Services) Rules, *ibid*, were not applicable as he had only 08 months left as against 1½ years, before attaining the age of superannuation on 31.03.2017.

27. In the premise, the writ petition is allowed and impugned order dated 29.10.2018 (Annexure P-6) is quashed and the respondents are directed to release all consequential benefits to the petitioner.

July 02, 2019
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(ARUN MONGA)
JUDGE

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