

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: October 24, 2019

1. CWP No.29956 of 2019

Pardeep Kumar

...Petitioner

Versus

State of Haryana & others

...Respondents

2. CWP No.30564 of 2019

Yog Raj

...Petitioner

Versus

Dakshin Haryana Bijli Vitran Nigam & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Kuldeep Singh Yadav, Advocate,
for the petitioner in CWP No.29956 of 2019.

Mr. Raman B. Garg, Advocate,
for the petitioner in CWP No.30564 of 2019.

Mr. Hitesh Pandit, Addl.A.G.Haryana,
for the State.

AMIT RAWAL, J.

This order of mine shall dispose of two Civil Writ Petitions bearing No.29956 and 30564 of 2019 as the controversy involved in both the petitions is the same.

The petitioners are aggrieved of the impugned action of the respondents regarding dispensation of their services from the post of Divisional Accountant having not cleared the departmental accounts

examination after having availed almost 11-13 chances, including mercy chance.

Petitioner in CWP No.29956 of 2019 was appointed as Divisional Accountants on 12.06.2008, whereas petitioner in CWP No.30564 of 2019 in 2007 on certain terms and conditions of the appointment letter, one of which, i.e., Condition No.(iii) mandatorily required them to qualify the departmental accounts examination within a period of two years or in three successive chances whichever is earlier from the date of appointment as Divisional Accountant with a caveat of dispensation of service without assigning any reason. The pith and substance of the writ petitions had been that the petitioners were given dual charge and despite having good or above Annual Confidential Reports, could not avail the chance. However, petitioner in the first writ petition has availed eleven (11) chances and out of five (5) papers, only cleared two, i.e., three (3) chances and two (2) mercy chances, three by the whole time Director and two by Board of Directors, whereas other petitioner Yog Raj in 2007 has availed thirteen (13) chances. However, in 2017 cleared one paper and did not avail the chance in 2018 and in 2019 was granted exemption in one paper and failed in all other papers except two.

Mr. Kuldeep Singh Yadav, learned counsel representing petitioner Pardeep Kumar submitted that the petitioner was astonished to receive show cause notice regarding dispensation of his services on account of non-clearance of departmental accounts examination, which was duly replied explaining the stand of dual charge and availment of the chances. The same was dismissed. Even the appeal filed was also rejected. Board is empowered to relax the rules and extend more chances.

Mr. Raman B. Garg, learned counsel appearing on behalf of petitioner Yog Raj submitted that in Paper I, petitioner was granted exemption and as per the result (Annexure P-6) declared in February, 2019, in Papers II and III, petitioner secured 40 marks and in other two papers, i.e., Papers IV and V, he achieved 45 marks each. In this regard, he had submitted an application for re-evaluation vide Annexure P-7. He received communication dated 24.04.2019 (Annexure P-8) that the answer sheets were verified and after re-totalling, it was found that there was no discrepancy. Petitioner sought copies of answer books and keys, but was communicated vide letter dated 30.04.2019 (Annexure P-9) that no answer key was prepared for subjective questions. Petitioner again requested for re-evaluation but was communicated the same reasoning.

In CWP No.29956 of 2019, respondents had filed reply and stated that despite availing chances, petitioner did not clear the examination as per the terms and conditions contained in the appointment letter and in the second writ petition, direction was given by the Court to show that request of petitioner Yog Raj for availment of more chances has been rejected and even re-evaluation and re-checking of Papers II and III was done and found that there was no discrepancy.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of the learned counsel for the petitioners.

On the previous date, this Court called upon the learned State Counsel to have instructions with regard to availment of another mercy chance. Mr. Hitesh Pandit, learned State Counsel informed the Court that the aforementioned mercy chance cannot be granted to the petitioners as it

would open pandora of litigation by the employees whose services have been dispensed with or who failed to clear the departmental examination despite availment of mercy chance and the power for relaxing is with the whole time Director or Board of Directors. It would be apt to reproduce clause (iii) of the appointment letter. The same reads thus:-

“After completion of successful training, you will have to qualify the Departmental Accounts Examination of Divisional Accountant within a period of two years or in three successive chances whichever is earlier from the date of your appointment as Divisional Accountant, failing which your services will be terminated/dispensed with without assigning any reason”.

The terms and conditions of the appointment letter are sacrosanct, though earlier debated. The categoric stand of the respondents had been that many other employees, who were given dual charge, cleared their departmental accounts examination with flying colours, thus, the plea of the petitioners of not clearing the examination owing to heavy burden of work is not able to cut ice. The department in order to protect the interest of the petitioners, had even placed the matter before the Board of Directors, but in the meeting held on 08.04.2019, rejected the request of Pardeep Kumar vide Annexure R-6 and that of petitioner Yog Raj for re-evaluation.

I have thought of imposition of costs on the petitioners by directing the respondents to afford mercy chance, but given a second thought finding that this practice would open a trail of other cases where the services of other employees have been dispensed with or are in the process of being dispensed with.

I do not not find any merit in the arguments of the learned

counsel for the parties. The writ petitions are devoid of any merit. The same are accordingly dismissed.

October 24, 2019
ramesh

(AMIT RAWAL)
JUDGE

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