

In the High Court of Punjab and Haryana, at Chandigarh

1. Civil Writ Petition No. 12807 of 2020

Anil Kumar and Another

... Petitioner(s)

Versus

State of Haryana and Others

... Respondent(s)

AND

2. Civil Writ Petition No. 12813 of 2020

Kuldeep Singh and Another

... Petitioner(s)

Versus

State of Haryana and Others

... Respondent(s)

Date of Decision: 01.09.2020

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Sanjeev Kumar Malik, Advocate
for the petitioners.

Mr. Samarth Sagar, Additional Advocate
General, Haryana for the respondents.

Anil Kshetarpal, J.

By this order, Civil Writ Petition No. 12807 and 12813 of 2020,
shall stand disposed of.

Learned counsel for the parties are also *ad idem* that the issue,
which needs adjudication, is common.

The question which arises for consideration in these writ petitions is as to whether before repatriation of an employee to the parent department, is it necessary to give an opportunity of being heard to the employee sought to be repatriated, particularly when such employee even after two attempts could not clear the mandatory examination?

For facility, the facts are being noticed from Civil Writ Petition No. 12807 of 2020. The writ petitioners are in employment of the Government of Haryana. They cleared Part-I of the Haryana Subordinate Accounts Service Examination (Ordinary Branch). Thereafter, they were, as a stop gap arrangement, appointed on the post of Section Officer. The terms of appointment, which are common, are extracted as under:-

- “1. It is purely a stop gap arrangement and officials offered appointment will have no right to the post of SAS Section Officer (OB).*
- 2. They can be reverted back to their parent Department on or prior to the availability of SAS qualified persons or on any other administrative grounds.*
- 3. They will not have any right/claim of regular/permanent appointment as SAS Section Officer and the pay scale and other benefit attached to the post.*
- 4. In the matter of disciplinary action they will be strictly under the control of their parent Department. However, Director of Treasuries and Accounts Department will have the right of recommendation for initiating disciplinary proceedings.*

5. *The appointment will not confer any right to the post of Section Officer towards pay, experience, seniority and probation etc.”*

The writ petitioners, even after lapse of 8-10 years, failed to qualify Part-II of the Haryana Subordinate Accounts Service Examination (Ordinary Branch). The writ petitioners have now been repatriated to their parent department on the posts held by them before their appointment as Section Officers. The writ petitioners have challenged the order passed by the respondents.

Before this Court examines the arguments of learned counsel for the parties, it would be appropriate to notice that the Department of Finance, Haryana, has framed the Service Rules under Article 309 of the Constitution of India, which are known as “the Haryana State Subordinate Accounts (Group-C) Service Rules, 1982 (hereinafter referred to as “the 1982 Rules”). Rule 7 (1) of the 1982 Rules, enumerates the sources of recruitment. It provides that the candidate can be recruited by promotion from amongst the candidates who have passed Part-I & Part-II of the Haryana Subordinate Accounts Service Examination (Ordinary Branch). Rule 8 provides that such recruited persons would be on a probation for a period of one year. Thereafter, the 1982 Rules were substituted by new Rules w.e.f. 28.03.2013, known as “the Haryana State Subordinate Accounts (Group-C) Service Rules, 2013” (hereinafter referred to as “the 2013 Rules”). Rule 9 thereof lays down various sources of recruitment. It is provided that 30% of the post of Section Officer shall be filled in by direct recruitment, whereas 70% shall be filled in by promotion. There is yet

another source i.e. by transfer/deputation. As per the appendix attached to the 2013 Rules that the officials who have completed three years regular service with the State of Haryana and have passed both parts of the Haryana Subordinate Accounts Service Examination (Ordinary Branch), shall be eligible for appointment by promotion/transfer/deputation. The relevant part of Appendix – B, delineating the requirement of the appointment of Section Officer under Item No.1 is extracted as under:-

APPENDIX - B
(See rule 7)

Sr. No.	Designation of Posts	Minimum Academic qualifications for direct recruitment		Academic qualification and experience, if any, for appointment other than by direct recruitment	
1	2	3		4	
1	Section Officer	(i)	Bachelors Degree in Commerce (B.Com.) with 60% marks (Ist Division) from recognized University having three years experience in an organization of repute; or	By Promotion/transfer/deputation	
				(i)	From amongst officials of Haryana Government with three years regular service and who have passed both parts of Haryana Subordinate Accounts Service Examination (Ordinary Branch) conducted by Government or got conducted by it through any agency.
		(ii)	Master Degree in Commerce (M.Com.) with 55% marks and having three years experience of Accounts in an organization of repute; or	(ii)	Knowledge of Hindi/ Sanskrit upto Matric Standard or higher education.
		(iii)	Having certificate integrated Professional		

Sr. No.	Designation of Posts	Minimum Academic qualifications for direct recruitment		Academic qualification and experience, if any, for appointment other than by direct recruitment
			Competence Course (IPCC)/Chartered Accountants (Intermediate) from the Institute of Chartered Accountant of India with three years experience in an organization of repute; or	
		(iv)	Knowledge of Hindi/ Sanskrit upto Matric Standard or higher education.	

It is undisputed that the writ petitioners, after having been appointed as Section Officers on a stop gap arrangement in the year 2011-2012, did write the exams but failed to qualify Part-II of the Haryana Subordinate Accounts Service Examination (Ordinary Branch), held in the year 2014 and 2019, respectively. On careful reading of the order of repatriation, it is apparent that the Director General Treasuries and Accounts Department, Haryana, passed the order of repatriation after noticing that since the writ petitioners could not qualify both parts of the Haryana Subordinate Accounts Service Examination (Ordinary Branch), which is the essential requirement for the recruitment to the post of Section officer, therefore, they are being repatriated to their parent department on the posts held by them before they were appointed as Section Officer on a stop gap arrangement.

Learned counsel for the writ petitioners submitted that the writ

petitioners have been repatriated without giving them an opportunity of

hearing. It was further contended that during the period of eight years, when the writ petitioners worked as Section Officers on a stop gap arrangement, they were given only two opportunities to write Part-II of the examination. He further contended that the repatriation of the writ petitioners, after a lapse of eight years, would be harsh and inequitable. He further contended that in the connected writ petition i.e. Civil Writ Petition No. 12606 of 2020, notice of motion has been issued while granting interim protection against repatriation.

On the other hand, learned State counsel, while refuting, has submitted that it was specified in the order of appointment that such appointment is purely a stop gap arrangement and the officials shall have no right to the post of SAS Section Officer (OB) and they can be reverted back to their parent department at any point of time. He further pointed out that since the writ petitioners could not qualify Part-II of the examination, which is an essential requirement for promotion, even after having worked on the post for a period of eight years approximately, then they do not deserve any sympathy. He further contended that no opportunity of hearing was required to be given. He further pointed out that in the connected writ petition i.e. Civil Writ Petition No. 12606 of 2020, referred to by learned counsel for the writ petitioners, the interim protection has been granted as it was brought to the notice of the Court that the result of the Haryana Subordinate Accounts Service Examination (Ordinary Branch) qua the writ petitioners in the aforesaid writ petitions, has not been declared. He contended that this is not the position in the present case.

counsel for the parties and with their able assistance, gone through the paper-books of both the writ petitions.

It is not disputed by the learned counsel for the writ petitioners that under “the 1982 Rules” as well as “the 2013 Rules”, it is mandatory to pass/qualify both parts of the Haryana Subordinate Accounts Service Examination (Ordinary Branch), before someone is considered for appointment as Section Officer by promotion/transfer/deputation. The writ petitioners, admittedly, have failed to clear Part-II of the aforesaid examination. It is also not in dispute that the appointment of the writ petitioners was purely on a stop gap arrangement. The Section Officers, on being appointed by the Department of Finance, are deputed to various departments. Such Section Officers are expected to have knowledge of the accounting procedures to be followed by various departments/organizations of the State. As per the 2013 Rules, before someone is considered for appointment as Section Officer by promotion/transfer/ deputation, an official is required to have three years regular service and should have passed both parts of the Haryana Subordinate Accounts Service Examination (Ordinary Branch). The writ petitioners, admittedly, have not passed Part-II of the said examination. In the present case, the writ petitioners were not eligible, but were appointed purely on a stop gap arrangement. It was specifically stipulated in the appointment order that they can be reverted back to their parent department on the availability of the SAS qualified person or any other administrative ground. Once the writ petitioners do not possess the essential qualification to continue on the post of the Section Officer, they cannot claim any right to continue. Learned counsel for the writ petitioners

failed to draw the attention of this Court to the requirement of hearing before passing the order of repatriation.

The next argument of the learned counsel for the writ petitioners that only two chances have been granted to the writ petitioners is also found without substance. In fact, the writ petitioners could not be appointed on the post of Section Officer. However, due to administrative exigencies in the year 2011 and 2012, the writ petitioners were appointed to the posts as a stop gap arrangement. Thereafter, it is not in dispute that twice the examinations have been held. The writ petitioners have appeared in examinations on both the occasions but failed to qualify. Still further, from the reading of the appointment letters, it is apparent that no assurance was given to them that they would be granted certain minimum number of chances to clear the examination. Hence, in the absence of any assurance or stipulation in the appointment letter, the writ petitioners cannot claim that they have a right to continue to hold the post of Section Officer till they clear the examination. It is not disputed that as and when the writ petitioners clear Part-II of the Haryana Subordinate Accounts Service Examination (Ordinary Branch), they would have right to be considered for appointment to the post of Section Officer.

As regards the arguments of learned counsel for the writ petitioners that the orders under challenge are harsh and inequitable, it will be noticed that once the writ petitioners could not clear the Haryana Subordinate Accounts Service Examination (Ordinary Branch), they cannot claim any equity.

In the end, learned counsel for the writ petitioners relied upon the interim order passed on 24.08.2020 in Civil Writ Petition No. 12606 of 2020. It will be noticed that this Court has gone through the aforesaid order. In the aforesaid order, the Court has noticed two contentions of the learned counsel for the writ petitioners. The second contention is to the effect that the result of the writ petitioners in the aforesaid writ petition has not been declared. It appears that the writ petitioners in the aforesaid writ petition had also appeared in the Haryana Subordinate Accounts Service Examination (Ordinary Branch), but their result was not declared. In the present case, the position is different. The result of the writ petitioners has been declared. However, they failed in the examination.

Keeping in view the aforesaid facts, this Court finds no ground to interfere. Hence, both the writ petitions are dismissed.

**(Anil Kshetarpal)
Judge**

September 01, 2020
“DK”

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No