

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CWP No.14268 of 2020

Date of decision: September 18, 2020

Devinder Kumar

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: Mr. Jatinder Kumar Kamboj, Advocate for the petitioner.

Mr. S.S. Mann, Additional Advocate General, Haryana.

Ashok Kumar Verma, J.(oral)

The matter has been taken up through video-conferencing on account of outbreak of pandemic COVID-19.

The question which arises for consideration in this writ petition 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?

The writ petitioner is in employment of the Government of Haryana. It is alleged that he cleared Part-I of the Haryana Subordinate Accounts Service Examination (Ordinary Branch). Thereafter, he was, as a stop gap arrangement, appointed on the post of Section Officer. The terms of appointment 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. *In some cases i.e. from Sr. No.1 to 9 these orders will supersede the orders issued by this department vide No.TA-HR(41)2012/5993-6098 dated 02.05.2012.*
6. *The appointment will not confer any right to the post of Section Officer towards pay, experience, seniority and probation etc.”*

The writ petitioner, even after lapse of about eight years, failed to qualify both parts of Haryana State Subordinate Accounts Service Examination (Ordinary Branch). The writ petitioner has now been repatriated to his parent department on the posts held by him before his appointment as Section Officer. The writ petitioner has 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)

<i>Sr. No.</i>	<i>Designation of Posts</i>	<i>Minimum Academic qualification for direct recruitment</i>		<i>Academic qualification and experience, if any, for appointment other than by direct recruitment.</i>
<i>1</i>	<i>2</i>	<i>3</i>		<i>4</i>
<i>1</i>	<i>Section Officer</i>	<i>(i)</i>	<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</i>	<i>By Promotion/transfer/ deputation</i> <i>(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.</i>
		<i>(ii)</i>	<i>Master Degree in Commerce (M.Com.) with 55% marks and having three years experience of Accounts in an organization of repute; or</i>	<i>(ii) Knowledge of Hindi/ Sanskrit upto Matric Standard or higher education.</i>
		<i>(iii)</i>	<i>Having certificate integrated Professional Competence Course (IPCC)/Chartered Accountant of India with three years experience in an organization of repute; or</i>	
		<i>(iv)</i>	<i>Knowledge of Hindi/Sanskrit upto Matric Standard or higher education.</i>	

It is undisputed that the writ petitioner, after having been appointed as Section Officer on a stop gap arrangement in the year 2012, did write the exams but failed to qualify both parts of 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 petitioner 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, he is being repatriated to his parent department on the posts held by him before he was appointed as Section Officer on a stop gap arrangement.

Learned counsel for the writ petitioner submitted that the writ petitioner has been repatriated without giving him an opportunity of hearing. It was further contended that during the period of about eight years, when the writ petitioner worked as Section Officer on a stop gap arrangement, he was given only two opportunities to write the examinations. He further contended that the repatriation of the writ petitioner, after a lapse of about eight years, would be harsh and inequitable.

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 official shall have no right to the post of SAS Section Officer (OB) and he can be reverted back to his parent department at any point of time. He further pointed out that since the writ petitioner 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 he does not deserve any sympathy. He further contended that no opportunity of hearing was

required to be given.

This Court has carefully heard the arguments of the learned counsel for the parties and with their able assistance, gone through the paper-books of the writ petition.

It is not disputed by the learned counsel for the writ petitioner 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 petitioner, admittedly, has failed to clear both parts of the aforesaid examination. It is also not in dispute that the appointment of the writ petitioner 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 petitioner, admittedly, has not passed both parts of the said examination. In the present case, the writ petitioner was not eligible, but was appointed purely on a stop gap arrangement. It was specifically stipulated in the appointment order that he can be reverted back to his parent department on the availability of the SAS qualified person or any other administrative ground. Once the writ petitioner does not possess the

essential qualification to continue on the post of the Section Officer, he cannot claim any right to continue. Learned counsel for the writ petitioner 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 petitioner that only two chances have been granted to the writ petitioner is also found without substance. In fact, the writ petitioner could not be appointed on the post of Section Officer. However, due to administrative exigencies in the year 2011 and 2012, the writ petitioner was appointed to the posts as a stop gap arrangement. Thereafter, it is not in dispute that twice the examinations have been held. The writ petitioner has appeared in examinations on both the occasions but failed to qualify. Still further, from the reading of the appointment letter, it is apparent that no assurance was given to him that he 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 petitioner cannot claim that he has a right to continue to hold the post of Section Officer till he clears the examination. It is not disputed that as and when the writ petitioner clears the Haryana Subordinate Accounts Service Examination (Ordinary Branch), he would have right to be considered for appointment to the post of Section Officer.

As regards the arguments of learned counsel for the writ petitioner that the order under challenge is harsh and inequitable, it will be noticed that once the writ petitioner has failed to qualify both parts of Haryana Subordinate Accounts Service Examination (Ordinary Branch), which is essential requirement for recruitment to the post of Section Officer,

he cannot claim any equity.

Keeping in view the aforesaid facts, this Court finds no ground to interfere. Hence, the writ petition is dismissed.

(ASHOK KUMAR VERMA)
JUDGE

September 18, 2020
'Rajpal'

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