

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 24.07.2020

CWP NO. 20951 OF 2015

GURSUKHWANT SINGH BRAR AND ANOTHER

...PETITIONERS

VERSUS

STATE OF PUNJAB AND OTHERS

....RESPONDENTS

CWP NO. 17198 OF 2016

LT. COL. JAGDEEP SINGH AND ANOTHER

...PETITIONERS

VERSUS

STATE OF PUNJAB AND OTHERS

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Pankaj Jain, Advocate,
for the petitioners in CWP No. 20951 of 2015,
for respondent No. 4 in CWP No. 17198 of 2016.

Mr. Jasmeet Singh Ghumman, Advocate,
for the petitioners in CWP No. 17198 of 2016,
for respondent No. 4 in CWP No. 20951 of 2015.

Ms. Devki Anand Sullar, Assistant Advocate General, Punjab,
for the State.

AUGUSTINE GEORGE MASIH, J.

By this order, I propose to decide CWP No. 20951 of 2015
titled as Gursukhwant Singh Brar and another vs. State of Punjab and others
and CWP No. 17198 of 2016 titled as Jagdeep Singh and another vs. State
of Punjab and others.

2. CWP No. 20951 of 2015 has been preferred by the petitioners

praying for issuance of a writ of certiorari for quashing para 9.3 of the General Instructions issued by the Punjab Public Service Commission-respondent No. 3 (hereinafter referred to as 'PPSC') relating to the Punjab State Civil Services Combined Competitive Examination, 2015 (hereinafter referred to as 'PSCSCCE, 2015') (Annexure P-1) limiting number of attempts by the Ex-Servicemen category candidates to three at the examination whereas for the other candidates belonging to different categories including the reserved categories, four attempts at the examination has been fixed. This paragraph 9.3 of the General Instructions has been challenged being violative of Rules 5 and 11 of the Punjab State Civil Services (Appointment by Combined Competitive Examination) Rules, 2009 (hereinafter referred to as '2009 Rules') and Articles 14 and 16 (2) of the Constitution of India. Prayer has further been made for granting four attempts to the Ex-Servicemen Category candidates also.

3. In CWP No. 17198 of 2016, petitioners have challenged and prayed for quashing of the merit list of the Ex-Servicemen Category which has been prepared by the PPSC in pursuance to the interim order passed by this Court on 01.10.2015 in CWP No. 20951 of 2015 directing acceptance of the application of the petitioners therein in pursuance to the notice/advertisement issued by the PPSC inviting applications for appointment to the posts subject to the decision of the writ petition having prepared in violation of Rule 5 (i) of the Punjab Recruitment of Ex-Serviceman Rules, 1982 (hereinafter referred to as '1982 Rules') as well as Clause 9.3 of the PSCSCCE, 2015 and thereby excluding the names of petitioners in CWP No.20951 of 2015 and putting the petitioners in the present writ petition in their place being next in merit.

4. The two writ petitions are directly connected with each other where the private respondents 4 and 5 in CWP No. 20951 of 2015 are petitioners in CWP No. 17198 of 2016. In case the writ petition preferred by the petitioners in CWP No. 20951 of 2015 is accepted, the consequence thereof would be dismissal of CWP No. 17198 of 2016 and in case of dismissal of CWP No. 20951 of 2015, the other writ i.e. CWP No. 17198 of 2016 will be rendered infructuous.

5. The issue involved in both the cases is the same, which is; “whether Rule 5 of the 2009 Rules would have an overriding effect and prevail over Rule 5 of the 1982 Rules or not?”.

6. As there is no dispute on facts, they, for the sake of brevity, are being taken from CWP No. 20951 of 2015. Petitioners, who belong to the Ex-Servicemen Category, have already availed of three attempts in the Punjab State Civil Services Combined Competitive Preliminary Examination in the years 2009, 2012 and 2013 respectively. These three attempts, which were availed of by these petitioners, were according to the 1982 Rules.

The grievance of the petitioners in the instant writ petition is that according to the 2009 Rules, every candidate is permitted four attempts in a competitive examination which includes general and reserved category. Petitioners, who belong to the reserved category of Ex-Servicemen, however, have been restricted to three attempts on the ground that they are governed, as far as their appointment is concerned, under the 1982 Rules wherein Rule 5 of the said Rules, the maximum chances, which can be availed of by an Ex-Serviceman in the competitive examination, would not exceed three. The Rule, on which reliance has been placed by the

petitioners for claiming relief, is Rule 5 of the 2009 Rules read with Rule 11, which, according to the petitioners, have an overriding effect.

7. The plea of the petitioners is that Rule 5 of the 2009 Rules is made applicable to every candidate appearing for the examination after coming into force of the said rules which provides for availing four attempts at the examination. The present 2015 examination being subsequent to the coming into force of the 2009 Rules, which were notified on 20.10.2009, would have effect over and above the 1982 Rules especially in the light of the provisions of Rule 11 of 2009 Rules. As per Rule 11 of the 2009 Rules, these rules have an overriding effect notwithstanding anything inconsistent contained therewith in any other rules relating to the conduct of examinations for making appointment to the services. It is asserted that this Rule 11 makes it amply clear that Rule 5 of the 1982 Rules which restricted the total number of attempts to three, being inconsistent to Rule 5 of the 2009 Rules, have to give way, therefore, all candidates irrespective of the category, whether belonging to general or reserved including the ex-servicemen, would be entitled to four attempts at the examination. Accordingly, the prayer has been made that para 9.3 of the General Instructions of the PSCSCCE, 2015, which restricted the maximum attempts to be availed of by an ex-serviceman to three, be struck off and the petitioners be given the fourth chance to take the examination in consonance with Rule 5 of the 2009 Rules.

8. In the reply, which has been filed by respondents No. 1 and 2, it has been asserted that the Department of Defence Services Welfare has informed that amendment to Rule 5 (i) of the 1982 Rules has been carried out by the Government of Punjab, Department of Defence Services Welfare,

which was notified on 15.12.2016, according to which, in Rule 5 (i), the words “exceed three” have been substituted by the words “exceed three except the examination for filling up the posts under the Punjab State Civil Services (Appointment by Combined Competitive Examination) Rules, 2009, where the maximum chances shall be four”.

9. Respondent No. 3-Punjab Public Service Commission has filed a reply stating therein that an advertisement for recruitment to 101 posts of PCS (EB) and Allied Services through PSCSCCE, 2015 including 10 posts reserved for Ex-Servicemen/Dependent of Ex-Servicemen of Punjab was issued. It has been mentioned that as per the 2009 Rules, four attempts have been provided for every candidate appearing in the examination after the commencement of the rules whereas for ex-servicemen, Rule 5 of the 1982 Rules provides for a maximum of three attempts. The Punjab Public Service Commission, keeping in view the above rules, incorporated the said conditions in the General Information for the candidates. Reference in this regard has been made to para Nos. 9.1 and 9.3 of the advertisement (Annexure P-1). It has been asserted that the examination of the petitioners is not merely governed by the 2009 Rules but the 1982 Rules as well. 1982 Rules being a special set of rules would be applicable to the candidates belonging to the ex-servicemen category as their appointment is made under the said rules. Prior to the commencement of the 2009 Rules, there was no restriction on the number of attempts at the examination for a general or reserved category candidate but the restriction of three attempts to ex-servicemen was in existence since the commencement of the 1982 Rules which came into force vide Notification dated 02.02.1982 (Annexure P-3).

It is after the coming into force of the 2009 Rules that the number of

attempts was restricted to four to all the candidates which included the general as well as the reserved but since the appointment of the petitioners, who are ex-servicemen, is governed by the 1982 Rules, the said special rules would prevail over the general rules. Prayer has, thus, been made for dismissal of the writ petitions as on the date of issuance of the advertisement, the rules which were prevalent have been applied as per the attempts specified therein.

10. Reply has also been filed by respondents No. 4 and 5 wherein they have stated that the recruitment of the petitioners is to be regulated by the 1982 Rules being ex-servicemen. The ex-servicemen have always been a special category which had a separate quota and being a special category regulated by its own set of rules unlike the other reserved category candidates. It is asserted that Rule 5 of the 2009 Rules itself stipulates that unless covered by any of the exceptions, every candidate shall be permitted to avail of four attempts at the examination. Since an exception has been made with regard to the number of attempts by the ex-servicemen category, the said category cannot avail of four opportunities granted to the others. It has also been pointed out that special privilege has been conferred upon the ex-servicemen category under Rule 5 of the 1982 Rules, which, under sub-rule (2) of the said rule, exempts ex-servicemen to appear in the optional subjects. It is asserted that the scope of 2009 Rules is limited to the extent of conduct of examination whereas 1982 Rules regulate the recruitment of ex-servicemen to the State Civil Services of Punjab. As far as the ex-servicemen category is concerned, they being governed by a separate special set of rules, no change has been brought about with the coming into force of the 2009 Rules, which has rather put a cap on the other category

candidates which includes general and reserved i.e. four, whereas earlier there was no such limit on attempts at the examination but for the ex-servicemen category, for which, there was always a cap of three attempts at the examination. Since there is no change in the conditions of examination as far as the ex-servicemen are concerned, petitioners cannot take the benefit of the 2009 Rules as the same are not applicable to them. Prayer has, thus, been made for dismissal of the writ petition.

11. Counsel for the petitioners as well as the counsel for the State and the private respondents have been heard. They have put forth their assertions as per the pleadings.

12. Counsel for the petitioners Mr. Pankaj Jain has referred to the 2009 Rules as also the 1982 Rules to carve out the distinction between the said rules. His primary stress was on Rule 11 of the 2009 Rules and on the basis of the said rule, he has asserted that the 2009 Rules would prevail over the 1982 Rules having come into force at a subsequent date and clearly mentions its overriding effect notwithstanding anything inconsistent which is contained in any other rules relating to the conduct of examinations for making appointment to the services. He asserts that the number of attempts to be availed by a candidate also relates to the conduct of examinations for making appointment to the services and, therefore, four attempts, which are provided for under Rule 5 of the 2009 Rules, would be available to every candidate appearing for the examination after coming into force of these Rules. He places reliance upon a judgment of the Hon'ble Supreme Court in the case of **S.Prakash v. K.M. Kurian**, 1999 (5) SCC 624, where the Hon'ble Supreme Court dealing with the principles for interpreting the effect of amendment of General Rules viz-a-viz Special Rules for

recruitment has held that if the intention of the legislature was to establish a rule of universal application, in such cases, a special provision must give way to general provision. He, on the basis of this judgment, submits that these writ petitions deserve to be allowed and the petitioners granted fourth attempt by quashing para 9.3 of the General Information as issued by the Punjab Public Service Commission (Annexure P-1) being violative of rule 5 of the 2009 Rules.

13. Counsel for the State as well as the counsel for respondent No. 4, on the other hand, have submitted that the Special Rules, which specifically provides for limiting the number of attempts, shall operate irrespective of the fact where the General Rules provide for more attempts at the examination. It is asserted that insertion of non-obstinate clause in the General Rules will not abrogate the Special Rules unless there are clear indication to that effect. It will not supersede the Special Rules and these would prevail irrespective of the date of coming into force of the General Rules. In support of this contention, reliance has been placed upon a judgment of the Hon'ble Supreme Court in the case of **R.S.Raghunath vs. State of Karnataka**, 1992 (1) SCC 335. Relying upon the said judgment, it has been asserted that non-obstante clause would not in itself lead to making a Special Rule inoperative especially when the language of the rules does not support the prayer of the petitioners. Referring to Rule 5 of the 2009 Rules, they contend that the said rule, which deals with the number of attempts at the examination, starts with the words "Unless covered by any of the exceptions to be notified by the Government, four attempts are permissible to every candidate appearing for the examination." Since there is already an exception clause in the case of ex-servicemen category limiting

the attempts to three under the 1982 Rules, the said rule irrespective of Rule 11 of 2009 Rules would not support the claim of the petitioners. Prayer has, thus, been made for dismissal of the writ petition.

14. I have considered the submissions made by the counsel for the parties and with their assistance, have gone through the pleadings as well as the records.

15. On 01.10.2015, CWP No. 20951 of 2015 came up for hearing before the Bench when following order was passed:-

“ Civil Misc. Applications

Prayer made in the present Civil Misc. Application which is filed in Court today for grant of exemption from filing certified as well as true typed copy of Annexure P/1 is allowed.

The Civil Misc. application stands disposed of accordingly.

Counsel for the petitioners filed the present Civil Misc. Application in Court today to replace Annexure P/1 with correct copy of General Instructions Punjab State Civil Services Combined Competitive Examination (PSCSCCE) 2015 as one earlier filed pertained to earlier years. The affidavit of the counsel has also been filed in support of the averments.

In view of the averments made in the application, the same is allowed. Annexure P/1 is allowed to be replaced.

Office to make necessary correction and number the applications.

Main Case

Inter-alia contends that the petitioners are ex-servicemen

and have availed three attempts in the Punjab State Civil Services Combined Competitive Examination in the years 2009, 2012 and 2013 respectively. By virtue of Rule 5 of the Punjab Recruitment of Ex-servicemen Rules, 1982 (Annexure P/2), the maximum chances were not to exceed three. However, as per Rule 5 of the subsequent rules i.e. the Punjab States Civil Services (Appointment by Combined Competitive Examination) Rules, 2009, four attempts have been permitted to candidates and Rule 11 further provides that the said Rules will have overriding effect notwithstanding anything inconsistent therewith contained in any other rules for the time being in force relating to the conduct of examination for making appointment to the services.

It is thus submitted that as per the advertisement no.4 (Annexure P/1), the right for ex-servicemen has been restricted as per Clause 9.3 gives only three attempts whereas for other candidates the restriction is for four attempts under Clause 9.1 and submits that the same is discriminatory.

Notice of motion for 5.11.2015.

Mr. R.S.Sidhu, Assistant Advocate General, Punjab accepts notice on behalf of the respondents no.1 and 2 and prays for some time to file reply.

Let the needful be done before the next date.

Requisite copies of the writ petition be supplied to the counsel for the State during course of the day.

Respondent no.3 be served by way of *dasti* process.

In the meantime, the petitioners will be allowed to fill up/submit their applications manually by 5.10.2015 with respondent no.3 who shall accept the said applications subject to final decision of the writ petition.

It is made clear that in case the petitioners become successful in the examination, no right of equity shall flow to them on the basis of this interim order.

Copy of this order be supplied to the counsel for the petitioners under the signatures of the Special Secretary/Reader of this Court.”

Thereafter, the PPSC had accepted the applications of the petitioners and proceeded with the process as per the advertisement.

16. The facts being not in dispute need not be referred to again except that the petitioners in CWP No. 20951 of 2015 have already availed of three attempts at the examination in the years 2009, 2012 and 2013 respectively. These three attempts petitioners were entitled to being ex-servicemen. There is no dispute that the three attempts, which were earlier availed of by the petitioners, were in accordance with the 1982 Rules. Rule 5 provides for three maximum chances to any ex-serviceman for appearing in a competitive examination. The said Rule of the 1982 Rules reads as follows:-

“5. Appointment through competitive examination.

Notwithstanding anything contained in the concerned Service Rules, in case an appointment to any post governed by these rules is made through competitive examination;-

(i) the maximum chances to be given to any ex-serviceman

for appearing in the said examination shall not exceed three;
and

(ii) the Ex-Serviceman shall not be required to appear in the optional subject, if any, specified for that examination.”

17. A perusal of the above rule would show that it starts with a non-obstinate clause i.e. notwithstanding anything contained in the concerned Service Rules. It is not in dispute that the appointment to the post, on which the petitioners are aspiring to be appointed, is based upon the competitive examination. Clause (i) of Rule 5 fixes maximum chances, which are to be given to an ex-serviceman for appearing in such a competitive examination, restricting it to only three. Clause (ii) gives an exemption to an ex-serviceman for appearing in an optional subject, if any, specified for that examination. Meaning thereby that an ex-serviceman is given the benefit of not appearing in the optional subject, if any, specified for the examination.

The rule as a whole has to be seen. It has an overriding effect qua the general provisions of the other statutory Rules which are in conflict with it. Therefore, while candidates of all categories are required to appear in the optional subject specified in the statutory Rules for the examination, an ex-serviceman stands exempted as per this Rule 5. This rule, therefore, being a special rule, would operate similarly concerning the chances to be availed in the examination for which an ex-serviceman is competing. The 1982 Rules not only deal with appointment to the competitive examination but also provides for reservation of the vacancies for the ex-servicemen. Extent of applicability of the said rules has also been given and it is not in dispute that the posts, for which the petitioners are aspiring, fall within

these rules and they are striving to get benefit of these 1982 Rules being ex-servicemen.

18. The thrust of the petitioners in these writ petitions for claiming the benefit of a fourth chance at the examination is based upon Rule 5 read and aided by Rule 11 of the 2009 Rules. For ready reference, these are reproduced below:

“5. Number of Attempts at the Examination.-Unless covered by any of the exceptions, which may, from time to time, be notified by the Government in this behalf, every candidate appearing for the examination after the commencement of these rules, shall be permitted to avail four attempts at the examination.

Explanation.-For the purpose of this rule, an appearance of a candidate in the preliminary examination, shall be deemed to be an attempt at the examination.

XXX

XXX

XXX

11. Overriding effect.-The provisions of these rules shall have overriding effect notwithstanding anything inconsistent therewith contained in any other rules for the time being in force relating to the conduct of examinations for making appointment to the services.”

19. The 2009 rules have been framed for conducting the examination to regulate the recruitment and conditions of service of persons appointed to the service mentioned in the schedule. According to Rule 3, appointment to the service specified in the schedule is mandated to be made through the combined competitive examination to be held by the

Commission. Rule 5 permits four attempts at the examination for every candidate appearing for the same after the commencement of the rules, which is qualified by mentioning at the beginning of the said rule unless covered by any of the exceptions which may be notified by the Government in this behalf from time to time. Meaning thereby that if there is a condition already fixed on the number of attempts at the examination or such a condition is notified later, the same would prevail. Thus, this rule, when seen in the context of language used by the framers of the rule, it cannot be said that this rule would apply universally to every candidate appearing for the examination permitting availing of four attempts at the examination. To read otherwise would render the qualifying/exception clause of this rule inoperative and redundant which would be not only offensive but violative of the simple language of the rule.

20. Rule 11 of the 2009 Rules, on which the petitioners are placing reliance to assert that the provisions of these rules shall have overriding effect notwithstanding anything inconsistent therewith contained in any other rules relating to the conduct of examination for making appointment to the services, the said rule would not in itself lead to overriding or obliterating the provisions of the other rules which have been specifically protected according to the substantive rule on which reliance has been placed by a candidate. Even if the contention of the petitioners is to be accepted, the same would not ultimately help the petitioners especially in the light of the language of Rule 5 which clearly lays exceptions to the said rule. Rule 11 will operate in the shadow and within the sphere and limits laid down in the substantive rule i.e. Rule 5.

21. It is not in dispute that the appointment has been sought by the

petitioners under the ex-servicemen category which benefit flows from the 1982 Rules, of which Rule 5 fixes the maximum limit of three chances to be given to an ex-serviceman for appearing in the competitive examination. Since the limit has been fixed under the 1982 rules which is saved by the exceptions as provided for in rule 5 of the 2009 Rules, the same would operate as far as the petitioners are concerned.

22. It is true that a notification has been issued on 15.12.2016 (Annexure R-1) by the Department of Defence Services Welfare, whereby amendment has been made in Rule 5 (i) of the 1982 Rules by substituting the words “exceed three” by the words “exceed three except the examination for filling up the posts under the Punjab State Civil Services (Appointment by Combined Competitive Examination) Rules, 2009, where the maximum chances shall be four”, but the said notification unfortunately being prospective would not be applicable to the petitioners and thus, cannot be granted the benefit of the same.

23. Petitioners have relied upon the judgment of the Supreme Court in **S.Prakash** (supra), where the principle, which has been laid down by the Hon'ble Supreme Court, is that a general enactment will have an overriding effect over a special provision if the intent of the legislature was that and the same is found out from the language used in the rules which may be expressed or by implication. If the language is clear and unqualified subsequent general rule would prevail despite repugnancy. The said principle would not be applicable in these cases in the light of the language of Rule 5 of the 2009 Rules which makes it amply clear that the exceptions to the Rule stand protected.

24. In the judgment in **R.S.Raghunath's case** (supra), on which

reliance has been placed by the respondents, the principle, which has been laid down, is that if there are two set of rules one being General and the other Special, for recruitment, the General Rules, even if subsequently notified, will not supersede the Special Rules despite the insertion of non-obstinate clause in the General Rules unless there is a clear indication in the subsequent rules to supersede the earlier rules or the Special Rules which are repugnant to the General Rules. In the cases in hand, this Court could not find any indication in the 2009 Rules, much less clear indication, of supersession of 1982 Rules.

25. The issue, as framed in para-5 above, is answered as follows:-

“Rule 5 of the 2009 Rules would not have an overriding effect nor prevail over Rule 5 of the 1982 Rules. Rather 1982 Rules being special shall prevail over the 2009 Rules which are of general application.”

26. In view of the above, finding no merit in CWP No. 20951 of 2015, the same stands dismissed.

27. In the light of dismissal of CWP No. 20951 of 2015, CWP No. 17198 of 2016 is disposed of with the observations that the official respondents shall proceed in the matter in accordance with law.

July 24, 2020
pj

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No