IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CWP No. 15976 of 2018
Date of decision : February 19, 2020

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Subhash Chand
...........Petitioner

Versus

State of Haryana and others
...........Respondents

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Ram Niwas Sharma, Advocate for the petitioner.

Mr. Randhir Singh, Advocate for the State of Haryana.

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RITU BAHRI, J.

The petitioner who has been working as Excise Inspector with the Excise and Taxation Department, Haryana has filed the present writ petition seeking direction to the respondents to withdraw the show cause notice dated 10/08/2017 (Annexure P-8) by allowing him exemption from passing departmental examination. He has further prayed for a direction to the respondents to consider his claim for promotion to the post of Assistant Excise and Taxation Officer in view of the letter dated 17/19.04.2017 (Annexure P-11) issued by the Chief Secretary

Haryana.

The petitioner was initially appointed as a clerk vide appointment letter dated 18/01/1989 (Annexure P-1) on temporary basis in head office i.e Excise and Taxation Commissioner, Haryana, PANCHKULA on the recommendation of the Excise and Taxation Commissioner under Special Handicapped Quota (Blind). He was promoted to the post of Assistant vide order dated 19/12/2008 (Annexure P-2) and further promoted to the post of Excise Inspector vide order dated 10/05/2012 (Annexure P-3). After being promoted to the post of Excise Inspector, the petitioner was required to qualify the departmental examination within a period of 2 years and if he did not qualify the examination he was liable to be reverted to his former post. The petitioner was issued a show cause notice dated 09/06/2015 (Annexure P-4) to pass the departmental examination within a period of 2 years. The petitioner replied to the show cause notice by the letter dated 20/06/2015 (annexure P5). Through this reply, the petitioner expressed his inability in appearing or passing the departmental examination on the ground that he is hundred percent handicap/blind having zero eyesight visibility and prayed for exemption from passing the departmental examination. Thereafter, the petitioner appeared before respondent No. 2 and made a request for exemption from passing the departmental examination. But respondent No.2 vide letter dated 01/04/2016 (Annexure P-7) informed that he could not be allowed exemption from passing the departmental examination. However, he was allowed one more year to pass the departmental examination. It was further stated in that letter that if he needed he would be provided a scribe as per rules. Another notice dated 10/08/2017 (Annexure P-8) was issued to him stating therein to show cause within a period of 15 days as to why he should not be reverted to the post from which he was promoted. The petitioner gave his reply to the show cause notice vide letter dated 28/08/2017 (Annexure P-9) and sought exemption under Rule 14 of the Haryana Excise and Taxation Inspectorate (State Service, Class III) Rules 1969. The petitioner also sought benefit under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995. By referring to Section 47 of the said Act, he stated that there should be no discrimination in government employees. But the Department vide letter dated 01/12/2017 (Annexure P-10) gave him two more opportunities to pass departmental examination and it was also informed that in case he needed scribe to appear in the examination, than he should submit the application in the head office.

Counsel for the petitioner has referred to the order dated 19/11/2004 (Annexure P-13), whereby a clerk in the Excise and Taxation Department, namely, Ishwar Singh who was promoted to the post of Assistant and later promoted to the post of Taxation Inspector failed to qualify the paper of sales tax even after availing five opportunities which was required to be passed within a period of 2 years from the date of appointment to the service as per the Haryana Excise and Taxation Inspectorate (State Service Group C) Rules 1969. He was reverted to the post of Assistant by the Excise and Taxation Commissioner. Against this order Ishwar Singh filed CWP No. 5586 of 2002 in this court. The petition was disposed of while relegating the petitioners to make a detailed representation to the Department on the basis of the judgments of this Court and that of Hon'ble Apex court praying for extension of the period for taking the examination or exemption therefrom in terms of the order of Hon'ble Apex Court. The representation of Ishwar Singh was duly considered by his department. A lenient view in the matter was taken keeping in view that the official was suffering from heart ailment and had attained the age of 56 years and he was exempted from passing the departmental papers.

Counsel for the petitioner further submits that the petitioner is hundred percent blind and is 55 years of age and after being promoted to the post of Excise Inspector on 10/05/2012 (Annexure P-3), he has been working to the full satisfaction of the Department for the last 8 years and he should be given exemption from passing the departmental examination. He has referred to a

Division Bench judgment of this court in the case of ***Sukhmander Singh Vs. State of Punjab and others 2000(3) RSJ 732*** , wherein the case of the petitioner-Sukhmander Singh was being examined who was a member of the Punjab Armed Police and has been working on the post of Sub-Inspector. He sought exemption from passing the Upper School Course which was considered necessary for becoming eligible for promotion to the post of Sub-Inspector and Inspector. Exemption was declined to the petitioner even though he suffered handicap while performing his duties. The Division Bench of this Court directed the respondents to consider the matter afresh. Relevant paragraph 6 of the judgment is hereby reproduced as under:

> *6. Ms. Tuli has referred to the provisions of Rule 13.21 to contend that the statutory rules grant a complete discretion to the authority and that the exercise of this discretion should not be interfered with by the Court.*
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> *Rule 13.21 provides as under:-*
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> *" Power of relaxation:-Where the Inspector General of Police is of the opinion that it is necessary or expedient so to do, he may , by order for reasons to be recorded in writing relax any of the provisions of this Chapter with respect*

of any class or category of persons"

A perusal of the above provision shows that it is only when the competent authority is satisfied that "it is necessary or expedient so to do that it can relax the provision. "Still further, it has to record reasons for granting a relaxation. In the present case, the petitioner's claim had been duly recommended by the Senior Superintendent of Police. It had been pointed out that the official "is very industrious, loyal and hard-worker who always takes keen interest ot discharge the assigned duties with utmost devotion and produced fruitful results at all the jobs". It was further mentioned that he had been awarded as many as 7 Commendation Certificates of Class-I, 6 in Class-II and 23 Commendation Certificates in Class-III. Still further, it was also pointed out that he has remained posted as a law instructor at the Recruitment Training Centre. He is a trained mechanic. He is looking after the motor transport section of the Department. Yet, the petitioner's claim was rejected without recording any reason. It is only in the written statement that it has been

> *pointed out that the director-general of police had approved the note wherein it was observed that "it is sufficient that we are tolerating handicapped persons....." In our view a handicapped person deserved sympathy. In fact, the legislative policy is to promote the welfare of the handicapped persons. The Parliament has promulgated the 'Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995`with the avowed object of helping the handicapped persons. The element of sympathy should have been all the more greater in view of the fact that the petitioner had suffered the handicapped while performing his duty. We are not very happy with the manner in which the petitioner's case has been dealt with."*

On the other hand, learned counsel for the State has referred to the promotion orders dated 17/04/2012 (Annexure R-1) whereby the petitioner was promoted to the post of Excise Inspector on temporary basis and he was bound to clear the departmental examination as per Rule 14 of the Haryana Excise and Taxation Inspectorate (State Service Group C) Rules 1969. Moreover, the petitioner was granted so many chances to clear the departmental examination. In the letter dated 01/12/2017 (Annexure R-4), it was stated that if the petitioner demanded scribe, he will be provided the same in according to the procedure. It is further stated therein that the petitioner cannot claim exemption from passing the departmental examination as a matter of right.

Heard counsel for the parties. The stand of the respondents is liable to be rejected in view of the judgment in the case of ***Sukhmander Singh (supra)***, where the action of the respondents in not granting exemption from qualifying the Upper School Course to the petitioner was taken to be unfair. Thus keeping in view that the petitioner is 55 years of age and he is serving as an Excise Inspector since the year 2012, this petition is allowed and show cause notice dated 10.8.2017 (Annexure P-8)is hereby quashed. Respondents are directed to again consider the case of the petitioner for exemption from passing the departmental examination keeping in view the Division Bench judgment of this court in the case of ***Sukhmander Singh (supra)*** and order dated 19.11.2004 (Annexure P-13).

The second prayer of the petitioner is with respect to consideration for promotion to the post of Excise and Taxation Officer. The petitioner was promoted way back in the year 2012 as Excise Inspector. The respondents are not disputing that there are 198 sanctioned posts of Excise and Taxation Officer. The claim of the petitioner is that under the

Service Rules of 1988, 147 sanctioned posts of Assistant Excise and Taxation Officer are available with the respondents and 3% horizontal reservation has been allowed in promotion in favour of handicapped employees as per the circular dated 19.4.2017 (Annexure P-11). The said circular had been issued in compliance of the Supreme Court Judgement dated 8.10.2013 passed in Civil Appeal No. 9096 of 2013.

Thus keeping in view Instructions dated 19.4.2017 (Annexure P-11), the present writ petition qua the second prayer is being disposed of with a direction to the respondents to consider the petitioner's case in terms of the aforesaid Instructions within a period of 6 months of receipt of a certified copy of this case.

February 19, 2020 **(RITU BAHRI)**
ritu **JUDGE**

Whether speaking/reasoned	Yes
Whether reportable	No