

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

(201)

CWP-6176-2018 (O&M)

Date of Decision : August 09, 2021

Neelam

.. Petitioner

Versus

Haryana Power Generation Corporation Ltd and anr. .. Respondents

(2)

CWP-6781-2018 (O&M)

Raj Kumar Sehgal

.. Petitioner

Versus

Haryana Power Generation Corporation Ltd and ors. .. Respondents

(3)

CWP-6354-2018

Rakesh

.. Petitioner

Versus

Haryana Power Generation Corporation Ltd and anr. .. Respondents

(4)

CWP-17245-2018 (O&M)

Parveen Kumar and others

.. Petitioners

Versus

Haryana Power Generation Corporation Ltd and anr. .. Respondents

(5)

CWP-6658-2018

Ashish Kamboj

.. Petitioner

Versus

Haryana Power Generation Corporation Ltd and anr. .. Respondents

(6)

CWP-14856-2019

Vijay Kumar

.. Petitioner

Versus

State of Haryana and ors.

.. Respondents

(202)

CWP-7407-2018

Ritu Tanwar

.. Petitioner

Versus

Haryana Power Generation Corporation Ltd and anr. .. Respondents

(Through Video Conferencing)

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. R.K. Malik, Senior Advocate with
Mr. Sandeep Dhull, Advocate for the petitioner
(in CWP No. 6176 of 2018).

Mr. Jitender K. Goel, Advocate for the petitioner
(in CWP No. 6781 of 2018).

Mr. Jasbir Mor, Advocate, for the petitioner
(in CWP No.6354 of 2018).

Mr. Ashwani Talwar, Advocate for the petitioners
(in CWP No. 17245 of 2018).

Mr. Anurag Goyal, Advocate for the petitioner
(in CWP No. 6658 of 2018).

Mr. Karan Nehra, Advocate, for the petitioner
(in CWP No.14856 of 2019).

Mr. Himanshu Arora, Advocate, for the petitioner
(in CWP No.7407 of 2018).

Mr. Puneet Jindal, Sr. Advocate, with
Mr. Amandeep Singh Meho, Advocate, for the respondents.

Ms. Shubhra Singh, Additional Advocate General, Haryana.

HARSIMRAN SINGH SETHI J. (ORAL)

By this common order, seven writ petitions, the details of

which have been given in the heading of the order, are being disposed of as all the writ petitions involve the same question of law on similar facts.

In these writ petitions, the challenge is to the orders of reversion to the feeder post on the ground that the petitioners, who were promoted with the clear condition that they have to pass departmental examination, have failed to qualify the same within the permissible chances/within the time frame prescribed, hence, they cannot continue on the promoted posts.

While issuing notice of motion, this Hon'ble Court had stayed the reversion and the petitioners even currently are discharging the duties of the promoted post.

Learned senior counsel appearing on behalf of the petitioner (in CWP No.6176 of 2018) submits that some of the petitioners have already cleared the required departmental examination in the integrum and therefore, now their reversion is not permissible. Learned counsel for the petitioners in some of the writ petitions concede that either the petitioners have not appeared in the examination or have failed to clear the same despite availing available chances/within the time frame prescribed even as of now.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

The question before this Court is whether, the action of the respondents in reverting the petitioners to the feeder cadre on the ground that they have failed to clear the required departmental examination within the chances available/within the time prescribed is legal and is in accordance with the rules/regulations governing the service or not.

The rules/regulations governing the promotion are not in dispute in the present petitions. As per the instructions, which were issued by the respondent-Corporation on 29.10.2013, the earlier policies with regard to the recruitment and promotion of the Accountant cadre were superseded and the following was adopted:-

“2.0 Divisional Accountant:-

2.5. 50% posts, shall be filled up by promotion as under:-

a. 40% (i.e. 80% of the promotional quota posts), shall be filled up by promotion from Accounts Clerk having passed Departmental Examination (SAS Part 0I) as prescribed by the Corporation and have completed 5 years service.

b. 10% (i.e. 20% of promotional quota) posts shall be filled up by promotion from Accounts Clerk on seniority basis from amongst who could not pass Departmental Examination (SAS Part-I) as prescribed by the Corporation but have completed 10 years of satisfactory service as Accounts Clerk.

3.0 Section Officer:-

3.3. 50% posts, shall be filled up by promotion as under:-

i. 40% (i.e. 80% of the promotional quota posts) from the Divisional Accountant having passed Departmental Accounts Examination (SAS) as prescribed by the Corporation and have completed 5 years service OR

ii. 10% (i.e. 20% of promotional quota posts) from the Divisional Accountant on seniority basis who could not pass Departmental Accounts Examination (SAS) as prescribed by the Corporation and have completed the 15 years of satisfactory service as Divisional Accountant.

B. Since the exams have either not been held or HPGCL officials/officers could not avail the opportunity to appear in the exams because of ambiguity so arisen due to amendment in policy in 2009, following is decided as one time measure:

i) *Accounts Clerk may be provisionally promoted under the new policy to the post of Divisional Accountant as per seniority and availability of promotional posts, with the stipulation that they shall qualify the promotional exam of departmental SAS-I within 03 chances or 2 years whichever is later. However, in case such an employee fails to qualify the exams even in 03 special chances, he will be reverted back and his seniority for promotion under qualified quota shall be determined from the date of passing the relevant exam.*

ii) *Divisional Accountants promoted as well as directly recruited in 2007 and 2008 batch may be provisionally promoted to the post of Section Officer under the new policy as per" seniority and availability of promotional post with the stipulation that they shall qualify:-*

a. Departmental SAS-II Exam within the 03 chances or 2 years whichever is later, in case of those Divisional Accountants who have already qualified the departmental SAS-I exam. However, in case such an employee fails to qualify the exams even in such special chances, they will be reverted back and their seniority for promotion under qualified quota shall be determined from the date of passing the relevant exam.

b. Departmental SAS-I & II within the 06 chances or 4 years whichever is later in case of those Divisional Accountants who have not even qualified the SAS-I exam."

A bare perusal of the above would show that for promotion to the post of Section Officer, certain criteria was laid down and one of the criteria was that the departmental SAS I/II examination were to be cleared by the Divisional Accountant within the chances mentioned therein so as to retain the promotions.

As per the reproduction above, a candidate, who has already passed SAS I examination by the time of the issuance of the policy on

29.10.2013, was to clear SAS II examination to become eligible to continue on the post of Section Officer within three more chances or two years, whichever is later. A candidate, who was supposed to clear both SAS I and SAS II examination, was to clear the same within six chances or four years, whichever is later, in order to retain the promotions.

By applying the said rule, the Department issued reversion orders to the employees, who got promotion to the higher rank after 2013, but failed to clear the examination within the stipulated chances/within the time prescribed mentioned therein. The claim of the petitioners was otherwise that they have not got enough chances to clear the examination, as depicted in the policy, before they were sought to be reverted, hence, their reversion is bad.

A perusal of the rules would show that a candidate promoted to higher rank with the clear stipulation that he or she has to clear the departmental examination within the fixed chances/number of years is mandatory and cannot be overlooked by the department. Rather, as per the rules governing the service, the requirement of passing the departmental examination is a condition precedent for promotion but due to certain ambiguity which arose in the department due to the amendment carried out in the rules in the year 2009, the department, as a one time measure, issued instructions in October, 2019 that the employees can be promoted to the higher rank provisionally subject to the clearing of the departmental examination within the specified chances/number of years. These regulations are not under challenge in these writ petitions.

In the absence of challenge to the regulations, every employee, who has been promoted provisionally, needs to clear departmental

examination within the number of chance/time frame prescribed therein. The respondents, in their reply, have depicted that after 2013, the candidates have been given number of chances to clear the departmental examination and the reversion orders have been passed only after expiry of four years, which was the maximum time within which a candidate had to clear said examination in case he or she has already availed maximum prescribed chances to clear the same. Once, the examination was conducted, whether the petitioners availed the said chance or not, is to be counted as a chance, subject to the condition that the employee could not appear in the examination due to the circumstances beyond his/her control. Therefore, the condition of passing the departmental examination within the time frame prescribed under the instructions dated 29.10.2013 cannot be said to be arbitrary or illegal and non-clearing of the examination by the employees, who have been promoted provisionally within allowed chances in the number of years prescribed, has to result in their reversion.

This Court has been informed that some of the petitioners have cleared the departmental examination as of now but, some of the petitioners have either not appeared in the examination or have not cleared the same despite availing maximum chances available to them under the regulations. No fault can be found with regard to reversion of the petitioners, who have not cleared the examination even upto now and the reversion orders in their cases need no interference by this Court and their petitions are accordingly dismissed. The interim order passed by this Court in their favour stands vacated.

The petitioners, who have cleared the examination as of now and are also continuing on the promoted posts keeping in view the interim

order passed by this Court, are to be allowed to continue on the promoted post. The only question which remains to be decided is whether, these employees, who have cleared the examination, are entitled for seniority from the date of initial promotion or, they are to be given seniority in the promoted cadre from the date they have cleared the examination.

As per the rules governing the service, which have been reproduced hereinbefore, in case, an employee fails to clear the departmental examination within the chances available to him/her or the time period fixed in the promotion policy dated 29.10.2013, the seniority is to be given in the promoted cadre from the date of the clearing of the examination.

In case, any of the petitioner, who has already cleared the departmental examination as of now, if feels that he/she has cleared the departmental examination within the number of chances available to him/her or the time period granted for clearing the examination or the circumstances were such that it was beyond the control of a particular employee to clear the examination within the time/number of chances prescribed, hence, is entitled for seniority in the promoted cadre from the initial date of promotion, he/she will be free to represent the respondents citing their facts and circumstances to support the said claim.

Learned senior counsel appearing on behalf of the respondents submits that in case, any representation is filed by any of the petitioner, who has already cleared the departmental examination so as to claim the seniority from the initial date of promotion, the said representation will be considered by the competent authority and appropriate orders will be passed in accordance with law within a period of eight weeks of the representation

so received.

Keeping in view the above, the present writ petitions are disposed of with the following directions:-

(i) in case, any of the petitioner, who has already cleared the departmental examination required for promotion, is of the view that he/she is entitled for seniority in the promoted cadre from the continuous length of service in the promoted cadre as he/she has cleared the examination within the chances available to him/her or non-clearing of the departmental examination within the time prescribed under the rule, was beyond his/her control, will make appropriate representation to the competent authority for the said relief and the competent authority, in case, any representation is received from any petitioner, will decide the said claim in accordance with law, keeping in view the facts and circumstances of each case, within a period of eight weeks of the receipt of the said representation.

Such petitioners, who have cleared the examination, will be allowed to continue on the promoted posts subject to the condition that the Competent Authority will decide whether the seniority of a particular petitioner is to be granted from the date of clearing of the examination or from the date of the initial promotion, keeping in view the facts and circumstance of each of the petitioner, by passing appropriate speaking order on the representation if any received from any of the abovestated petitioner.

(ii) The petitioners, who have not cleared the examination and have not been able to substantiate their claim for continuance on the promoted post keeping in view the rules governing the service, will stand reverted to the feeder cadre and the interim order passed in their favour

stands vacated and their writ petition stands dismissed.

(iii) The petitioner in CWP No.6781 of 2018, if is of the opinion that he is entitled for promotion as Section Officer on the basis of continuous service of 15 years, he is at liberty to make the representation to the respondent-Corporation claiming the said relief, which will be considered by the competent authority, in case any such representation is received, to be decided within a period of eight weeks of the receipt of the same.

With regard to CWP No.14856 of 2019, the petitioner, who is seeking further promotion to the post of Accounts Officer, will be at liberty to file appropriate representation claiming the same by raising appropriate ground regarding his eligibility and entitlement for the same and in case, any such representation is made, the Corporation will decide the same within a period of eight weeks of the receipt of the same by passing speaking order.

As the present writ petitions are disposed of, CM-4721-CWP-2019, CM-7941-CWP-2019 and CM-8189-CWP-2019 also stand disposed of.

August 09, 2021

harsha

(HARSIMRAN SINGH SETHI)

JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No