

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

302 (03 cases)

(1) CWP-16916-1998 (O&M)
Date of Decision :-08.12.2023

Dalip Singh

..Petitioner

Versus

State of Haryana

...Respondent

(2) CWP-16918-1998 (O&M)

Anant Ram Goel

..Petitioner

Versus

State of Haryana

...Respondent

(3) CWP-20026-2002 (O&M)

Ishwar Singh Dahiya

..Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Puneet Pali, Advocate for petitioner in CWP-16916-1998.

Mr. Mukesh Kumar Verma, Advocate for the petitioner
in CWP-16918-1998.

Ms. Bhagyashri, Advocate for petitioner in CWP-20026-2002.

Mr. Ravi Dutt Sharma, DAG, Haryana.

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Harsimran Singh Sethi, J. (Oral)

1. By this common order, above mentioned three writ petitions are being disposed of as all the writ petitions involve the same question of law on similar facts.

2. For the purpose of this order, facts are being taken from **CWP-16916-1998 titled as Dalip Singh vs. State of Haryana.**

3. Petitioner was working as a Deputy District Attorney with the respondent-State of Haryana in the department of P.W.D (B & R). At the said point of time, the name of the petitioner was recommended for appointment to the post of HCS (Executive Branch) and the petitioner had joined on the said post of HCS (Executive Branch) on 16.05.1994.

4. The post of HCS (Executive Branch) was governed by the Punjab Civil Service (Executive Branch) Rules, 1930 and under Rule 21 of the said Rules, an employee, who has been appointed on the post of HCS (Executive Branch) is required to clear the departmental examination within a period of two years of joining. The said Rule also vests power with the respondent-State to exempt an officer from clearing the said departmental examination. The said Rule-21 is reproduced hereunder for reference:-

“21. Members of the Service to pass the departmental examination within two years of appointment:-

Every member of the service shall within two year of his appointment to the service pass by the higher standards the departmental examination from time to time prescribed for Extra Assistant Commissioners and if any member fails so to pass the departmental examination his services shall be terminated;- provided that the Governor of Haryana may exempt any member of the service from so passing the whole or any portion of the departmental examination or may extend the period within which the member of the Service shall so pass the examination.”

5. On being appointed on the post of HCS (Executive Branch), a departmental examination which consists of 06 papers is to be cleared. For the conduct of Departmental Examination in question 'Rules for Departmental Examination of Assistant Commissioner, Extra Assistant Commissioners and candidates for the post of Extra Assistant Commissioners were framed and Haryana Government Notification No.GSR 39/Const./Art.309/86, dated 16.5.1986 prescribes that the said examination be held twice a year and therefore, conjunct reading of above reproduced Rule-21 of 1930 Rules and Rule-1 framed for the conduct of the examination makes it clear that four effective opportunities were to be afforded to the officers for passing the said departmental examination.

6. The petitioner after his appointment in the HCS (Executive Branch) appeared in the departmental examination and though, had cleared few papers but could not clear all the required papers so as to pass the departmental examination. As the petitioner could not clear all the papers within the time period prescribed, a show cause notice was issued to him on 28.07.1997 by the respondent-department that as the petitioner failed to clear the departmental examination hence, his services are required to be terminated so as to revert him to the post on which he was working prior to his appointment to the HCS (Executive Branch).

7. Reply to the said show cause notice dated 28.07.1997 was submitted by the petitioner stating that petitioner had already crossed the age of 50 years and therefore, by exercising powers of relaxation as envisaged under Rule-21 of the 1930 Rules, he be exempted from passing the departmental examination. It is also stated that all four effective

opportunities were also not made available to the petitioner as on the date of issuing the said show cause notice thereafter, the petitioner was afforded his fourth opportunity to pass the departmental examination, in which the petitioner was unsuccessful. Through his reply/representation the petitioner had also pointed out that there were instances when extended chances i.e. more than four opportunities were given to officers to pass the departmental examination, in light of which fact petitioner should also be extended more opportunities to pass the said departmental examination. The petitioner had also mentioned names of officers, who were altogether exempted from passing the said departmental examination by exercising the power under Rule 21 which has been reproduced hereinbefore.

8. That the State of Haryana vide order dated 11.03.1981 Annexure P/7 exercising the power under Rule-21 has exempted officers appointed to the post of HCS (Executive Branch) from passing the said departmental examination who have been appointed on the said post on or after attaining 50 years of age, benefit of which was sought by the petitioner to be also extended to him as by the time the four effective opportunities for passing the departmental examination were provided to him he had already crossed 50 years of age.

9. Ultimately vide order dated 27.10.1998 (Annexure P/5), the respondents have terminated the services of the petitioner from the HCS (Executive Branch) with immediate effect and reverted him to the post of Deputy District Attorney in the department of prosecution. The petitioner challenged the said order of termination of his services by way of filing present petition, in which the operation of the impugned order of reversion was stayed and subsequently the respondents were directed by this Court to

examine the feasibility for grant of relaxation to the petitioner. Keeping in view the direction given by this Court, the respondents considered the feasibility to grant the benefit of relaxation to the petitioner but the respondents came to the conclusion that no relaxation can be granted to the petitioner and an order to this effect was passed on 12.02.1999 (Annexure P/6) by the respondents. The said order along with order terminating the services of the petitioner is under challenge vide the present amended petition.

10. It may be noticed that similar orders on similar facts were passed against the other petitioners in the connected petitions as well, in which notice of motion was issued and the order terminating the services of the petitioners was stayed and, thereafter, the writ petitions were admitted and interim order staying the order of termination of services of the petitioners continued.

11. It is a matter of fact that during the pendency of the petitions, all the petitioners continued working on the post of HCS (Executive Branch) and retired as such on attaining the age of superannuation starting from year 2005 onwards i.e. petitioner Dalip Singh retired on 31.03.2005, petitioner Anant Ram Goel retired on 30.04.2006 and petitioner Ishwar Singh Dahiya retired on 29.02.2008.

12. From the facts stated hereinbefore, it is clear that the petitioners retired from the post of HCS (Executive Branch) more than one and a half decade ago.

13. Learned counsel for the petitioners submits that once the petitioners have been retired from the post of HCS (Executive Branch) keeping in view the interim order passed by this Court and as corollary of

which the order terminating the services of the petitioners due to non-passing of departmental examination could not have been given effect to, now at this stage, the said question of law whether the services of the petitioners could have been terminated or not, has been rendered academic and the respondents are liable to release the pensionary benefits of the post from which the petitioners retired which benefit is yet to be released to them as the same are withheld by the respondents.

14. Learned counsel for the petitioners submits that the petitioners have been treated to be reverted from the post of HCS (Executive Branch) for the purpose of grant of pensionary benefits and the said action also happens to be contrary to the interim order passed by this Court and in fact, is contemptuous in nature. Further grievance of the petitioner is that though, operation of the impugned order was stayed, the petitioners were not given any increment till they retired despite rendering services on the post of HCS (Executive Branch).

15. Learned counsel for the petitioners further submits that in somewhat similar circumstances in **CWP-895-2015 titled as Gurdial Chand vs. The State of Haryana and others decided on 06.12.2016**, where the petitioner therein namely, Gurdial Chand, who was working on the post of Taxation Inspector was reverted to the post of Assistant on the same ground that he failed to pass the departmental examination, the impugned order of reversion therein was also stayed by this Court and the petitioner therein also retired during the pendency of the said petition and upon final hearing keeping in view the factum of retiring of the petitioner on the promoted post in the interregnum, a statement was made by the State counsel that as the said Gurdial Chand has already retired from service as Taxation Inspector

and was never reverted from the said post, he was given all the benefits of the post of Taxation Inspector hence, on the same analogy, the respondents are liable to extend the same benefit i.e. of the pensionary benefits of the post from which the petitioners retired the same being that of HCS (Executive Branch) as petitioners have actually discharged duties till their retirement.

16. Learned counsel for respondent-State submits that though it is a conceded fact that orders reverting the petitioners to their earlier posts were passed which were impugned in the present petition and operation of which was stayed and that the petitioners continued working on the post of HCS (executive Branch) till they attained the age of superannuation and retired however, they cannot claim the benefit of interim order so as to claim pensionary benefits of the said post of HCS (executive Branch) and that the case of petitioners is required to be adjudicated on merits i.e. as to whether the petitioners were entitled to continue on the post of HCS (Executive Branch) or not.

17. Learned counsel for the respondent-State further concedes the fact that despite interim order under which the petitioners were allowed to continue working on the post of HCS (Executive Branch), they were not given increment and after retirement their pensionary benefits have been fixed on the basis of the reverted post which in the case of the present petitioner is that of Deputy District Attorney. It is submitted on behalf of respondent-State that the benefit of interim order cannot be extended for the grant of requisite pensionary benefits of the post of HCS (Executive Branch) in view of the fact that the benefit of relaxation from passing departmental examination has been declined to the petitioners, same not being covered by

order dated 11.03.1981 (Annexure P/7).

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

19. The facts which have been mentioned hereinbefore are not in dispute. It is a matter of fact that the respondents had terminated the services of the petitioners by passing impugned order due to non-passing of departmental examination by the petitioners. It is also a matter of fact that under the interim order passed by this Court, the petitioners continued working on the post of HCS (Executive Branch) till their retirement. It is also a matter of fact as admitted by respondent-State in its written statement that certain employees who were appointed on the post of HCS (Executive Branch) were granted exemption from passing the departmental examination as a special case and that there have been others who were given extended attempts i.e. more than prescribed four attempts to pass the departmental examination.

20. Considering the totality of the circumstances especially, that petitioners up to the date of their retirement worked on the post of HCS (Executive Branch) under the interim order of this Court and have retired approximately one and a half decade ago, question of law raised in the present petitions has been rendered academic. In the facts and circumstances, which have come into being after the filing of the present petition especially, that the petitioners continued working on the promoted post till they attained the age of superannuation and retired while working on the post of HCS (executive Branch), deciding the question of law raised in the present petitions on merit does not arise.

21. It is a conceded fact that in *Gurdial Chand (supra)*, wherein

also the petitioner was reverted from the post of Taxation Inspector and that too on the ground of non-passing of departmental examination and who also, in view of the interim order of stay passed by this Court, continued working on the promoted post of Taxation Inspector till he retired, the respondent-State granted all the benefits of the higher post to the said Gurdial Chand by treating him as Taxation Inspector for all intents and purposes. The relevant paragraph of the said judgment recording the statement of the respondent-State is reproduced hereunder:-

“At this juncture, learned counsel for the State submits that the petitioner has already retired from the post of Inspector and due to interim order passed by a Coordinate Bench of this Court, he was never reverted from the post of Inspector. He, further states that the petitioner has also been paid all the consequential benefits of the post of Taxation Inspector”.

22. In the present case, different stand cannot be taken by the respondent-State. While deciding a claim in similar facts and circumstances two different stand cannot be taken by the respondent-State. Learned counsel for the respondents-State has not disputed the concession given in the case of **Gurdial Chand (supra)**. That being the factual position, applying different yardsticks qua the petitioners herein, will amount to discrimination.

23. The above reproduced relevant paragraph of the judgment in **Gurdial Chand (supra)** shows that State counsel only informed the Court that the petitioner i.e. Gurdial Chand had retired and due to interim order passed by this Court, he was never reverted from the post of Taxation Inspector and the said Gurdial Chand had been granted all consequential benefits of the said post. This was the only information given by the State counsel and it was conceded that the department itself has given the benefits of the post of Taxation Inspector to the said Gurdial Chand, hence in the

facts and circumstances of the present case, respondent-State should follow

the same principle as followed in the case of **Gurdial Chand (supra)**. Once, under the similar circumstances, same benefit has already been extended to the similarly situated employee by the respondents, non-grant of the said benefit to the petitioners is totally arbitrary and illegal.

24. Further, denying the petitioners benefit of post of HCS (Executive Branch) at this stage, will also not be permissible for the reason that once, it is matter of fact that the petitioners had actually worked on the post of HCS (Executive Branch), asking the Court to pass an order that petitioners be granted pensionary benefits of the reverted lower post on which post petitioners actually did not work after their appointment in the HCS (executive Branch) and from which they retired, would be against equity.

25. It is a settled principle of law that an employee will get benefit/salary of the post on which he/she actually worked. Once, under the interim order of this Court, petitioners have already worked on the post of HCS (Executive Branch) till their retirement, question of law raised in the present petitions has been rendered academic and the petitioners are entitled for the grant of pensionary benefits of the post of HCS (Executive Branch) on which they have rendered their services and have retired with all consequential benefits.

26. Learned counsel for the respondents have placed reliance upon the judgment of the Hon'ble Supreme Court of India in **Civil Appeal No.5865-2007 titled as Union of India and another vs. Narender Singh decided on 13.12.2007** to contend that even if, the petitioners are allowed to continue on promoted post, their pensionary benefits need to be fixed as per their substantive post.

27. The said reliance, which is being placed by learned counsel for the respondents is misplaced. In the case of Narender Singh (supra) promotion of an employee concerned was held to be bad even at the initial stage. In the said case, promotion was granted by relaxing the rules governing the service, which action of the respondent-department was under challenge at the hands of other eligible candidates, who were claiming promotion and under those circumstances, the order in Narender Singh (supra) was passed by the Hon'ble Supreme Court of India.

28. In the present case, promotion to the HCS (Executive Branch) qua the petitioners was not held to be bad in any manner. The only objection raised is that the petitioners have failed to clear the departmental examination so as to continue on the said promoted post. Further, under the interim order of this Court, petitioners continued working on the post of HCS (Executive Branch) and retired as such about one and a half decade ago. Hence, the facts and circumstances of the present case are entirely different from the case of Narender Singh (supra) so as to claim the benefit of the said judgment.

29. Keeping in view the fact that petitioners continued working on the post of HCS (Executive Branch) after their promotion uninterruptedly till they attained the age of superannuation and retired, treating them to be working on the reverted lower post for the purpose of grant of pensionary benefits is totally arbitrary and illegal. Once, interim order was passed by this Court staying the order of termination of services of the petitioners, as a consequence of which they continued working on promoted post, petitioners now cannot be treated as working on lower post for the purpose of grant of pensionary benefits in any manner.

30. Even otherwise, it has come on record that the petitioners could not pass some of the papers of the departmental examination in consequence of which orders terminating their services were passed. It is also a conceded fact that the employees who were above age of 50 years at the time of appointment to the post of HCS (executive Branch) were granted the benefit of relaxation from passing the said department examination. It is also a conceded fact that by the time the petitioners attained the age of 50 years they had not been able to avail all the chances to be afforded by the department for passing the said departmental examination and ignoring the said fact the impugned orders reverting the petitioners to their earlier posts were passed. The only reason given for not giving petitioner's concession of relaxation as envisaged under the 1930 Rules is that the appointment of the petitioners to the HCS (executive Branch) was prior to the date when they attained the age of 50 years and relaxation was only given to those candidates who were appointed on the same post after attaining the age of 50 years keeping in view the Government orders Annexure P/7. The difference being pointed out by the respondents, in the facts and circumstances of the present case, especially when the petitioners actually worked on the post of HCS (executive Branch) till attaining the age of superannuation, cannot be accepted. Once the respondents themselves framed a policy that an employee, who has crossed the age of 50 years is not to be subjected to the departmental examination, the same should be applicable even qua the employees, who could not avail all the available chances to clear the departmental examination before attaining the age of 50 years. Therefore, in the present case, as the petitioners were yet to avail their all the available chances to clear the departmental examination before attaining the age of 50

years coupled with the fact that petitioners continued to work on the post of HCS (executive Branch) till the age of superannuation, the respondents should have sympathetically considered the claim of the petitioners for the grant of relaxation from passing the departmental examination, hence even on this score declining of the relaxation from passing the departmental examination to the petitioners by the respondents is not valid and in the facts and circumstances of the present case, there needs to be a deemed relaxation from passing remaining papers which the petitioners could not have passed so as to continue on the post of HCS (executive Branch) so as to get the benefit of the post of HCS (executive Branch).

31. Present petitions are disposed of with the directions that keeping in view the fact that petitioners worked on the post of HCS (Executive Branch) during the pendency of the present petitions under the interim order passed by this Court and retired from the said promoted post one and a half decade ago, the question of law raised in the present petitions has been rendered academic for the purpose of the present petitions, however the said question is kept open to be decided in appropriate proceedings. As for the present petitions, the petitioners are held entitled for the grant of benefit of increment to the post of HCS (Executive Branch) and the pensionary benefits of the said post and the same shall be extended to them treating them as having worked and retired from the post of HCS (Executive Branch) and arrears, if any for which the petitioners are entitled, be extended to them within a period of two months from the date of receipt of copy of this order on the same analogy as applied by the respondent-State to the case of **Gurdial Chand (supra)**.

32. No other argument claiming any interest has been raised.

- 33. Civil miscellaneous application pending if any, is also disposed of.
- 34. Photocopy of this order be placed on the file of connected case.

December 08, 2023
aarti

(HARSIMRAN SINGH SETHI)

JUDGE

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