

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

233 (05 cases) (1) CWP-19244-2019
Date of Decision :-05.09.2023

Arvind and others ...Petitioners

Versus

State of Haryana and another ...Respondents

(2) CWP-21854-2019

Naveen Kumar ...Petitioner

Versus

State of Haryana and another ...Respondents

(3) CWP-22995-2021

Ashok ...Petitioner

Versus

State of Haryana and another ...Respondents

(4) CWP-8926-2021

Sandeep Dangi and another ...Petitioners

Versus

State of Haryana and another ...Respondents

(5) CWP-30005-2019

Amit Kumar ...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Bikramjit S. Patwalia, Advocate and
Mr. Lalit Narang, Advocate for the petitioners
in CWP-19244-2019.

Mr. Sandeep Thakan, Advocate for the petitioners
in CWP-21854-2019 and CWP-22995-2021.

Mr. Rishi Lal, Advocate for Mr. Saurabh Dalal, Advocate
for the petitioners in CWP-8926-2021.

Mr. Aftab Singh Khara, Advocate for the petitioner
in CWP-30005-2019.

Mr. Harish Nain, AAG, Haryana.

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Harsimran Singh Sethi, J. (Oral)

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

2. For the purpose of this order, facts are being taken from CWP-19244-2019 titled as **Arvind and others vs. State of Haryana and another.**

3. In order to recognize the achievement of the outstanding sports persons, the respondent-State framed Haryana Outstanding Sports Persons (Recruitment and Conditions of Service) Rules, 2018 (hereinafter referred as '2018 Rules'. As per the said rules, the outstanding sportspersons were to be given appointment keeping in view their achievement in the field of sports.

The said Rules envisaged granting appointment to group-A,B and C posts keeping in view the achievement of a particular sportsperson in different

sports tournament specified therein. The said rules were notified by the Government of Haryana on 05.09.2018. As per Schedule attached with 2018 Rules the entitlement of the sports persons to different category for appointment to different categories of post were specified. After promulgation of the rules, the petitioner(s), who claimed themselves to be outstanding sports persons applied for the grant of benefit under 2018 rules keeping in view their achievement in the sports events/tournament as specified by the said schedule to 2018 Rules. The petitioner(s) claimed that as per the said 2018 Rules they are fully eligible for the grant of appointment against the group-C posts and the same is liable to be extended to them.

4. The claim of the petitioner(s) was considered by the respondents and the same was rejected by the respondents vide impugned orders dated 05.12.2018 (Annexure P/4) and 31.12.2018 (Annexure P/5) on the ground that petitioner(s) are not found eligible for the grant of appointment to group-C post under the 2018 Rules. Similar orders have been passed qua the petitioner(s) in the other petitions also, which orders are under challenged in all the petitions which are being decided by this common order.

5. Learned counsel for the petitioner(s) argues that though, in the impugned orders, no reason has been given as to why the petitioner(s) are not eligible for the grant of appointment under the 2018 Rules but in reply filed by the respondents, it has been mentioned that 2018 Rules were amended vide notification dated 10.09.2019, wherein certain amendments were made to 2018 Rules and keeping in view the 2018 Rules along with the subsequent amendments, the petitioner(s) have not been found eligible as the petitioner(s) were not among participants in the first 08 position competing

for gold medal and the total participants in the games, benefit of competing in which is being sought were less than 16. It has also been said that 2018 Rules were repealed by Notification dated 26.02.2021 and new Rules i.e. Haryana Outstanding Sportspersons (Group A, B and C) Service Rules, 2021 have been framed in view of which 2021 Rules, the petitioner(s) cannot be granted benefit of appointment.

6. First argument which has been raised by learned counsel for the petitioner is that they had submitted their application for the grant of benefit of appointment to the group-C post under the unamended 2018 Rules and their claim has been rejected by passing an order in December, 2018, which is much prior to the amendment which was undertaken by the respondent in September 2019, hence, the claim of the petitioner(s) could have only been considered under the unamended 2018 Rules as to whether the petitioner(s) are entitled for the grant of benefit or not and the amendment done in September, 2019 cannot be made applicable upon the petitioner(s) as even prior to the said amendment, claim of the petitioner(s) was rejected in December 2018 hence, the action of the respondents, denying the claim of the petitioner(s) by taking a stand in the written statement that keeping in view the amendment done in the year 2019, is liable to set aside.

7. Second argument raised by the learned counsel for the petitioner(s) is that once the petitioner(s) made an application seeking benefit under the 2018 Rules even if, the said rules have been subsequently clarified on 16.11.2018, the claim of the petitioner(s) is liable to be considered under the unamended 2018 Rules de hors the said clarification, which were applicable on the date when the application for the grant of benefit has been made by the petitioner(s) and the said unamended Rules to

be considered as relevant rules de hors the subsequent clarification as the subsequent clarification will not take away the right of the petitioner(s) in any manner and also as the same being inconsistent with the main 2018 Rules.

8. Learned counsel for the petitioner(s) further submits that respondents themselves have considered the claim of the similarly situated employees under the unamended Rules, 2018 and granted them the benefit even in the year 2023 hence, the respondents once themselves are allowing the benefit of unamended Rules, 2018 to the similarly situated candidates even in the year 2023, the stand taken by the respondents that the claim of the petitioner(s) is to be considered under the amended Rules of the year 2019 or freshly framed rules in the year 2021 will amount to discrimination and the said action of the respondents is liable to be set aside.

9. Learned counsel for the respondents on the other hand submits that even otherwise prior to the amendment to the rules in the year 2019, a clarification was given by the department clarifying the 2018 Rules. The said clarification is dated 16.11.2018 according to which, the claim of the petitioner(s) is not covered under the 2018 Rules also hence, even if amended Rules of 2019 are not to be made applicable, the unamended Rules of 2018 along with clarification dated 16.11.2018 will be applicable upon the petitioner(s) hence, the claim of the petitioner(s) has rightly been rejected by the respondents.

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

11. First issue which needs to be decided is as to which rules will be applicable for considering the claim of the petitioner(s). Whether the

unamended Rules, 2018 will be applicable or amended Rules of 2019.

12. It is a settled principle of law that whatever rules are applicable at the time of filing an application are to be made applicable and not the subsequent amendment to the rules. Delay in finalizing the claim of the petitioner(s) will not prejudice the petitioner(s) in any manner and the subsequent amendment to the rules will not take away the right of the petitioner(s) to be considered under the unamended rules especially, when right has already been created under the unamended 2018 Rules to the grant the benefit as per the achievement of the petitioner(s). Hence, 2018 Rules as amended in September 2019 cannot be made applicable so as to deny the claim of the petitioner(s). The said finding can be supported by the judgment of Full Bench of this Court in CWP-4303-2009 titled as ***Krishna vs. State of Haryana and others*** decided on 20.04.2012, wherein, question of law as to whether a policy for the grant of ex-gratia compensation, which was operational on the date of death of the employee is to be taken into account or the subsequent policy which came into operation after the death of the employee can also be taken into consideration for considering the claim of the claimant therein. Full Bench of this Court held that only policy which is operational on the date of death of an employee is to be treated as valid policy for considering the claim of the claimant therein. Applying the ratio of the said judgment in the present case also, the policy/rules which were applicable on the date when the application was made by the petitioner(s) are to be made applicable and not the subsequent amendment to the said rules. Moreso, in the present case, claim of the petitioners was considered and even rejected prior to the amendment of the 2018 Rules hence, in any case, claim of the petitioners has been considered and rejected prior to the

amendment dated 10.09.2019, thereby, unamended rules will be applicable in the case of the petitioners.

13. Now dealing with the other argument of the learned counsel for the respondents according to which 2018 Rules were clarified vide letter dated 16.11.2018, which clarification was incorporated into the rules by way of amendment in September, 2019 and as the said clarification was very much available for the consideration of the department at the time when the claim of the petitioners was considered, the department has rightly taken into account the same while considering the claim of the petitioner(s) for the grant of appointment, hence it was stated, that even if the amendment to the rules made in September, 2019 is not to be made applicable, the department was well within its right to take into consideration the clarification given by the department on 16.11.2018.

14. Before addressing the said ground it is to be seen as to whether the claim of the petitioner(s) is admissible under the unamended 2018 Rules for the grant of benefit of appointment or not. As per the averments made and keeping in view Schedule-I and II of the unamended Rules, 2018, certain sports events/tournaments have been mentioned in the said schedules and the benefits which are to be extended to the claimants as per their achievement in the said events have also been mentioned. A candidate claiming benefit has to fulfill the terms and conditions mentioned in Scheduled -I and II.

15. In the present petitions, the claim of the petitioner(s) is premised on them having participated in the requisite sports event/tournament and having cleared the quarter finals, making them entitled in accordance with the unamended 2018 rules for extension of benefit of

appointment to group-C posts and the same is being objected to by the respondents. The said claim of the petitioner(s) is being contested by the respondents on the ground that the petitioner(s) have not played the tournament upto the quarter finals or above so as to claim benefit of appointment.

16. It may be noticed that in the 2018 Rules, the term “quarter final or above” has not been defined. The said term was elaborated by the respondents vide clarification dated 16.11.2018, the same is reproduced as under:-

“To be considered under the column “Quarter Final(s) or above” in Schedule-I and Schedule-II, the final rank or position of the individual or team must be in the top eight and as one of the top eight contestants remaining in the tournament, the individual or team was in contention for the Gold Medal.

Provided further that if the total number of individuals or teams taking part in the tournament is less than sixteen, the outstanding sportsperson will not be considered under the column “Quarter Final (s) or above’ in Schedule-I and Schedule-II.

Meanwhile necessary steps to amend the rules are being taken.”

17. It may be noticed that there are different games being played on different patterns so as to find out the winner of a particular tournament/sport being played. For example, in the football, hockey, table tennis etc. game is played in a manner where elimination process starts from the quarter finals stage and prior to that all the athlete/teams compete with each other more than once. In certain games such as shot put, discus throw etc. there are hits/rounds where participation and elimination leads to final participant, who competes for the gold medal. There is a further pattern for example in athletic only eight candidate compete for gold medal whereas depending upon terms and conditions of a particular tournament, there can

be a possibility that after elimination more than 08 sportsperson are allowed

to compete for gold medal. Hence, the said aspect depends upon each tournament/sport.

18. A bare perusal of the said clarification would show that final rank/position of the individual or team must be in the top eight contestants remaining in tournament who were in contention for gold medal. It was further mentioned that in order to be considered eligible, there should be at least 16 teams/individual taking part in the said tournament. A bare perusal of the above clarification would also show that in order to be in quarter final or above, team/individual should be in top eight and should be in contention for gold medal. When the said clarification is applied to athletic, there is no ambiguity, but when the said clarification is applied to the tournament where even after elimination, more than 08 contestants are cleared to compete for the gold medal and in fact competed for gold medal, candidates will be caused prejudice by limiting that the benefit to only top eight contestants, who competed for the gold medal. This is for the reason that even though a contestant at position No.9 is also allowed to compete for gold medal after clearing elimination round and is in contention for gold medal, he/she is still ousted from the zone of consideration only because the clarification restricts the zone of consideration to only 8 top contestants competing for gold medal.

19. It may be noticed that the primary intention behind the clarification is that after elimination, the sportsperson should be under contention for gold medal. Therefore even if, the said sportsperson is at No.2 position after elimination or is at No.10, both stand on same footing as either of them can get gold medal keeping in view their subsequent performance. There is no difference between a sportsperson in first top eight or being at No.9 as both

were in a position to compete for the gold medal after qualifying the elimination round. Hence, the clarification takes away the vested right as envisaged under the 2018 Rules which accrued on participation upto quarter final(s) or above and, hence it stands in conflict with 2018 Rules and cannot be given effect too. Hence, as the intention in accordance with the clarification is that after elimination the sportsperson remained in the tournament and should have competed for the gold medal, whether the said sportsperson was at rank No.2,3,8, or 10 should not have made any difference as all the competitors after elimination are on the same footing and anyone of them keeping in view their subsequent performance can win gold medal or other medal in the tournament. Therefore, ousting the petitioner(s) only on the ground that they are not amongst the first eight contestant after elimination despite the fact that they were in contention for gold medal, is rightly causing prejudice to them, keeping in view the unamended 2018 Rules which are applicable upon them. Hence the respondents are under an obligation to reconsider the claim of the petitioner(s) as per the unamended 2018 Rules by giving liberal interpretation to the word “quarter finals and above”, keeping in view the facts and circumstances of each game while conforming to the intention of the clarification, as per which, in case there are required number of participants (team/individual) and they after clearing the elimination round were is in contention for the gold medal, the said sportsperson is to be treated as having cleared the quarter finals so as to claim benefit under the 2018 Rules.

20. Further in case, any benefit is available to the petitioner(s) as per the interpretation of clarification dated 16.11.2018 as done hereinbefore, the

petitioner(s) are entitled to claim the said benefit, as, clarification which takes away the benefit as extended by the 2018 rules, cannot be made applicable upon them so as to take away vested right bestowed upon the petitioner(s) by the unamended 2018 Rules. In case of conflict between rules and clarification, the rules will prevail over the clarification for considering the claim of petitioner(s).

21. Further argument which has been raised by the learned counsel for the respondents is that there is no challenge to the clarification dated 16.11.2018 hence, the relief being claimed by the petitioner(s) is liable to the rejected.

22. It is a settled principle of law that once there are rules as well as instructions on the same issue and the instructions are contrary to the rules, the rules will prevail. Hence, even if, there is no challenge to the instructions/clarification dated 16.11.2018, the same cannot be given effect over and above the unamended 2018 Rules. In the present case, petitioners have got the letters from their respective Sports Association that they had played the tournament in question upto the level of quarter final, same cannot be ignored on the touch stone of clarification dated 16.11.2018 so as to oust their claim under the unamended Rules of 2018. Hence, once the petitioner(s) are able to make out their claim on the basis of documents that they have cleared a particular tournament beyond the quarter finals so as to claim appointment to group-C post under the 2018 Rules, the respondents are under an obligation to consider their claim under the unamended Rules of 2018 by ignoring the clarification dated 16.11.2018

23. Further, qua the argument of the petitioners that respondents themselves have applied the unamended 2018 Rules ignoring the

clarification and subsequent amendment in case of similarly situated sportsperson same has gone unrebutted hence, keeping in view the facts and circumstances of the present case wherein, the respondents themselves have considered the claim of the similarly situated sportsperson under the unamended 2018 Rules even after the same had been amended in the year 2019 and thereafter, repealed in the year 2021, there is no reason, as to why, the same consideration should not be given to the petitioner(s) also, which act of the respondents will lead to discrimination, which will be violative of Article 14 of the Constitution of India. The respondents have not been able to deny the fact that by the order passed by the Commissioner for the Persons with Disabilities Haryana, the claim of similarly situated sportsperson has been considered under the unamended 2018 Rules and has been allowed the benefit hence, the same benefit needs to be extended to the petitioner(s) as well while considering their claim for appointment under the unamended 2018 Rules.

24. Further, a fact needs to be noticed in the present case that impugned orders have been passed in December, 2018, i.e. much prior to the amendment, which was effected in September, 2019. The orders passed in December 2018, cannot be defended on the basis of the amendment which came into being subsequent to the passing of the impugned orders hence, even on this score, the impugned orders cannot be sustained.

25. Keeping in view the totality of the facts and circumstances of the present case, the respondents are directed to reconsider the claim of the petitioner(s) on the basis of the facts of each case and pass an appropriate order keeping in view the facts and circumstances of a particular sportsperson claiming benefit under the unamended 2018 Rules on the

basis of the fact that in a particular tournament he/she played up to the quarter finals so as to claim benefit under the unamended 2018 Rules. For the purpose of ascertaining whether candidate had played a particular tournament beyond the quarter finals or not, respondents will only ascertain whether after the elimination round, a participant has participated in the tournament and was in the hunt for the gold medal or not. The said restriction that only top eight candidates, who were in contention for gold medal will be eligible, be not given effect to qua claim of sports persons dating before the coming of amendment to 2018 rules and actual facts be seen as to whether the candidate irrespective of his/her position after elimination was in the contention for gold medal or not so as to become eligible for the grant of benefit under the unamended 2018 Rules. The condition of minimum participants/teams in the tournament will remain applicable.

26. Let the said consideration be finalized within a period of two months from the date of receipt of copy of this order and in case any petitioner(s) is found eligible for the benefit under the unamended 2018 rules, the said relief be extended to him/her, otherwise detailed speaking order be passed giving reasons as to why the said candidate is not found eligible for the grant of benefit under the unamended 2018 Rules.

27. All the writ petitions stand disposed of in above terms.

28. Civil miscellaneous application pending, if any, is also disposed of.

September 05, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

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