IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

LPA-1308-2019(O&M)
Reserved on: 07.02.2023
Date of Decision:21.02.2023

State of Haryana and another

. . . . Appellants

Vs.

Kanwar Singh and others

. . . . Respondents

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CORAM: HON'BLE MR JUSTICE M.S. RAMACHANDRA RAO
HON'BLE MRS JUSTICE SUKHVINDER KAUR

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Present: - Mr.Hitesh Pandit, Addl. A.G., Haryana.

Mr.R.K. Malik, Sr. Advocate, with
Mr.Sunil Hooda, Advocate, for the respondents.

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M.S. RAMACHANDRA RAO, J.

This Letters Patent Appeal is preferred challenging the order dt.13.03.2019 passed by the learned Single Judge in CWP-507-2018.

The said Writ Petition had been filed by the respondents challenging an order dt.29.12.2017 passed by the appellants refusing to release annual increments to them. The respondents also sought a direction that they be granted benefit of annual increments from the date of passing of Haryana State Certificate in Information Technology [HS-CIT] from authorized learning centres of Haryana Knowledge Corporation Limited [HKCL] and also consequential benefits.

The respondents were appointed and joined as peons on 08.11.1991, 08.04.1991, 16.04.1992, 12.04.1999 and 16.04.1999 in the office of the Excise and Taxation Commissioner, State of Haryana. They were promoted as clerks on 20.08.2014, 20.08.2014, 20.08.2014, 17.07.2015 and 16.06.2015.

The services of the respondents were governed by the Haryana Excise and Taxation Commissioner's Office (Group-C) Service Rules, 1980 [for short 'the Rules'].

These Rules were amended vide notification dt.08.11.2013 and Rule 9A was introduced in the said 1980 Rules substituting typing test with the State Eligibility Test in Computer Appreciation and Applications (SETC) as part of service requirement for Clerks.

The said test was to be a qualification, which all the newly recruited/appointed Clerks in the Government Departments/Organizations, would have to qualify after such appointment. Under Clause (2) of Rule 9A of the Rules, a candidate would have to qualify the SETC test within the probation period of two years, extendable by one year in case of direct recruit.

Sub Clause (6) of Rule 9A of the Rules however exempted the employees from taking the SETC test if they possess the following qualifications i.e. M.Tech. B/Tech. (computers), M.C.A., B.C.A. or Diploma in Computers from the recognized institutions i.e. Polytechnics; basic computer literacy certificate from any recognized centre established under the National Institute of Electronics and Information Technology (NIELIT) [erstwhile DOEACC Society]; Haryana State-Certificate in Information Technology [HS-CIT] from the Authorized learning Centres (ALCs) of the HKCL; and also for other categories with which we are not concerned.

Though this Rule was inserted in 2013 prior to the promotion of the respondents as Clerks in the year 2014 and though they had a choice to pass the SETC test within a period of two years from their probation, the respondents did not take the said test, but instead obtained the HS-CIT certificate from authorized learning centres of HKCL in April 2017.

Respondents No.1 to 3 thereafter, made representation for grant of benefit of annual increments from the date of passing of the said HS-CIT examination.

When no decision was taken on the representation of respondents No.1 to 3, they filed CWP-16086-2017, which was disposed of on 01.08.2017 with a direction to the Excise and Taxation Commissioner, Haryana to decide their representation dt.23.05.2017.

However, the said representation of respondents No.1 to 3 was rejected on 29.12.2017 vide Annexure P5.

In the said order, the Excise & Taxation Commissioner, Haryana held that exemption had been provided to only those employees who possess the qualifications mentioned in Rule 9A(6) of the Rules including HS-CIT as on the date of promotion; that respondents No.1 to 3 requested in their representation to grant increments on the ground that they have passed the HS-CIT examination authorized by HKCL on 29.04.2017 *after* their promotion was made in 2014/2015; that the respondents had been promoted w.e.f. 19.08.2014 and they did not possess the HS-CIT qualification provided for exemption *on that date*; that they have obtained the said qualification only on 29.04.2017; their contention is that even after the Rules are amended they have a choice or option to pass either SETC or obtain equivalent qualification in the nature of passing of HS-CIT from HKCL; this stand of the respondents runs contrary to the amended Rules whereby SETC had been made mandatory subject to the exemption as provided in Rule 9A(6) of the Rules; and that a clarification had also been issued on 22.09.2016 by the Chief Secretary, Haryana that persons *already having* computer qualifications from reputed institutions shall continue to be exempted from SETC; that such a test had been conducted on 16 occasions between 29.10.2014 to 28.07.2017 i.e. after the promotion of the respondents; and so the respondents are not entitled for annual increments unless they qualify SETC.

The Writ Petition

Challenging the same, the respondents had filed CWP-507-2018.

The learned Single Judge allowed the said Writ Petition holding that in the written statement filed by the appellants, they had not denied that similar benefit of exemption had been extended to employees of other departments like Animal Husbandry and Dairy Department, Haryana and Marketing Board; as per Sub Rule (6) of Rule 9A of the Rules, if the candidates possess HS-CIT from the authorized learning centres of the HCKL, they are exempted from taking the HS-CIT qualification; that a notification had been issued on 17.11.2018 making it mandatory to pass SETC examination for all Clerks who had been promoted or appointed by direct recruitment; and in that notification, the Government had held that it should be mandatory for all Clerks to qualify SETC test within six months from 17.11.2018 i.e. by 31.05.2019; that these instructions also provided exemption from passing SETC test, if they acquire necessary computer knowledge certification as per the Government notifications dt.07.11.2013 and 22.09.2017, but no such benefit was given to the respondents even after they obtained the certificate as per the Sub Rule (iii) of Rules 6 of the notification dt.08.11.2013 amending the Rules; and so the appellants should give benefit of annual increment to all respondents from the date when they acquired the HS-CIT certificate, within three months.

The LPA

Assailing the same, this Appeal is filed by the State.

Counsel for the State contended that the view taken by the learned Single Judge is erroneous; when the notification dt.08.11.2013 amended the 1980 Service Rules, and made it mandatory to persons promoted or appointed by direct recruitment as Clerks to possess SETC qualification, and even gave two years time within the period of probation to obtain the said qualification, the respondents, who had been promoted after 08.11.2013 i.e. after the coming into force of the amended Rules, should have obtained the SETC qualification and instead deliberately chose to avoid getting it and only got HS-CIT certificate from authorized learning centres of the HKCL.

He contended that the exemption contained in Sub Rule (6) of Rule 9A of the Rules was only to those employees who possessed the HS-CIT qualification as *on the date of the promotion*/appointment; and such exemption cannot be claimed by promotees after obtaining the HS-CIT qualification *subsequent* to their promotion.

Counsel for the respondents refuted the contentions of the appellants and supported the order passed by the learned Single Judge.

Consideration by the Court

We have noted the contentions of both the parties.

The admitted fact is that the respondents had been promoted after 2014 as Clerks from the post of Peons which they were holding in the office of Excise and Taxation Commissioner.

Prior to their promotion, notification dt.08.11.2013 amended the 1980 Service Rules and inserted Rule 9A, which made it mandatory for persons appointed as Clerks or promoted as Clerks from the post of Peons to possess the SETC qualification. Sub Rule (2) of Rule 9A of the Rules in fact gave two years time *after* the promotion to a Clerk to obtain the said qualification.

We fail to understand why the respondents did not choose to qualify the SETC test in the said period of two years in spite of such Rule having come into force *before* their promotion and chose to obtain only the HS-CIT certificate in 2017.

Sub Rule (6) of Rule 9A of the Rules states:

"Rule 9A:

(1) To (5) ...

(6) The employees possessing the following qualifications are exempted from taking State Eligibility Test in Computer Appreciation and Applications (SETC):-

..."

The word "possessing" implies that if such HS-CIT or other exempted qualification is possessed by an employee on the date of his direct recruitment or on the date of his promotion, then only he can seek exemption from taking the SETC qualification.

If the contention of the respondents is to be accepted, then Sub Rule 9A of the Rules has to be read as *"employees going to possess the following qualifications in future are exempted from taking the SETC"*, but Sub Rule 6 of Rule 9A of the Rules says that *"employees possessing the following qualifications are exempted from taking the SETC*".

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Having regard to the clear language used in Sub Rule 6 of Rule 9A of the Rules, the interpretation sought to be made thereon by the respondents cannot be accepted.

Consequently, since the respondents did not possess the HS-CIT qualification as on the date of their promotion, and they obtained it long after their promotion, they cannot invoke Sub Rule (6) of Rule 9A of the Rules and claim exemption from taking the SETC.

In our considered opinion, even the notification dt.17.11.2018 issued by the State Government in the impugned order has to be understood only in the above manner and not otherwise.

We do not agree with the view of the learned Single Judge that if similar benefit of exemption was extended to employees of other departments like Animal Husbandry and Dairy Department, Haryana and Marketing Board, the respondents also should be granted the said exemption. This is because it is not known whether those candidates possessed the qualifications mentioned in Sub Rule (6) of Rule 9A before their promotion or not. If, in spite of such persons not possessing the qualification mentioned in Sub Rule (6) of Rule 9A of the Rules, they were granted the benefit of additional increments, such illegality cannot be sought to be perpetrated even with regard to the respondents and no such parity with such employees can be claimed as a matter of right.

In this view of the matter, the Appeal is allowed; order dt.13.03.2019 passed in CWP-507-2018 is set aside and the said Writ Petition is dismissed; and the respondents are held not entitled to grant of additional increments on the basis of HS-CIT certificate secured by them; and it is directed that such increment can only be granted to them in the event they pass the SETC test w,e,f the date of such passing of the test.

Pending application(s), if any, shall stand disposed of.

(M.S. RAMACHANDRA RAO)
JUDGE

(SUKHVINDER KAUR)
JUDGE

21.02.2023
Vivek

1. *Whether speaking/reasoned?* ***Yes/****No*
2. *Whether reportable?* *Yes/No*