

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

Date of decision : 26.05.2023

1. CWP-20206-2019 (O&M)

Madan Lal and others Petitioners

versus

State of Punjab and others Respondents

2. CWP-11181-2019 (O&M)

Ravinder Pal Singh and others Petitioners

versus

State of Punjab and others Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

**Present: Mr. D.S. Patwalia, Senior Advocate with
Mr. Gaurav Rana, Advocate
for the petitioners.**

Mr. Inderpreet Singh Kang, AAG, Punjab.

**Ms. Monica Chhiber Sharma, Advocate
for the respondents-PUDA.**

**Mr. Tribhawan Singla, Advocate
for respondents No.4 and 8.**

PANKAJ JAIN, J. (Oral)

By way of present judgment, I intend to dispose off above said two writ petitions. Both involve common question of law in identical set of facts. For the sake of convenience, facts are being taken from CWP-20206-2019.

2023:PHHC:083224

2. Present writ petitions have been preferred impugning agenda item No.44.07 (Annexure P-8) and the decision made thereon (Annexure P-9) dated 17.06.2011 to the extent that the promotion of the petitioners was made on provisional basis for the reason that they have not qualified SAS/Departmental Examination.

3. Petitioners herein who were working as Senior Assistant (Accounts) with the respondent-authority were ordered to be promoted vide order dated 24.06.2019 (Annexure P-10) with the following stipulation:-

“That in case an Assistant (Accounts) qualifies the SAS Examination / Departmental Examination as per the provision of Sr. No. 8 of the Schedule-3 Group-3 (General) of the PUDA Employees (Service) Regulation 1999 or for the promotion to the post of Section Officer (Works) qualifies the prescribed educational qualification Intermediate examination of the institute of costs and of Chartered Accountants of India and completes the experience of 5 years of service prescribed for the promotion to the post of Section officer then the junior most employee out of the promoted Non SAS Section Officers on provisional basis shall be reverted.”

4. Learned Senior counsel representing the petitioners submits that in terms of schedule prescribing the essential qualification and experience for appointment by way of promotion to the post of Section Officer read with Regulation 17 of the 1999 Service Regulations, it is amply clear that the test is not condition precedent for promotion, but will be a condition precedent for earning future grade increments. He further submits that even if the regulation is read to

2023:PHHC:083224

mean that the qualification of examination is condition precedent for promotion, the departmental examination admittedly having not been held after the petitioners were promoted, they cannot be non-suited for having not passed the same.

5. Per contra, Ms. Chhibber appearing for the respondent-authority submits that the provision w.r.t. the promotion and the qualification prescribed in the schedule is unambiguous. It has been specifically prescribed that appointment to the post of Section Officer is by way of promotion from amongst Senior Assistant (Accounts) of the authority with at least 05 years (subsequently reduced to 04 years) experience as such and who have qualified:-

“(a) SAS/Departmental Examination as specified in Regulation 17;

Or

(b) Have passed intermediate examination of the Institute of Costs and Works Accountants of India;

Or

(c) Have passed intermediate examination of the Institute of the Chartered Accountants of India.”

6. She submits that the word ‘departmental examination’ as specified in regulation 17 would connote the departmental examination as may be prescribed by the authority from time to time. It does not mean that regulation 17(2) has to be read into the schedule to render the requisite qualification of having passed the departmental examination redundant. She further submits that all the petitioners after having been promoted as Senior Assistants (Accounts) were aware of passing departmental examination or SAS examination. SAS examination is

2023:PHHC:083224

being conducted regularly by the State of Punjab and they could have taken the said test before attaining the age of 48 years. The petitioners having opted not to qualify the same cannot cry foul now. More so, in the situation when they represented to the Board that they are not in a possession of requisite qualification and sought with condition to give up their right to seniority in case eligible persons are found. Reference has been made to P-6 i.e. the communication from Additional Chief Administrator PUDA to the Secretary, Punjab Government, Department of Housing and Urban Development, Chandigarh, wherein it has been observed as under:-

“XX XX XX

Now the Senior Assistants (Accounts) of PUDA have requested this officer that as the Non SAS qualified employees have been promoted by the Finance Department, Punjab Government, similarly they may also be considered for promotion. As per the orders issued by Finance Department, Punjab Government which have been issued vide letter No. 1(5)/S.O./07/40/C dated: 15.5.2007 (copy attached), the Junior Auditors working in the departments of Punjab Government, which are Non SAS (eg. SAS examination unqualified) have been promoted on provisional basis in the lower scale of the post of Section Officer i.e. Rs. 10300-34800+ Rs. 4200 Grade Pay than the pay scale of Rs. 10300-34800+ Rs. 4400 Grade Pay on this condition that if SAS examination qualified employees will be available then these employees shall be reverted to their lower post and these promoted Non SAS employees will have no claim over the seniority of the Section Officers. Therefore, in view of these orders of the Finance Department, Punjab Government, the senior most

2023:PHHC:083224

employees out of the Senior Assistant (Accounts) at PUDA may be considered for promotion, by giving exemption in the requisite educational qualification, in the lower pay scale of the post of Section Officer on provisional basis.”

7. It was accordingly approved by the Government vide P-7 observing as under:-

“xx xx xx

After perusing the proposal received vide the reference above with regard to the promotion of Senior Assistants (Accounts) working in PUDA authority to the post of Non SAS Section Officer, on the pattern of the order issued by the Finance Department dated 15.07.2007, approval is hereby accorded to take decision on own level. These promotions shall be on the condition that whenever SAS qualified employees will be available, these employees will be reverted to their lower post and these promoted employees I have no claim over the seniority of the SAS examination qualified Section Officers.”

8. She further submits that the petitioners in service could have well taken intermediate examination conducted by Institute of Cost and Work Accountants of India or intermediate examination of Institute of Chartered Accountants of India. Thus, it is not a case wherein for non-conducting of the departmental examination by the authority, the petitioners were left with no choice.

9. Mr. Singla who filed an application for impleadment submits that the applicants who sought themselves to be impleaded are all ICWA qualified people and have passed those examinations during the course of their service.

2023:PHHC:083224

10. I have heard counsel for the parties and have gone through the records of the case.

11. So far as the plea raised by Mr. Patwalia w.r.t. the application of regulation 17 on the schedule is concerned, the same in the considered opinion of this Court sans merit and cannot be accepted.

12. Regulation 8 of the 1999 Regulations deals with qualification and experience and the same reads as under:-

“(1) All appointments to the posts in a service shall be made in the manner specified in Scheule III.

Provided that, if no suitable candidate is available for appointment by direct recruitment or by promotion, as the case may be, such a post shall be filled by transfer of person holding identical post or similar post in any department of the Government of Punjab, any other State Government or Government of India or a local authority, a statutory body or corporate body of Government or Semi-Government Undertaking or Organisation.

(2) No person shall be appointed to a post in a Service unless he possesses the educational Qualifications and experience as specified against that post in Schedule III.

(3) All appointments by promotion to Group C posts in a Service shall be made from amongst eligible persons on seniority-cum-merit basis and no person shall be entitled to claim promotion on the basis of seniority alone.

(4) All appointment by promotion to Group A and Group B posts in a Service shall be made by selection on merit-cum-seniority basis and no person shall be entitled to claim promotion on the

2023:PHHC:083224

basis of seniority alone.

- (5) Whenever any vacancy occurs in a Service the same be filled up as per provisions of these Regulations.”

13. Relevant part of the schedule III which deals with the appointment to the post of Section Officer reads as under:-

“From amongst the Senior Assistant (Accounts) of the Authority with at least five years experience as such and who:

- (i) have qualified the SAS/Departmental Examination as specified in Regulation 17;

Or

- (ii) have passed intermediate examination of the Institute of Costs and Works Accountants of India;

Or

- (iii) have passed intermediate examination of the Institute of the Chartered Accountants of India.”

14. Regulation 17 as referred to in schedule III reads as under:-

“17. Departmental Examination (1) Employees appointed to a Service, unless they have already done so, may pass within a period of two and half years from the date of their appointment such departmental examination as may be prescribed by the Authority from time to time. Provided that Authority may for any sufficient cause, extend the period within which any member is required to pass the departmental examination.

(2) If an employee fails to pass the departmental examination within the specified period or within the extended period, if any, he shall not earn his future grade increments till such time he passes the departmental examination when the increments shall be released retrospectively.”

2023:PHHC:083224

15. Co-joint reading of the aforesaid provisions makes it amply clear that the qualification and experience vis-a-vis all appointments to the post in service of the authority are governed by Regulation 8 which refers to schedule III. Schedule III refers to Regulation 17 to a limited extent i.e. “the departmental examination as specified in Regulation 17”. ‘As specified in regulation 17’ would mean the departmental examination as may be prescribed by the authority from time to time.

16. In view of above, regulation 17(2) cannot be read to render the mandate of regulation 8 otiose and to hold the person eligible for promotion despite being not in possession of the requisite qualification as prescribed in schedule 3. Thus, the argument raised by learned senior counsel based upon the provisions regulating and governing the right of promotion cannot be accepted and is hereby rejected.

17. In view of above, the present writ petitions are dismissed.

18. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

19. A photocopy of this order be placed on the file of other connected case.

**(PANKAJ JAIN)
JUDGE**

26.05.2023

Dinesh

Whether speaking/reasoned : Yes

Whether Reportable : Yes