

207

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-7777-2016 (O&M)

Date of Decision: 19.09.2023

AKASHDEEP SINGH

.....Petitioner

V/s.

STATE OF PUNJAB AND OTHERS

.....Respondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA.

Present Mr. Onkar Singh, Advocate,
for the petitioner.

Ms. Shivani Sharma, DAG, Punjab.

SANJEEV PRAKASH SHARMA, J (Oral)

1. The petitioner by way of this Writ Petition prays for issuance of a Writ in the nature of *certiorari* for quashing the show cause notice dated 06.11.2015 (Annexure P-8) issued to the petitioner stating as to why his services should not be terminated on account of non-clearance of departmental examination.

2. Learned counsel for the petitioner submits that the issue raised by the petitioner stands adjudicated by the Division Bench of this Court in the judgment passed on 28.07.2011 in CWP-7449-2001 titled as **Dr Ravinder Singh** Vs. **State of Punjab** and the coordinate Bench of this Court has also taken the same view in the case of **Jyotsna Singh** Vs. **State of Punjab and Others** passed in CWP-7277-2016 on 23.05.2017.

3. Learned counsel for the petitioner submits that while the petitioner is continuing in service in terms of the impugned show cause notice and the interim orders passed by this Court, no further chance has

been given to the petitioner to appear in the departmental examination, while the petitioner is always ready to participate and appear in the examination. He further submits that the examination is being conducted twice in a year and accordingly in 2 ½ years, the petitioner is supposed to be given at least six chances for clearing the examination, but the respondents have not given sufficient chances. Even otherwise, learned counsel for the petitioner submits that the intent of the Rules is not to terminate the service, but not to grant further increments to a person who has not cleared the examination.

4. Learned State counsel has stated that the petitioner was given five chances to appear in the examination, but has consistently failed and is therefore, not suitable to continue on the post.

5. I have considered the submissions of the learned counsel for the parties and perused the file and available record.

6. Rule 6(1) of the Punjab Animal Husbandry (Class-I) Service Rules, 1996 (for short “the Rules of 1996”) provides that a person is required to pass the Departmental examination within 2 ½ years.

7. It would be relevant to quote Rule 6 of the said Rules.

“Rule-6.

Departmental Examination:-

(1) Every member of the Service unless he has already done so, shall within a period of two years and six months from the date of appointment qualify such papers comprising such syllabus and of such standard as may be specified by the Government from time to time.

(2) If any person fails to qualify the Departmental Examination within the aforesaid stipulated period he shall not earn his future grade increments till he passes it. After passing the

Departmental Examination the increments shall be released retrospectively.

Provided that he shall not be entitled to get arrears of the released grade increments for the period during which he could not qualify the examination."

8. As per Rule 6(2) the Rules of 1996, it is apparent that upon not passing of the departmental examination, the power available to the respondents is only not to grant an employee the future increments, however, there is no power available to terminate the services and the action of issuing show cause notice for terminating the services is beyond the provisions of the Rules of 1996.

9. The interim order passed in connected CWP-7277-2016 by this Court is, therefore, deserves to be made absolute and at the same time, respondents were required to give opportunity to the petitioner to appear in departmental examination. The condition under Rule 6 (1), as above, does not limit participation in the departmental examination of a candidate after a period of 2½ years. The only aspect of the Rule is not to grant future grade increments till he passes the departmental examination. Thus, if an employee does not pass the examination, even after 2½ years, future increments shall not be granted. However if later on, he passes the examination, the increment shall be granted to him retrospectively. It does not put an embargo on the concerned employee to appear in the examination after 2 ½ years.

10. In view of the above, the petitioner would be free to participate in the examination and the respondents cannot disallow him to participate in the same.

11. This Court also notices that so far as the provisions of Rule 7 (B) of the Punjab and Civil Services (Punishment and Appeal) Rules, 1970 are concerned, they are independent of Rule 6 of the Rules of 1996. The decision to dispense with services of the probationer on account of having not passed the departmental examination, is not necessarily to be followed in all cases and the authorities have a discretion to deal with such a person in such a manner as the terms and conditions of his appointment may permit. Therefore, in these circumstances, there is no strict Rule available under the Rules of 1996 to terminate the services of an employee on account of having failed to clear the departmental examination.

12. Accordingly, this Writ Petition is allowed. The show cause notice dated 06.11.2015 issued by the respondents for terminating the services of the petitioner is quashed and set aside with further direction to allow the petitioner to appear in the departmental examination and for the said purpose, if the petitioner seeks appropriate leave in terms of the leave Rules, the same may be granted for preparation of the examination.

13. The petitioner would, however, be entitled to increments only after he clears the departmental examination.

14. All pending applications in this Writ Petition shall stand disposed of accordingly.

September 19, 2023

Ess Kay

[SANJEEV PRAKASH SHARMA]

JUDGE

Whether speaking / reasoned : *Yes/No.*

Whether Reportable : *Yes/No*