IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

LPA-145-2024 (O&M)

Date of decision : 28.02.2024

Excise & Taxation Inspectors Association

…….Appellant

Versus

State of Punjab and others

….Respondents

CORAM: HON'BLE MR. JUSTICE G.S. SANDHAWALIA, ACTING CHIEF JUSTICE
HON'BLE MS. JUSTICE LAPITA BANERJI

Present: Mr. Puneet Bali, Senior Advocate, with
Mr. Shivam Sharma, Advocate,
for the appellant.

Mr. Saurav Verma, Addl. Advocate General, Punjab,
for the respondents – caveators.

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G.S. SANDHAWALIA, ACTING CHIEF JUSTICE (Oral)

1. The consideration in the present letters patent appeal is to the order dated 21.12.2023 passed by the learned Single Judge in a writ petition (CWP-5598-2016) filed by the appellant – Association.

2. The Association in the writ petition had sought quashing of the order dated 02.12.2015 (Annexure P-11), whereby its representation for restoring the quota of promotion to the post of Excise and Taxation Officers, as was available prior to March, 2010, had been rejected. After hearing learned counsel for the parties, the learned Single Judge had framed the following points for consideration:-

> *i) Whether the directions issued by the State Government while creating the posts on 23.09.2002 and 04.12.2002 to fill up the 50 created posts from promotion quota only would amount to relaxing Rule 6 of the Rules of 1956 and whether such*

> *relaxation could be permissible under Rule 18 of the Rules of 1956 and whether decision to fill '53' posts by promotion by the Cabinet vide memo dated 04.03.2010 would amount to breaking down of quota rule?*
>
> *ii) Whether action of the respondents now in filling up the posts by way of direct recruitment by maintaining 50:50 quota of the total cadre strength can be said to be unjustified?*

3. The learned Single Judge came to the conclusion that 50 posts, which had been created, could not be filled up totally by way of promotion, which was the main plea as such. It was observed that the equal number of posts when created in future will have to be kept available for filling up from the direct recruitment and, therefore, the relaxation power exercised by the State in the years 2002 and 2010 would only be allowed for the posts to be filled temporarily from promotees and the quota rule for direct recruitment and promotees could not be relaxed. Power under Rule 18 of the Punjab Excise and Taxation Department (State Service Class – II) Rules, 1956 (for short, "1956 Rules"), thus, could not be exercised for the said purpose. Resultantly, point No.1 was decided against the Association, on the ground that the decision as such would amount to breaking down the quota rule, which was against the mandate of the 1956 Rules, which were in existence at that point of time. Reliance was placed upon the binding precedents in ***Keshar Chandra Joshi Vs. Union of India, 1992 Supplementary (1) SCC 272***; ***Syed Khalid Rizvi Vs. Union of India, 1993 Supplementary (3) SCC 575;*** ***State of Orissa Vs. Sukanti Mahapatra (1993) 2 SCC 486;*** ***Dr. M.A. Haque Vs. Union of India, (1993) 2 SCC 212;*** ***Ashok Kumar Uppal Vs. State of J & K (1998) 4 SCC 179;*** ***Suraj Kumar Gupta Vs. State of J & K (2000) 7 SCC 561;*** and ***M.S. Sandhu Vs. State of Punjab,*** Civil Appeal Nos. 5397-5406/2014, decided on 07.05.2014.

4. Similarly, point No.2 was also answered against the Association while holding that though the promotees continued to hold posts over and above their quota, the State Government has rightly bifurcated the same thereafter and issued an advertisement to fill up direct recruitment posts, which cannot be objected to.

5. Apparently, advertisement No. 04 dated 10.09.2015 (Annexure P-13) was issued by the Punjab Public Service Commission, whereby 23 posts of Excise & Taxation Officer were purported to be filled up by way of direct recruitment. It is not disputed that when the said advertisement was issued, the Punjab Excise and Taxation Department (Group 'A') Service Rules, 2014 (Annexure P-2) (in short, "2014 Rules"), which had come into force with effect from 03.03.2014, were in existence. These Rules provide the appointment to the Services to be made in the manner as specified in Appendix 'B', whereas under Rule 3 the Service shall comprise the posts specified in Appendix 'A'. Rule 5 (2) provides that no person should be appointed to any post in the Services, unless he possesses the educational qualification and experience, as specified against the post in Appendix 'B'. As per Appendix 'A', 275 permanent posts along with 59 temporary posts of Excise and Taxation Officer were available. Appendix 'B' would go on to show that 50% posts of Excise and Taxation Officer were to be filled up from amongst the Taxation Inspectors, Excise Inspectors and Excise and Taxation Inspectors, and Taxation Officers who were having minimum experience of working as such for a period of eight years, whereas the remaining 50% posts were to be filled up from amongst the candidates who had passed the Examination as provided in the Punjab State Civil Services (appointment by Combined Competitive Examination), Rules, 2009. The posts thus advertised were in

pursuance of 2014 Rules, which provided 50% bifurcation. The fall back at this stage on the earlier arrangement, which was, if any, made in the year 2002, would not as such allow the Association to agitate for its cause.

6. A specific objection had been taken by the State in paragraph two on merits of the written statement to the effect that 2014 Rules had come into force, apart from the fact that the Association cannot have any right to file the writ petition as no individual grievances are being addressed or agitated. In such circumstances, we are of the considered opinion that the writ petition also was not maintainable at the hands of the Association. The objection raised has also not been controverted in the replication. The *locus standi* as such of the Association is thus an aspect which has to be seriously pondered upon as to on what account it was furthering the cause of a set of persons who were handling the Association, and the persons aggrieved as such were not coming forward to show as to how their interests have been affected. Apparently, 2014 Rules were never subject-matter of challenge. In such circumstances, for reasons other than what have been noted by the learned Single Judge, we are of the considered opinion that in the peculiar facts and circumstances of the case, no interference is called for in the order of the learned Single Judge.

7. The argument raised by learned senior counsel for the appellant – Association that the repealing clause of proviso to Rule 11 of 2014 Rules as such saved the action what had been taken is also to be repelled. It has already been noticed by the learned Single Judge that the decision as such to create 50 posts would mitigate against the initial Rules itself which provided for 50% quota for both, the promotion and direct recruitments. In such circumstances, relaxation which has been done against the Rule has been rightly held bad by

the learned Single Judge, while dismissing the writ petition.

8. Appeal is, accordingly, dismissed.

9. Pending application, if any, stand disposed of.

(G.S. SANDHAWALIA)
ACTING CHIEF JUSTICE

(LAPITA BANERJI)
JUDGE

February 28, 2024
ndj

Whether speaking/reasoned	Yes
Whether reportable	No