

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

104+225 (3)

Decided on :26.02.2024

CWP-4874-2020 (O&M)

PAWAN KUMAR AND ANR . . . PETITIONERS
Versus

STATE OF HARYANA AND ANOTHER . . . RESPONDENTS
CWP-4384-2021 (O&M)

ANIL KUMAR GARG . . . PETITIONER
Versus

STATE OF HARYANA AND OTHERS . . . RESPONDENTS
CM -15548-CWP-2023 in/and CWP-12606-2020 (O&M)

PAWAN KUMAR AND ANR . . . PETITIONERS
Versus

STATE OF HARYANA AND ANOTHER . . . RESPONDENTS
CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

PRESENT: Mr. Sunil K. Nehra, Advocate
for the petitioners in CWP-4874-2020 & CWP-12606-2020.

None for the petitioner in CWP-4384-2021.

Mr. Harish Rathee, Sr. DAG, Haryana.

Mr. D.S. Rawat, Advocate for respondent No. 3.

HARSIMRAN SINGH SETHI , J. (Oral)
CM -15548-CWP-2023 in/and CWP-12606-2020

The present application stands allowed as prayed for.

Main Case:

1. By this common order, above mentioned writ petitions are being disposed of as all the writ petitions involve the same question of law on similar facts.
2. In the present bunch of petitions, the grievance being raised by the petitioners is that they have wrongly been declared ineligible in passing the State Subordinate Accounts Services (S. A. S.) (Part-II) examination

which is essential for the appointment to the post of Section Officer on which post they were temporarily appointed after clearing S. A.S. (Part-I) examination.

3. Certain facts needs to be mentioned here for the adjudication of the present bunch of petitions, which are as under:-

4. The State of Haryana had issued Haryana State Subordinate Accountants short title (Group C) Service Rules, 1982 (herein after referred as 1982 Rules) . Under the said Rules, the method of recruitment has been given in Rule 7, according to which, the appointment to the post in question as governed by the Rules, 1982 shall only be made from the candidates who have passed both parts (Part-I and Part-II) of the Haryana State Subordinate Accounts Services (SAS) conducted by the Government in accordance with such Regulations as may be framed by the Government from time to time. It may be noticed that the Government has already framed Regulations on 29.09.1987, copy of which has been appended as Annexure P-13, wherein the detail with regard to the conduct of the SAS (Part-I and Part-II) examination and the criteria for qualifying the same was prescribed. As per the Regulation 8 of the 1987 Regulations in order to clear the SAS (Part-I and Part-II) examination, a candidate must have obtained more than 40 per cent marks in each subject and 45 per cent in aggregate of all the subjects in each part of SAS examination. In order to become eligible for appointment to the post of Section Officer, a candidate is required to pass SAS (Part-I and Part-II) examination but as the petitioners had passed the SAS (Part-I) examination, they were temporarily appointed on the post of Section Officer by the department concerned subject to their

passing of the SAS (Part-II) examination.

5. Thereafter, 1982 Rules were repealed and Haryana State Subordinate Accountants (Group C) Service Rules, 2013 (herein after referred as 2013 Rules), were brought into operation on 28.03.2013. In the said 2013 Rules also, the recruitment was to be made only from the candidates who have passed the SAS (Part-I and Part-II) examination.

6.. The petitioners, appeared for SAS (Part-II) examination in the year 2019. Though, the petitioners got 40 % marks in each subject, but could not maintain an overall percentage of 45 % in all the subjects in each part of the SAS examination which was required under 1987 Regulations in accordance of which they have been declared failed by the department, which action of the department is under challenge in the present bunch of petitions..

7. The prayer of the petitioners is that 1987 Regulations which are being implemented upon the petitioners is without any authority and once, no minimum pass percentage criteria has been mentioned in 2013 Rules regarding aggregate marks for qualifying SAS (Part-I) and SAS (Part-II) examination , the petitioners keeping in view their achievement in SAS (Part-II) examination held in the year 2019, should be declared as having cleared SAS (Part-II) examination so that, the services of the petitioners can be regularized on the post of Section Officer on which post they were temporarily working with the department concerned.

8. Learned counsel for the petitioners submits that the action of the department in declaring the petitioners fail in SAS (Part-II) examination is contrary to the rules governing the service and hence, keeping in view the

marks secured by the petitioners in SAS (Part-II) examination held in the year 2019, they be deemed to have cleared the same so as to regularize their services on the post of Section Officer, on which post they were temporarily working with the department concerned.

9. Learned counsel for the petitioners further submits that if the combined aggregate of SAS (Part-I) and SAS (Part-II) examination was seen, the petitioners had more than 45 % marks, and therefore, it should be deemed that even under 1987 Regulations, the petitioners had cleared the SAS (Part-I) and SAS (Part-II) examination.

10. Learned counsel for the respondents on the other hand submits that the Regulations of 1987 which were valid in the year 2019 i.e. on the date petitioners appeared for SAS (Part-II) examination and the petitioners have not been able to secure overall percentage of 45 % in all the subjects in each part of the SAS examination as per 1987 Regulations, the claim of the petitioners that the 1987 Regulations loses its sanctity after the promulgation of the 2013 Rules, is incorrect as, the Regulations which have been prescribed are only to give the details as to how, the SAS (Part-I) and SAS (Part-II) examination is to be conducted and the minimum percentage required to clear the said examination and hence, even after the promulgation of the 2013 Rules, the method given in 1987 Regulations to declare a candidate pass in SAS (Part-I) and SAS (Part-II) examination will continue.

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

12. Before proceeding further, certain facts regarding the

promulgation of the rules and the regulations so as to conduct the State Subordinate Accounts Services (S. A. S.) (Part-II and Part-II) examination needs to be enumerated.

13. The arguments of the learned counsel for the petitioners that there is no minimum passing percentage under 2013 Rules, hence, they should be deemed to have cleared the SAS (Part-II) examination cannot be accepted for the reasons that 1987 Regulations give the details as to how, the SAS (Part-I) and SAS (Part-II) examination is to be conducted and how a candidate, who is appearing in those examination is to be evaluated so as to declare the result of the said candidates in the said SAS (Part-I) and SAS (Part-II) examination. It is a conceded position that SAS (Part-II) examination held in the year 2019 conducted by the State of Haryana as per 1987 Regulations\ and the petitioners did not clear the same as there combined aggregate marks of all the subjects in SAS (Part-II) is not 45 % which is required in each part of SAS examination so as to be declared having cleared the said SAS (Part-I) and SAS (Part-II) examination.

14. The argument of the learned counsel for the petitioners that once, 1982 Rules were repealed in the year 2013, there was no minimum criteria laid down to declare a candidate having passed or failed and that 1987 Regulations cannot be made applicable in the present case is fallacious and cannot be accepted. Once, 1987 Regulations have been framed for conduct the SAS (Part-I and Part-II) examination which also prescribed the criteria for as to how a candidate is to be evaluated, merely that 1982 Rules were repealed in the year 2013, the said 1987 Regulations will continue to operate, because the same only 'denotes the method' as to how the SAS

(Part-I and Part-II) examination is to be conducted and as to how a candidate is to be evaluated so as to be declared having cleared the SAS (Part-I and Part-II) examination or not. Hence, even after the promulgation of 2013 Rules, the 1987 Regulations will continue to operate so as to evaluate the candidates who appeared in SAS (Part-I) and SAS (Part-II) examination as the case may be so as to declare them having cleared the said examination or not especially when no contrary regulations were framed under 2013 Rules.

15. Learned counsel for the petitioners further argues that once 2013 rules are silent about the minimum requirement eligibility to clear the SAS (Part -I) and SAS (Part- II) examination, the 1987 Regulations cannot be brought into operation to declare the petitioners ineligible.

16.. It is settled principal of law that in case any rule is silent qua any aspect, the instructions issued by the Government on the said aspect will come into operation. Once, the petitioner has conceded before this Court that there is no minimum criteria given for clearing the SAS (Part-I and part-II) examination in 2013 Rules, the 1987 Regulations, which prescribed the said criteria, are to be treated supplementing 2013 rules so as to decide as to which candidate, who is appearing in SAS (Part -I) and SAS (Part- II) examination, clear the same or fails in clearing the said examination. Hence, operating the 1987 Regulations with respect to the conduct of the said examination when 2013 Rules are silent on the said aspect is well within the jurisdiction of the respondents to decide the eligibility about clearing the SAS (Part -I) and SAS (Part- II) examination.

17. The second argument of the learned counsel for the petitioners

is that under 1987 Regulations, the total aggregate percentage of the SAS (Part-I) and SAS (Part-II) examination should be 45% and not the 45 % aggregate separately in SAS (Part -I) and SAS (Part- II) examination. On being asked to show on what basis the said arguments has been raised, learned counsel for the petitioners submits that once the wording used in the 1987 Regulations is “in all the papers”, the same has to mean that in all the papers of SAS (Part -I) and SAS (Part- II)”.

18. It may be noticed that a candidate does not appear in SAS (Part -I) and SAS (Part- II) examination simultaneously. It is only in case, a candidate has cleared SAS (Part-I) examination, then only, a candidate can appear in SAS (Part II) examination, hence, the argument that the total aggregate marks of SAS (Part-I) and SAS (Part-II) examination is to be seen, to access the result of a candidate cannot be accepted. If the argument of the petitioner is to be accepted then no candidate can be declared fail in SAS (Part-I) examination unless and until he has appeared in SAS (Part II) examination as well. Hence, the arguments which is being raised by the learned counsel for the petitioners that the total aggregate of all the subjects in SAS (Part-I) and SAS (Part-II) examination is to be seen to decide the requirement of 45 % marks cannot be accepted and is accordingly rejected.

19. Keeping in view the above facts and circumstances recorded herein above, the prayer of the petitioners that they be declared successful in qualifying the SAS (Part-II) examination held in the year 2019, cannot be accepted and the same is accordingly rejected.

20. At this stage, learned counsel for the petitioners submits that during the pendency of the present petitions, some of the employees have

cleared the SAS (Part-II) examination also.

21. Upon this, learned counsel for the respondents submits that in case that is a fact, the petitioners can raise an appropriate plea before the Government and in case any such claim is raised by the petitioners before the Government, the same will be considered and an appropriate speaking order will be passed by the Competent Authority within a period of 8 weeks from the receipt of any such claim received from the petitioners qua the candidates who have now cleared the SAS (Part II) examination as well so as to claim the eligibility.

22. No other arguments are being raised by the learned counsel for the petitioner.

23. Keeping in view the facts and circumstances of the present case recorded herein above, no ground is made out for the grant of any relief to the petitioners as being claimed by them through present petitions, hence, the present petitions **stand dismissed**.

24. Dismissed.

25. A photocopy of this order be placed on the files of connected cases.

26. Pending miscellaneous application, if any, shall also stand disposed of.

(HARSIMRAN SINGH SETHI)
JUDGE

26.02.2024

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Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No