214

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-11378-2002 (O&M)
Date of decision : 17.07.2024

Gurdial Singh Sehgal

...Petitioner

Vs.

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL
HON'BLE MR. JUSTICE DEEPAK MANCHANDA

Present: Mr. Vivek Singla, Advocate
for the petitioner.

Mr. Hitesh Pandit, Addl.A.G.Haryana.

***

DEEPAK MANCHANDA, J.

1. This petition has been filed under Article 226 of the Constitution of India for issuance of a writ in the nature of Mandamus directing the respondents for granting exemption to the petitioner from passing the departmental examination in view of Rule 12 of Haryana Finance Department Treasuries (Group-B) Service Rules 1980 (hereinafter referred to as 'Rules 1980') with a further prayer for release of incremental benefits w.e.f. 01.04.2001 by enhancing the petitioner's pay from Rs.7,500/- to Rs. 7,700/-.

2. The facts in brief emerging from the record are that the petitioner joined as a Clerk in the Joint Punjab of State w.e.f. 01.05.1963, and was promoted as Assistant Treasury Officer w.e.f. 10.05.1999, who was to superannuate on 30.11.2002. The primary grievance raised through this petition

is for seeking exemption from passing of the departmental test based upon his long and unblemished service of 39 years as also because he had completed 57 years of age till the year 2002 and was to retire by 30.11.2002.

3. The petitioner alleged discrimination by citing examples for granting of exemption from passing the departmental examination to similarly placed employees and a detailed representation dated 21.12.2001 (Annexure P-1) was made to this effect. The departmental examination was scheduled to be held on 05.08.2002 and notice dated 25.06.2002 (Annexure P-2) was issued to the petitioner granting him the last chance to appear in the departmental examination to escape reversion. According to the petitioner since he was to retire on 30.11.2002, no useful purpose would have been served by him passing the departmental test as the same would have not added to his efficiency and the entire exercise would be in futility. Therefore, he sought exemption, however, his request was not accepted by the respondents. Being aggrieved by the same, the petitioner filed the present petition.

4. On 25.07.2002, notice of motion in this petition was issued, in response whereto respondent Nos.1 to 3 filed their written statement, wherein a categoric stand was taken that the petitioner was promoted to the post of Assistant Superintendent Treasury on 08.11.1995 and was further promoted to the post of Assistant Treasury Officer w.e.f. 10.05.1999. The services of the petitioner as Assistant Treasury Officer are governed by the Haryana Finance Department Treasuries (Group-B) Service Rules, 1980, where Rule 10(1) describes the period of probation for the direct recruited/promoted employees and Rule 12 of the 1980 Rules, provides that such employee has to qualify the departmental exams within the period of his probation. It was submitted by the

respondent-department that the petitioner had appeared in the departmental examinations, but could not qualify the same as per the rules mentioned above, he was not entitled to continue on the post of Assistant Treasury Officer. It is further submitted that the petitioner sought exemption from qualifying the departmental exam as per the proviso to Rule 12 (1), but through a conscious decision, the competent authority rejected all the representations filed by the petitioner seeking therein exemption from qualifying the departmental exam and that no other official was granted exemption from qualifying the departmental exam since 1997 and this was to maintain efficiency in the working of the treasuries. Accordingly, the prayer of the petitioner was rejected. It is the specific stand taken by respondent Nos.1, 2 and 3 that once the petitioner failed to qualify the departmental exams, he was rightly reverted to the post of Assistant Superintendent (Treasury) and was not entitled for any exemption/relaxation in light of the rules. The relevant Rules are reproduced hereunder:-

> "***Rule 10 (1)***
>
> *"Persons appointed to any post in the service shall remain on probation for a period of two years, if appointed by direct recruitment and one year, if appointed otherwise.*
>
> *Provided that the total period of probation including extension if any, shall not exceed three years".*
>
> ***Rule 12 (1)***
>
> *"Every member of the service, who has not already done so, shall pass such examination and under go such training with in the period of probation as may be prescribed by the Government.*
>
> *Provided that the Government may exempt any candidate from passing the whole or any part of the departmental examination or may extend the period within which a candidate shall pass the examination."*

> ***Rule 12.6***
> *"If any member of the service, fails to pass the examination or to undergo the training within the period of probation or such period as may be prescribed he may be discharged from service if directly or reverted to his former post if recruited otherwise."*

5. It is also mentioned in the written statement that the prayer of the petitioner for increments w.e.f. 01.04.2001 is not tenable as he did not qualify the departmental exam. In this regard, Rules 12 (3) and (4) were pressed into service. These Rules are reproduced below:-

> "***Rule 12 (3)***
> *No increment should be withheld until the period prescribed for clearing the departmental examination is over.*
> ***Rule 12 (4)***
> *If a member of the service passes the departmental examination after the prescribed period then the increment for the period subsequent to that within which the departmental examination was to be passed should be released to him from the date following the last day on which the departmental examination were completed. The increment should be released with retrospective effect from the date it was otherwise due but no arrear should be paid for the past period."*

6. We have heard the learned counsel for the petitioner.

7. Through this petition, the petitioner seeks exemption from qualifying the departmental examination. Such prayer is based upon his length of service and the fact that he is to superannuate soon as also alleging discrimination.

8. The respondents have taken a categoric stand in their written statement that no official/officer had been granted exemption since 1997. Respondents relied upon the order dated 18.07.2002 passed by this Court in CWP-1750-2002, titled as "**Ram Bhagat Jain Vs. State of Haryana**", wherein it has been held that the Government is within its right not to allow

exemption from qualifying the departmental examination. It is further the respondent's case that qualifying the departmental exams is one of the condition for promotion to the post of Assistant Treasury Officer and petitioner cannot claim exemption as a right on any ground including his length of service as the same violates the rules. It is still further submitted that since the petitioner was promoted to the post of Assistant Treasury Officer in the year 1999, he was on probation till 09.05.2000 within which period he was to qualify the Departmental exams as per Rule 12 of the Haryana Finance Department Treasury (Group B) Rules, 1980, but he could not. Hence, he was not entitled to continue on the post of Assistant Treasury Officer.

9. A perusal of Annexure P-2 would show that vide notice dated 25.06.2002, the petitioner was duly informed that as under Rule 12(1) of the Rules, he had failed to clear the departmental examination, where last opportunity to clear the said examination was granted to him, failing which he would be reverted as per Rules. Therefore, the claim of the petitioner that despite failing in the departmental examination, he be promoted to the post of Assistant Treasury Officer on the sole ground of his length of service and experience has no legs to stand and we find that the respondents were well within their right to reject the claim raised by the petitioner and he cannot claim promotion on the sole ground of his length of service and experience.

10. Apart from the above, once the petitioner did not qualify the test and exemption was not granted, his prayer for granting increments can not be accepted in the light of the afore-quoted Rule 12(3) and Rule 12 (4).

11. Moreover, this petition had been filed on 23.07.2002 and during its pendency, the petitioner would have been retired on 30.11.2002. Therefore,

with the efflux of time, the purpose of filing this writ petition has also paled into insignificance.

12. Given the above discussion and in light of Rules referred by the respondents, the present petition fails and same is accordingly dismissed.

13. Since the main case is dismissed, pending application(s), if any, have also rendered infructuous.

(DEEPAK MANCHANDA)
JUDGE

(DEEPAK SIBAL)
JUDGE

17.07.2024
vanita

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