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

106+254

Date of decision: 27.11.2024

**1. CM-19502-CWP-2022 in/and
CWP No.19529 of 2021 (O&M)**

Anil Prashar ...... **Petitioner**

Versus

State of Punjab and another ...... **Respondents**

107+255

**2. CM-19486-CWP-2022 in/and
CWP No.19633 of 2021 (O&M)**

Chamkaur Singh ...... **Petitioner**

Versus

State of Punjab and others ...... **Respondents**

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. B.S. Jaswal, Advocate
for the petitioner(s) (in both petitions).

Mr. Amarpreet Singh Bains, AAG, Punjab.

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<u>HARSIMRAN SINGH SETHI, J.(ORAL)</u>

<u>CM-19502-CWP-2022 in CWP No.19529 of 2021</u>

This is an application for placing on record the replication filed by the petitioner.

Application is allowed and the said replication is taken on record.

<u>CM-19486-CWP-2022 in CWP No.19633 of 2021</u>

This is an application for placing on record the replication filed by the petitioner.

Application is allowed and the said replication is taken on record.

<u>Main Cases</u>

1. Vide this common order, two petitions bearing CWP-19529-2021 and CWP-19633-2021, the details of which have been given in the heading, are being disposed of, as the same question of law involved. Facts are being taken from CWP-19529-2021.

2. The present petition which has been filed in the year 2021, is raising a claim that the petitioner who was promoted to the post of Excise and Taxation Officer on 16.10.2002 was required to pass the departmental examination within a period of 2 years and six months of the promotion, was entitled for grant of exemption from the passing of the departmental examination so as to grant him the increment, which was not granted to him upto the date of retirement i.e. 31.12.2010.

3. Learned counsel for the petitioner submits that the petitioner should be granted deemed exemption from the passing of the departmental examination and therefore, the petitioner be also granted the benefit of increment, which was not released to then, from the date of promotion till his retirement.

4. Upon notice of motion, the respondents have filed the reply wherein, the respondents have stated that the promotion of the petitioner with the stipulation that he was required to pass the departmental examination before the grant of increment, was done in the year 2002 and the petitioner

failed to pass the said examination upto the date of his retirement i.e. December 2010. Learned State counsel submits that once the said stipulation in the appointment order has not been complied with, claiming of the deemed relaxation, is not made out, as the relaxation cannot be claimed as a matter of right.

5. Learned State counsel further submits that the present petition has been filed after a period of 19 years of the date of promotion and after 11 years of the retirement which even otherwise is liable to be dismissed as, no service benefit can be claimed after the retirement and in the present case, the writ petition has been filed for claiming a service benefit, which according to the petitioner was admissible 19 years before the filing of the petition.

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

7. The first question, which needs to be decided is whether, a relaxation can be claimed as a matter of right or not. In the present case, the promotion of the petitioner to the post of Excise and Taxation Officer was with the clear stipulation that the petitioner is required to pass the departmental examination as specified under Rule 10 of the Punjab Excise and Taxation (State Service Class-III) Rules, 1956. The petitioner failed to pass the said examination for a period of 8 years of promotion i.e. upto the date of retirement. The petitioner retired on 31.12.2010 without raising any grievance with regard to the non-release of the increment, which was only admissible upon clearing of the departmental examination. Once the petitioner never raised any grievance upto the date of retirement, filing a petition after 11 years of the retirement, so as to claim the deemed relaxation, is not admissible.

8. Further, as per the settled principles of law, the relaxation cannot be claimed as a matter of right. The judgment of the Hon'ble Supreme Court of India in ***Civil Appeal Nos.2250-2252 of 2020*** titled as ***'Dr. Thingujam Achouba Singh and others Vs. Dr. H. Nabachandra Singh and others'***, decided on 17.04.2020, the relevant portion of the same reads as under:-

> *"So far as relaxation of upper age limit, as sought by the petitioners in one of the writ petitions is concerned, High Court has directed the competent authority and Executive Council of the Society to consider for providing such relaxation clause. We fail to understand as to how such direction can be given by the High Court for providing a relaxation which is not notified in the advertisement. While it is open for the employer to notify such criteria for relaxation when sufficient candidates are not available, at the same time nobody can claim such relaxation as a matter of right. The eligibility criteria will be within the domain of the employer and no candidate can seek as a matter of right, to provide relaxation clause".*

9. Learned counsel for the petitioner has not been able to rebut the said judgment to claim the relaxation as a matter of right. Further, learned counsel for the petitioner has placed reliance upon a judgment passed in ***CWP-14200-2012***, decided on 26.11.2018. No benefit of the said judgment can be given, as in the said judgment, the challenge was by the Excise and Taxation Office *qua* their reversion for non-passing of the departmental examination. In the present case, the petitioner continued working on the promoted post utpo the date of retirement and they were never reverted. Therefore, no benefit of the judgment being relied upon by learned counsel for the petitioner can be given.

10. In the light of above, no ground is made out for grant any relief to the petitioner in the present petition keeping in view the facts and circumstances of the present case and accordingly, both the present petitions are dismissed.

11. The pending miscellaneous application, if any, shall also stands disposed of.

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

(HARSIMRAN SINGH SETHI)
JUDGE

27.11.2024
D.Bansal

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