
(2013) 05 P&H CK 0076

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 12661 of 2012

Surjit Singh

APPELLANT

Vs

Punjab and Haryana High Court and Another

RESPONDENT

Date of Decision : 09-05-2013

Acts Referred:

Punjab Civil Services (Judicial Branch) Rules, 1951 — Rule 5

Citation : (2013) 171 PLR 375

Hon'ble Judges : Ritu Bahri, J; Hemant Gupta, J

Bench : Division Bench

Advocate : R.K. Malik and Ms. Kiran, for the Appellant; Deepali Puri for Respondent No. 1 and Mr. Nitin Kaushal, Asst. Advocate General, Haryana, for the State, for the Respondent

Final Decision : Dismissed

Judgement

Hemant Gupta, J.—The challenge in the present petition is to an order (Annexure P. 9) dated 17.5.2011 whereby the services of the petitioner were dispensed for the reason that he has failed to pass the departmental examination within the stipulated period noticing the fact that he has relinquished the charge on 31.1.2011. The petitioner was offered appointment as member of the Punjab Civil Service (Judicial Branch) on 03.11.2005 consequent to the directions issued in C.W.P. No. 11734 of 1997 decided on 02.02.1999 and after dismissal of Letters Patent Appeal on 05.12.2003. The services of the petitioner are governed by Punjab Civil Service (Judicial Branch) Rules, 1951. Part D of the said Rules relates to the procedure of appointment and the condition of qualifying the departmental examination. The relevant clause reads as under:-

5. Every candidate shall, within a period of two years from the date of his selection, pass by the higher standard the departmental examinations prescribed in Part-"E" failing which his name shall be removed from the register of candidates.

Provided that where a candidate is appointed as a subordinate judge within the said period of two years. He shall within a period of four years from the date of his selection, pass by the higher standard the said departmental examinations failing which he shall be removed from service.

Provided further that in no case, the said period of two years of four years, as the case may be, shall be extended.

2. Part G deals with providing for relaxation of Rules. The said rule reads as under:-

Where the Govt. in consultation with the High Court, is, of opinion that it is necessary so to do, it may by order, for the reasons to be recorded in writing, relax any of the provisions of the Rules with respect to any class or category of persons.

3. In terms of the requirement of Rules, the petitioner availed chances for qualifying the departmental examination. The details of such chances availed by the petitioner within five years are given in the following table:-

4. Learned counsel for the petitioner has vehemently argued that the respondents in the written statement has taken up a stand that the time period for qualifying of the departmental examination is two years, i.e., up to 26.11.2007. But that is said to be incorrect reading of Rules inasmuch as that a candidate has to qualify the departmental examination within four years and not within two years. The period of two years is meant for a candidate whose name is brought on the register. The consequences of not passing the departmental examination within two years is to remove his name from the register but a candidate, who has joined services can qualify in the departmental examination within four years. Thus, the entire reading of the Rule by the respondents is incorrect. It is contended that as the petitioner was granted extension to pass departmental examination up to 26.11.2009, therefore, he could qualify in the examination after two years of the period fixed in the Rules. Therefore, such relaxation would be admissible to the petitioner after the expiry of four years, i.e., up to 26.11.2011. The petitioner has appeared in the examination lastly in April, 2011. The result of which was not declared, therefore, the petitioner has appeared within the extended chances granted to him and consequently, the result of the said examination should be directed to be declared. On the basis of such result, it would be apparent that the petitioner has qualified the departmental examination within the extended period. Mr. Malik further contends that in terms of Rule contained in Para G of the Rules, the petitioner should be granted the relaxation in the Rules so as to enable the respondents to qualify in the examination conducted in April, 2011.

5. We have heard learned counsel for the parties and find no merit in the present petition. It is not disputed by learned counsel for the petitioner that before a candidate is appointed as member of the service, his name has to be included in register of the candidates called High Court Register. The continuation of name of

the candidate in High Court Register is a condition precedent for appointment. Therefore, the first part of the Rule 5 as reproduced above in respect of condition to qualify test within two years, is a condition to enable a candidate to continue on the register of successful candidates eligible for appointment. Since the petitioner has joined soon after his name was brought on the High Court Register in pursuance of the directions of this court in a writ petition filed by him, therefore, he was required to qualify the departmental examination within a period of four years from the date of appointment which has been taken as 26.11.2005. In fact, the said date is taken by the respondents as the date for calculating the period during which the petitioner is to qualify departmental examination. The further proviso in the rules stipulates that in no case the period of two or four years as the case may be shall be extended. Since in case of the petitioner, his entry into High Court Register and appointment were at the same time, therefore, as far as the petitioner is concerned, he was required to qualify the departmental examination within a period of four years from the date of appointment.

6. Rule 5 clearly stipulates that period of four years shall not be extended in any case. The rule of relaxation contained in Part G of the Rules would be applicable where there is no prohibition in relaxation of the Rules. Rule 5 and Rule of relaxation have to be harmoniously construed. The rule of relaxation will not override the Rule 5 which clearly contemplates that there shall not be any extension beyond the period of four years.

7. We do not find merit in the argument that extension of two years granted to the petitioner shall be available to him after expiry of normal period of qualifying test, i.e., from 26.11.2009 till 26.11.2011. Reading of the written statement shows that the extension was up to 26.11.2009. Once relaxation has been granted up to a particular date, it cannot be read to mean that extension was of years and not up to the date specified. In any case, the reading of Rule 5 does not show that there can be any relaxation after four years.

8. Even if the Petitioner has appeared in the examination held in the month of April 2011, that will confer any right to seek declaration of result of such attempt. A candidate has to qualify test within the period prescribed in Rules. Such appearance in the examination was in fact, contrary to the Rules. A judicial officer who could not qualify the departmental test in four years would not be entitled to continue in service in order to maintain efficiency in the cadre. In view of the said fact, we do not find merit in the present petition.

Dismissed.