

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO. 9048 OF 2011

STATE OF HIMACHAL PRADESH

...APPELLANT(S)

VERSUS

HARNAM SINGH GULERIA

...RESPONDENT(S)

ORDER

1. The challenge in the present appeal is to an order passed by the High Court of Himachal Pradesh on 14.10.2009, whereby the writ petition filed by the respondent, who was a member of the Himachal Administrative Service (H.A.S.), was allowed.
2. The respondent was appointed as Tehsil Welfare Officer on 19.04.1979 after his discharge from Army. He was promoted as a District Welfare Officer on 19.04.1986. Thereafter, he was inducted in the H.A.S. on 10.03.1997 in accordance with the provisions of the Himachal Pradesh Administrative Service Rules, 1973¹ and assumed charge on 29.01.1998. The respondent was more than 50 years of age but less than 55 years when he joined service as an H.A.S. Officer.
3. The service conditions of the respondent are governed by the Administrative Rules framed in exercise of powers conferred under the proviso to Article 309 of the Constitution of India. There are Departmental Examination Rules, 1976, which were also framed in

¹For short, the 'Administrative Rules'

exercise of powers conferred under proviso to Article 309 of the Constitution of India. Such Rules have since been repealed by the Himachal Pradesh Departmental Examination Rules, 1997². These Rules are applicable to various services in the State, including the Members of the Himachal Pradesh Administrative Service in terms of Rule 2(2)(i) of the Examination Rules. The relevant Rule reads thus:

"NOTIFICATION

No. Per. (Trg.) B (I2)-40/95, dated Shimla-2, the 13th March, 1997

1. xxx xxx xxx
2. Commencement Application: (1) xxx xxx xxx
- (2) These shall govern the Departmental Examinations in respect of-
- (i) The members of Himachal Pradesh Administrative Services;
- (ii) The members of Himachal Pradesh Forest Services;
- (iii) Tehsildars and Naib-Tehsildars;
- (iv) All other gazetted officers working in connection with the affairs of the State of Himachal Pradesh not included in Clauses (i) to (iii) above;
- (v) Superintendent grade-II and Sr. Assistants of H.P. Govt. (Non-Gazetted) and
- (vi) All such other Non-Gazetted officials who have put in not less than 10 years of regular service in connection with the affairs of the State of Himachal Pradesh whose next promotion or placement as and when it takes place than put them in a Gazetted rank.
- (vii) Any other class or category of officers which may be included by the Government from time to time."

²For short, the 'Examination Rules'

4. The respondent could not qualify the departmental examination as provided in the Examination Rules; therefore, he was not granted the benefit of second and subsequent increment(s). He submitted a representation for exemption to appear in the departmental examination. Such representation was declined on 19.08.1999 on the ground that an officer appointed to the service prior to the attainment of age of 55 years shall have to pass the departmental examination for the purpose of release of second and subsequent increment(s). Aggrieved by such decision of the State Government, the respondent filed an Original Application under Section 19 of the Administrative Tribunal Act, 1985 before the Himachal Pradesh State Administrative Tribunal³.
5. The Tribunal dismissed such application on the ground that exemption from qualifying the departmental examination is available to an officer who is appointed from Register A-I or Register A-II and who on the date of appointment, had attained the age of 55 years, but other members of the H.A.S. are required to qualify the departmental examination. Thus, the respondent having entered the H.A.S. when he was less than 55 years of age could not be exempted. The relevant part of the order of the Tribunal reads thus:

“18. In view of the provisions of the relevant Rules as discussed herein above the departmental examination of members of HAS is required to be conducted as per the Examination Rules but the eligibility for exemptions from qualifying and consequences of not qualifying the departmental examination shall be governed by the Service Rules. Therefore the applicant having entered the HAS at the time when he was less than 55 years of age was not exempted

³ For short, the 'Tribunal'

from, qualifying the requisite departmental examination by operation of the Service Rules applicable to him nor can he claim such exemptions under Rule 23 of the Examination Rules for want of its applications to him in the matter of exemption, therefore his representation Annexure A/2 seeking exemption under rule 23 of the Examination Rules from qualifying the departmental examination was misconceived could not have been favorably considered.”

6. In a writ petition challenging the aforesaid order of the Tribunal, the High Court held that the later Rules (the Examination Rules) deemed to have repealed the earlier Rules (Administrative Rules), in the following manner:

“.....Once the Departmental Rules were made applicable to the HPAS and the exemptions laid down in the Departmental Rules it is this exemption clause which will be applicable and not the provision of the HPAS Rules. The Departmental Rules were framed after the HPAS Rules and it can be presumed that the rule making authority was aware that the HPAS Rules also had certain exemption clauses. The rule making authority still decided to make these rules applicable to the H.P. Administrative Service and provide a different exemption clause. This later rule must be deemed to have repealed the earlier rule which was inconsistent with the freshly framed rules.”

7. It was also held that in terms of Rule 19(1) of the Administrative Rules, if a candidate fails to qualify the departmental examination within two years of his selection, he could be removed from service. The High Court held that since the respondent had completed 50 years of age, he was not required to pass the departmental examination and that the increment(s) could not be denied to him.
8. Mr. Abhinav Mukerji, learned counsel appearing for the appellant submitted that the financial benefits have been granted to the respondent in terms of the judgment of the High Court and the State

shall not recover any financial benefits granted to him, but since the applicability of the Administrative Rules is the question which may arise for consideration in other large number of cases, therefore, such question of law requires to be clarified.

9. Rule 19 of the Administrative Rules reads as under:

"19. Candidates to pass the departmental examination within two years of selection, - (1) Every candidate shall within two years from the date of his appointment to the service pass by the prescribed standard the departmental examination from time to time prescribed for Himachal Pradesh Administrative Service and if any candidate fails so to pass the departmental examination his name shall be removed from the register of candidates or, if in the meantime he has been appointed to the service, he shall be removed from the service.

(2) Every person holding a duty post under second proviso to Rule 6 shall also be required to pass the departmental examination within a period of two years from the commencement of these rules.

(3) Persons appointed to the service under proviso one to Rule 6 shall also be required to pass within the period of their probation, the departmental examination in the subject(s) in which they have not already qualified under the DHANIN Civil Service Rules, 1965:

Provided that the Governor may in exceptional cases, and for reasons to be recorded in writing exempt any candidate/person from passing the whole or any portion of the departmental examination or may extend the period within which the candidate/person shall so pass the examination.

(4) The candidate appointed from Register A-I or Register A-II who has attained the age of 55 years on the date of his appointment to the Himachal Pradesh Administrative Service on officiating or substantive provisional basis under Rule 15 shall not be required to pass the Departmental Examination as prescribed for the Himachal Pradesh Administrative Service under the Himachal Pradesh Departmental Examination Rules, 1976 for the purpose of confirmation and grant of second and subsequent increments after the first increment.

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22. Substantive permanent appointment - On the completion of the per probation prescribed by, or determined by the Governor under the provisions of rules 19 and member of the service shall be qualified for substantive permanent appointment provided passed the departmental examination by the prescribed standard."

10. Rules 21 and 23 of the Examination Rules read thus:

"21. Failure to pass the Departmental Examination:-

A member of the service shall not be eligible for :

- (i) Proficiency step-up/higher scale next due
- (ii) Confirmation in service even after completing of probationary period; and
- (iii) Promotion to the next higher post.

Unless he passes the departmental examination prescribed in these rules:

Provided that if there are specific rules governing the condition of service of a category or a class of officers, the provisions contained in such rules relating to the effect of failure to pass the departmental examinations shall prevail.

Provided further that the provisions of this Rule shall not be applicable to the category of employees as specified in Clause (v) of sub-rule (2) of Rule 2 until they are promoted/appointed against the Gazetted posts.

Provided further that any employee falling under the category as specified in clause (v) of sub-rule (2) of Rule 2 who passes the departmental examination under these rules shall not be required to pass the departmental examination under these Rules on his appointment/promotion to the Gazetted post as specified in clause (iv) of sub-rule (2) of Rule 2.

(Emphasis supplied)

23. Exemption Clause:-

(2) **A gazetted officer on the attainment of 55 years of age

shall not be required to pass the departmental examination prescribed under these rules, as amended from time to time for the purpose of Proficiency Step Up/Higher Scale, next due and confirmation in the service. However, Gazetted officers irrespective of their age shall get further promotion whenever due only after passing such examination.

Provided further that no non-gazetted promotee to a gazetted post will be allowed to cross the efficiency bar/proficiency set-up/higher scale next due and confirmation in service before the age of 50 years and unless he passes the prescribed departmental examination. In such cases the same will be treated automatically released only on attaining 50 years of age and not from the due date."

** The age of 55 years was inserted in lieu of 50 years of age vide the notification dated 22.07.2008."

11. A candidate has to qualify the test within two years from the date of his appointment failing which his name could be removed from the register of candidates [Rule 19(1)]. On the other hand, a candidate appointed from Register A-I or Register A-II and who had attained the age of 55 years on the date of appointment to the H.A.S. shall not be required to pass the departmental examination for the purpose of confirmation, and for the grant of second and subsequent increment(s), after the first increment. Since the respondent was less than 55 years of age, therefore, sub-rule (4) of Rule 19 would not be applicable to him. The relevant rule applicable shall be Rule 19(1) of the Administrative Rules which provides for the consequences of passing the departmental examination.
12. Rule 19(1) has created two categories- one, the Officers above age of 50 who are required to qualify the test in terms of sub-Rule (1) and

second, members of the Service of over 55 years of age covered under sub-Rule (4). Such Officers are not required to pass the departmental examination for the purpose of confirmation and grant of second and subsequent increment(s) after the first increment.

13. On the other hand, as per Rule 21, a member of service shall not be eligible for (i) Proficiency step-up/higher scale next due; (ii) Confirmation in service even after completing of probationary period; and (iii) Promotion to the next higher post unless, he passes the departmental examination. The first proviso to Rule 21 of the Examination Rules provides that if there are specific rules governing the condition of service of a category or a class of officers, the provisions contained in such rules relating to the effect of failure to pass the departmental examinations shall prevail. In terms of the proviso, the Administrative Rules would be applicable wherein the consequence of passing the departmental examination is removal from service. We may clarify that though there is a power of removal, but such removal is a conscious decision to be taken by the State Government on the satisfaction arrived at in the facts and circumstances of the case. It is not an automatic removal on failure to pass the departmental examination.
14. Rule 23(2) of the Examination Rules grants exemption from qualifying the departmental examination to a Gazetted Officer on attainment of 50 years of age, that is the then age limit applicable on the date of the entry of the respondent to service. The respondent was a Gazetted Officer. The effect is that he would be entitled to proficiency

step-up/higher scale next due and confirmation in service. The condition is that the further promotion could be granted only after passing such examination. Therefore, in terms of Rule 23(2) of the Examination Rules, a Gazetted Officer, such as the respondent, was not required to pass the departmental examination, except the restriction on further promotion under Rule 23(2). Thus, there is conflict between the Administrative Rules and the Examination Rules. The proviso to sub-rule (2) is not applicable in the case of the respondent as such proviso is applicable to non-Gazetted promotee officers.

15. The well-known rule of interpretation is *generalia specialibus non derogant*, that is, special law prevails over the general law. Reference be made to ***Patna Improvement Trust v. Smt. Lakshmi Devi & Others***⁴, wherein this Court held as under:-

“12. The law on the subject is very well settled and, in my view, the learned Judges of the High Court have correctly appreciated it and applied it to the facts of the case. Two principles noticed by the High Court are apposite. The first principle is *generalia specialibus non derogant*. This principle is exemplified by the decision of the Privy Council in *Secretary of State v. Hindustan Cooperative Insurance Society Ltd.* [AIR 1931 PC 149] The second principle is that if a statute directs a thing to be done in a certain way that thing shall not, even if there be no negative words, be done in any other way. This principle is illustrated by the decision in *Ex-parte Stephens* [(1876) 3 Ch D 659]. A combined effect of the said two principles may be stated thus: a general Act must yield to a special Act dealing with a specific subject-matter and that if an act directs a thing to be done in a particular way, it shall be deemed to have prohibited the doing of that thing in any other way.....”

16. In ***U.P. State Electricity Board & Anr. v. Hari Shanker Jain & Ors.***⁵, this Court held that in passing a special Act, Parliament devotes its entire consideration to a particular subject. When a general Act is subsequently passed, it is logical to presume that Parliament has not repealed or modified the former Special Act, unless it appears that the Special Act again received consideration from the Parliament. This Court held as under:

“9. The reason for the rule that a general provision should yield to a specific provision is this: In passing a special Act, Parliament devotes its entire consideration to a particular subject. When a general Act is subsequently passed, it is logical to presume that Parliament has not repealed or modified the former Special Act unless it appears that the Special Act again received consideration from Parliament. Vide *London and Blackwall Railway v. Limehouse District Board of Works* [26 LJ Ch 164 : 69 ER 1048] , and *Thorpe v. Adams* [(1871) LR 6 CP 125] . In *J&K. Cotton Spinning and Weaving Mills Co. Ltd. v. State of U.P.* [AIR 1961 SC 1170 : (1961) 3 SCR 185 : (1961) 1 LLJ 540 : (1960-61) 19 FJR 43] , this Court observed (at p. 1174):

“The rule that general provisions should yield to specific provisions is not an arbitrary principle made by lawyers and Judges but springs from the common understanding of men and women that when the same person gives two directions, one covering a large number of matters in general and another to only some of them his intention is that these latter directions should prevail as regards these while as regards all the rest the earlier direction should have effect.”

17. The Examination Rules are general rules, applicable to various services including the members of the H.A.S., whereas the Administrative Rules are applicable only to the members of the H.A.S. Thus, in case of a conflict between the two, the Administrative Rules shall prevail being special rules governing the administrative services

alone. On the other hand, the Examination Rules are applicable to numerous services including the administrative services. Thus, the latter rules are general rules as against the Administrative Rules, which are special rules in respect of a particular service alone. Hence, the Administrative Rules would prevail over the Examination Rules.

18. In terms of the Administrative Rules, as per Rule 19(1), in case a candidate fails to qualify the departmental examination, the consequence is of removal from service. On the other hand, Rule 23(2) of the Examination Rules puts a restriction on a Gazetted Officer for further promotion, if he was 50 years of age, now 55 years w.e.f. 22.07.2008. Rule 21 of the Examination Rules disentitles a member of the service for the grant of proficiency step-up/higher scale next due and confirmation in service even after completion of probation period and promotion to the next higher post unless he passes the departmental examination. Therefore, in terms of Rule 19(1) of the Administrative Rules read with Rule 21 of the Examination Rules, the respondent was not entitled to higher scale or confirmation on account of his failure to qualify the departmental examination.
19. The provision of exemption from appearing in the departmental examination is not applicable to the respondent as in terms of the Administrative Rules, he was required to qualify the departmental examination within two years. It is the Administrative Rules which would be applicable to the respondent in terms of first proviso to

Rule 21. The exemption under Rule 23(2) shall not be applicable to the respondent.

20. The only consequence provided in Rule 19(1) of the Administrative Rules is removal from service on account of failure to pass the departmental examination. The stoppage of second and subsequent increment(s) is part of Rule 19(4) which is not applicable in respect of the respondent. Similarly, in terms of Rule 21 of the Examination Rules, the member of service shall not be entitled to proficiency step-up/higher scale; confirmation in service even after completion of probationary period and promotion to the next higher post unless he passes the departmental examination. The consequence of failure to pass the departmental examination in terms of Rule 21 is also not stoppage of increment in case the officer is less than 55 years of age. Therefore, we find that a member of the service cannot be denied benefit of increment on the failure of qualifying the departmental examination but the option is of removal from service.
21. In view of the above, we do not find any merit in the present appeal. The same is accordingly dismissed.

.....,J.
(HEMANT GUPTA)

.....,J.
(VIKRAM NATH)

NEW DELHI
AUGUST 10, 2022.

ITEM NO.105

COURT NO.8

SECTION XIV-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 9048/2011

STATE OF HIMACHAL PRADESH

Appellant(s)

VERSUS

HARNAM SINGH GULERIA

Respondent(s)

Date : 10-08-2022 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE HEMANT GUPTA

HON'BLE MR. JUSTICE VIKRAM NATH

For Appellant(s)

Mr. Abhinav Mukerji, AAG
Ms. Bihu Sharma, Adv.
Ms. Pratishtha Vij, Adv.
Mr. Akshay C. Shrivastava, Adv.
Mr. Abhinav Mukherji, AOR

For Respondent(s)

Mr. Varinder Kumar Sharma, AOR
Ms. Parul Sharma, Adv.
Ms. Shantanu Sharma, Adv.
Mr. Yugal Kishor Prasad, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The civil appeal is dismissed in terms of the signed order.

Pending applications, if any, stand disposed of.

(DEEPAK SINGH)
COURT MASTER (SH)

(RENU BALA GAMBHIR)
COURT MASTER (NSH)

[Signed order is placed on the file]