



Signed order is placed on the file.

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.6269-6270/1998@@  
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State of Haryana

..Appellant

Vs.

Pankaj Choudhary & Anr.

..Respondents

WITH C.A. No.1897-1898/99@@  
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C.A. Nos.1897-1898/1999: These two appeals had been@@  
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filed against an interim direction of the High Court while the Writ Petitions were pending. On account of subsequent events, when prayer was made before the High Court to dispose of the matter, the High Court declined to dispose of the matter on the ground that the papers are pending in this Court in the Civil Appeal filed by the State of Haryana. Since the High Court has not considered the merits of the contentions in the Writ Petitions, we think it appropriate to remit these two appeals to the High Court for being considered and dispose of on merits.

C.A.Nos.6269-6270/1998: These appeals by the State@@  
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of Haryana are directed against the judgment of the Punjab and Haryana High Court. By the impugned judgment the High Court set aside the orders of termination passed by the State Government in exercise of powers under Rule 21 of the Punjab Civil Service ( Executive Branch) Rule 1930 on the ground  
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that the respondents, who had been recruited through the Public Service Commission in the year 1991 could not pass the departmental examination at a higher standard. The High Court also directed re-instatement of service and all consequential benefits to be given to the respondents and called upon the State Government to decide the question as to whether it is a fit case to grant an exemption to employee from passing Revenue Law Group-B Paper or whether another opportunity should be given to the respondents to pass the departmental examination.

The recruitment to the post of Assistant Commissioner is governed by a set of rules framed under proviso to Article 309 of the Constitution. In accordance with the prescribed

procedure, the respondents took the examination conducted by the Public Service Commission, and were appointed in December 1992. In accordance with the provisions contained in Rule 21 they were required to pass the departmental examination within 2 years of appointment, and if they failed to pass the same examination their services were liable to be terminated. Proviso to the aforesaid rule confers a power on the Governor of the State who may exempt any member of the service from so passing the whole or any portion of the departmental examination or may extend the period within which the member of the service shall so pass examination. Since the two

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respondents could not pass the departmental examination till 1997 though 5 chances had been made available to them, they were served with a notice by the State authorities. The respondents did file the explanation indicating the reasons for which they have not been able to pass the departmental examination but the said explanation was found to be unsatisfactory, and therefore their services stood terminated by order dated 23rd April, 1998. The respondents approached the High Court by filing Writ Petition. The High Court in the impugned judgment has indicated how in the past several employees have been allowed to continue notwithstanding their failure to pass the departmental examination. But it appears that the Government has taken a policy decision in the year 1997 and took the decision that if the employees failed to clear the departmental examination in four chances, then their services would be dispensed with. Such a policy decision has been found to be in the interest of administration, and is intended to improve the efficiency in the service. But the High Court has accepted the plea of the respondents indicating the circumstances under which they have not been able to take the departmental examination. The same being either they were on maternity leave or they were busy in public service for conducting elections in Municipality and Gram Panchayat or even they had not received the timely intimation about the holding of the said

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examination. As stated earlier, prior to 1997 the rigours of Rule 21 had been observed more in breach than in its compliance. Taking a totality of the circumstances, the High Court therefore thought it fit to set aside the order of termination and directed re-instatement of the respondents in service and further directed that the Governor may consider the question of exercise of power under proviso to Rule 21.

Mr. Mahabir Singh, the learned counsel appearing for the State contended that in view of the statutory rule contained in Rule 21 of the Recruitment Rules, the High Court erred in law in setting aside the order of termination since the employer was fully justified in passing an order of termination. When the employee has failed to pass the departmental examination within stipulated period. According to Mr. Singh, the proviso confers a discretion on the Governor but until the Governor exercised that power and pass a positive orders, no employee can claim as of right to be continue in service, even though he/she has not passed the departmental examination in accordance with the substantive part of Rule 21. Mr. Mishra, the learned senior counsel, on the other hand, contended that the provision of the aforesaid rule, as indicated, in the past, had not been strictly

adhered to and employees have been allowed to continue in service, notwithstanding the passing of a departmental ...5/-

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examination. Mr. Mishra further contended that his clients are not interested in getting an exemption from the Governor in exercise of power under proviso to Rule 21, but the direction of the High Court that they should be given an opportunity to pass the departmental examination could not be interfered with in the peculiar facts and circumstances of the present case, when the High Court has considered all pros and cons and has passed the impugned direction.

Having examined the relevant provisions, more particularly rule 21 of the Recruitment Rules, we are of the considered opinion that it would be open for the employer to terminate the services of an employee if the employee concerned has failed to pass the departmental examination within the stipulated period, subject to the power of Governor contained in proviso to rule 21. But at the same time, we cannot lose sight of the fact that in the past several employees have been allowed to continue in their respective post, notwithstanding the fact they have not passed the departmental examination within the stipulated period, and in the case in hand, the fact that the employees concerned were engaged in discharging their duties in public interest should not be totally lost sight of. It is in these circumstances, we do not find that the High Court committed any error by requiring the Government to give the employee an ...6/-

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opportunity of clearing the departmental examination at a higher standard. In the aforesaid premises, we are not inclined to interfere with the impugned direction of the High Court requiring the Government to give an opportunity to the employees to pass the departmental examination. We, however do not approve of the direction to the Governor for considering whether the employees concerned would be exempted from passing the departmental examination. That part of the direction of the High Court accordingly stands set aside.

When the matter was before this Court, the State had obtained an order for stay. We vacate the aforesaid order of stay, and we direct that these respondents be re-instated in service forthwith. They would not, however, be allowed any back wages from the date of termination till the re-instatement, but they will be allowed to get their salary for the period of service they would be rendering hereinafter. The examination in question would be conducted within one year from today and if the respondents fail to take the said examination or fail to pass the examination at the required standard then it would be open for the State to terminate their services thereafter. In the event, they pass

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the examination in question then their continuity in service would be from the date in their appointment.

The appeals are disposed of.

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.....J.  
(G.B. PATTANAİK)

.....J.  
(U.C. BANERJEE)

New Delhi,  
March 13, 2001

.....J.  
(B.N. AGRAWAL)