

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

**RSA No.83 of 1997 (O&M)  
Date of Decision: 14.10.2015**

**Punjabi University, Patiala through its Registrar**

**....Appellant**

**Vs**

**Gobind Kumar**

**....Respondent**

**CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH**

Present: Mr. Ajaivir Singh, Advocate  
for the appellant.

Mr. Vijay Sharma, Advocate  
for the respondent.

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1. *Whether Reporters of local papers may be allowed to see the judgment ?*
2. *To be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

**RAJ MOHAN SINGH, J.**

[1]. Defendant-Punjabi University, Patiala is in second appeal against judgment and decree dated 18.07.1996 passed by Additional District Judge, Patiala vide which judgment and decree dated 30.04.1993 passed by Senior Sub Judge, Patiala was upheld and appeal was dismissed.

[2]. Plaintiff Gobind Kumar filed a suit for declaration and mandatory injunction to the effect that plaintiff was entitled for promotion to the post of Technician T-5 on the basis of seniority-cum-merit when senior most Sh. Manjit Singh refused such promotion and when 100% posts of Technician T-5 were to be filled

up from amongst departmental candidates. Mandatory injunction was sought restraining the defendant from imposing condition of typewriting in English at the speed of 30 WPM and holding of such typewriting test before consideration of names for promotion to the post of Technician T-5. Such a condition was claimed to be not prescribed under departmental service rules which prescribed only qualification and experience for promotion.

[3]. Plaintiff asserted that he being fully qualified having served as Technician T-6 for about 10 years, therefore, was entitled to be promoted as Technician T-5 on the basis of his seniority-cum-merit without the condition of passing of typewriting test with prescribed speed.

[4]. Defendant contested the suit denying promotion as a matter of right besides taking other grounds also. Defendant alleged that plaintiff was required to pass typewriting test with prescribed speed of 30 WPM. Since plaintiff was lacking in his qualification, therefore, he was rightly denied promotion. The defendant alleged that in the meeting of Syndicate held on 16.09.1978 conditions laid down by Punjab University, Chandigarh were adopted for appointment and promotion to the post of technical staff. Knowledge of English typewriting with minimum speed of 30 WPM was the prescribed condition.

[5]. Scorn of unnecessary details, trial Court framed the following details:-

*“1. Whether the plaintiff is entitled to the promotion to*

*the post of Technician T-5 on the basis of seniority? OPP*

2. *Whether the qualifications prescribed as far as qualifications is in English Typewriting at the speed of 30 WPM is essential qualification under the set of rules made under the statutes of the Punjabi University? OPD*
3. *Whether the suit is not maintainable in the present form? OPD*
4. *Relief.”*

[6]. Both the parties led evidence before the trial Court. Trial Court took up the issues No.1 and 2 jointly and held that the reason for not promoting the plaintiff was that he had no knowledge of English typewriting at the speed of 30 WPM. The qualification of typewriting was not prescribed under notified Rules. The additional qualification of English typewriting was introduced by the Head of Botany Department in the Punjabi University, Patiala and was claimed to be unauthorised in prescribing such qualification at his own level. Post of Technician Grade-5 was lying vacant for the last three years and the plaintiff was not being considered for promotion to the post despite, being a senior most Technician Grade-6.

[7]. Plaintiff was appointed as Lab Attendant on 30.06.1987. He sought promotion to the Assistant Technical Grade-5 as Technical Technician Grade II, Technician Grade I, Liquid Nitrogen Plant Operator, Junior Technical Grade II (Stores) were to be given promotion as Technical Assistant Grade-V, subject to fulfilling the

conditions laid down in the promotion channel. 100% promotions were from amongst internal candidates working in the Department from designation Y-6 with eight years experience, keeping in view the confidential reports, job requirement and seniority which was to be tested on the basis of maximum time spent in scale of 480-800 or in the scale of 510-940. If in-service candidates of a particular job were not available for promotion the post was to be filled by way of direct selection. In such an eventuality Head of Department was to confirm that the candidate for the job was not available from lower designation.

[8]. Plaintiff fulfilled the requisite qualification for departmental promotion to the post of Technical Assistant Grade-5 as 100% post of Technical Assistant Grade-5 were to be filled by way of promotion in the Department. One post of Technical Grade-5 was lying vacant in the Department of Botany. It is also admitted position that post of Technical Assistance Grade-5 was also sanctioned in the Department of Human Biology, Chemistry and Physics in the University and Technical Assistant Grade-5 were placed in the same pay grades in their Departments. Same set of qualifications were applicable for promotion in all the Departments. It is also an admitted position that the plaintiff was not promoted because of the reason as set forth in the qualification prescribed for the candidates, requiring passing of English Typewriting Test with speed of 30 WPM. Since plaintiff did not fulfill this qualification, he was ignored for promotion.

[9]. As per the stand of the defendant the Syndicate in its

meeting dated 19.08.1989 separated all Science Departments and thereafter seniority was maintained department wise. The condition of English typewriting test was prescribed only for Department of Botany and in other Science Departments no such qualification was prescribed for promotion to Technical Assistant Grade-5. This additional qualification of typewriting was introduced by the Head of Department of Botany under the term (job requirement). This additional qualification was not approved by the Syndicate. There was a post of clerk in existence in the Department of Botany for doing clerical and typewriting work. No specific order was passed by the University accepting the recommendation made by the Head of Department of Botany prescribing additional qualification of typewriting for promotion to the post of Technical Assistant Grade 5. On these broad features, trial Court decreed the suit and passed a decree for declaration to the effect that plaintiff was entitled for promotion to Technician T-5 on the basis of his seniority-cum-merit without imposition of condition of English typewriting test at the speed of 30 WPM from the due date. Judgement and decree passed by the trial Court was upheld in appeal as well.

[10]. Instant Regular Second Appeal was filed under Section 41 of the Punjab Courts Act. In view of Full Bench judgment of this Court in **Ganpat vs. Smt. Ram Devi and others 1977, PLR Page I,** framing of question of law was having no effect on the maintainability of the appeal. However, in view of amendment of Section 100 CPC, framing of substantial question of law is *sine qua non* for maintaining

regular second appeal in this Court. Prior to amendment, the appeal could have been filed on the ground set out in clause (a) to (c) of Section 100(i) CPC. Now second appeal requires substantial question of law to be framed. The interference cannot be made only because the order is contrary to law, but when the disputed issues raised a substantial question of law. Limiting such a power in the Appellate Authority is based on public policy having roots in the maxim "*interest reipublicae ut sit finis litium*".

[11]. This Court has considered the issue involved in the appeal and formulate the following question of law for consideration:-

“Whether Competent Authority is entitled to examine the job requirement and fix condition of passing of English typewriting test with a speed of 30 WPM for promoting Technical Assistant Grade 6 to the post of Technical Assistant Grade-5, despite the criteria of seniority-cum-merit?”

[12]. The aforesaid mechanism was evolved by the defendant-Department on the basis of meeting of Syndicate dated 16.09.1978 adopting the conditions laid down by the Panjab University, Chandigarh for appointment to the post of technical staff wherein knowledge of English typewriting with minimum speed of 30 WPM was prescribed. The aforesaid inclusion was duly implemented on Birinderjit Singh Sodhi and Sh. Devinder Bhushan who worked on the said post as per requirement of typewriting test. The post was not filled thereafter with the incumbent not knowing English

typewriting as per requirement of the job.

[13]. There were other posts of Technical Assistant Grade-5 which were filled by direct recruitment when suitable candidates were not available and the criteria of knowledge of English typewriting was evolved in their appointment as well. The job requirement in different Departments were claimed to be different as was determined by the Competent Authority of that concerned Department.

[14]. Both the Courts have considered the aspect in detail. The stand of the defendant-University was that the typing condition at the speed of 30 WPM was the pre-requisite for promotion to the post of Technical Assistant Grade-5 as per job requirement of the Department. The job requirement of the Department was to be decided by the Head of the Department and was exclusively under its domain. On the other hand stand of the plaintiff was that the incorporation of the impugned condition of passing the english typewriting test was not in the Rule. This was introduced only by the Head of Department, Botany without the decision of the Executive Committee and without the approval thereof. In other departments this qualification was not approved by the Syndicate of the University. There was no Rule of typewriting test and the Head of the Department was not the appointing authority. The consistent case of the plaintiff was that the subsequent persons were also promoted without insisting the typewriting test as made applicable in the case of plaintiff. Plaintiff already stood retired.

[15]. Evidently, condition of introducing English typewriting test with requirement of speed of 30 WPM was never approved by the Syndicate. Head of Department of Botany was not competent to prescribe any such condition of promotion from departmentally candidates particularly when there were posts of Assistant Technician in other science departments also where no such qualification was prescribed for departmental candidates for promotion. Since 100% posts were to be filled by promotion from amongst internal candidates having eight years experience, therefore, no such distinction could have been made only in Botany Department that too without approval of the Syndicate.

[16]. Plaintiff was fully eligible having eight years of experience for the promotion of Technical Assistant Grade-5. The condition as incorporated by Head of Department of Botany was never approved by the Executive Council of the University, nor was approved by the Syndicate. In other Departments, no such condition was made applicable even the persons subsequently promoted had no such impediment in terms of impugned condition. Under the relevant Rules there was no such requirement of passing of English typewriting test before being promoted to the post of Technical Assistant Grade-5. The Head of the Department of Botany was not the appointing authority of the plaintiff. The plaintiff has already retired.

[17]. Both the Courts have taken realistic approach to the case and the question as formulated above has no obligation, firstly the

Head of Department, Botany cannot formulate such a distinct qualification for departmental employees for promotion. It is apparently against the Rules. The Rules simpliciter was to the effect that on attaining eight years experience departmental candidates were entitled to be promoted to the post of Technical Assistant Grade-5. Plaintiff had the aforesaid qualification. No such qualification was prescribed by Head of the Department of other Science Departments wherein no such condition was existed for promoting Technical Assistant Grade 6 to the post of Technical Assistant Grade 5. The impugned condition was only introduced by Head of the Department of Botany without approval by the Executive Council and by the Syndicate.

[18]. The plea of job requirement cannot be read distinctly from the job requirement prevailing in other Science Departments. The incorporation of such a condition in the Department of Botany that too by the Head of Department only cannot be read as a job requirement over and above the job requirement of other Science Departments where no such condition was prevailing. The fixing of condition under the garb of job requirement was the result of colourable exercise of powers that too was undertaken by the Head of Department, Botany without approval of Executive Council of the University and the Syndicate also.

[19]. In view of aforesaid, the fixing of additional qualification under the job requirement is discriminatory and is *per se* illegal which could not have been enforced by the Head of Department, Botany.

The cumulative consideration of question of law as framed above has to be answered in favour of the plaintiff that no such qualification could have been framed by the Head of Department, Botany under the garb of job requirement.

[20]. Resultantly this appeal is totally found to be bereft of merit and the same is accordingly dismissed.

October 14, 2015

*Atik*

**(RAJ MOHAN SINGH)**  
**JUDGE**