

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

**CWP No.13682 of 2012
Date of decision: 11.02.2015**

Om Parkash

.....Petitioner

versus

State of Haryana and another

....Respondents

**CORAM: HON'BLE MR. JUSTICE SATISH KUMAR MITTAL
HON'BLE MR. JUSTICE DEEPAK SIBAL**

Present: Ms. Pratibha Yadav, Advocate
for the petitioner.

Mr. Sudeep Mahajan, Addl.A.G. Haryana.

Deepak Sibal, J.

The main challenge in the present writ petition is to the order dated 17.07.2012 (Annexure P-9) through which the petitioner was ordered to be reverted from the post of Clerk to the post of Peon. The ground on which the petitioner was sought to be reverted was that as per the Haryana Financial Commissioner's Office (Group-C) Service Rules, 1998 (hereinafter referred to as the 'Rules'), he was not matriculate with English and that being the requirement under the Rules, the order of reversion was passed.

The facts in brief, which are not in dispute are that the petitioner joined as a Peon in the Office of the Financial Commissioner Haryana on 01.12.1997. He had passed his Matriculation examination on 12.06.1989 and has also done training in the trade of Steno in Hindi. On 01.02.2010, the petitioner was promoted to the post of Clerk, subject to the approval of Haryana Staff Selection Commission, Panchkula. As his promotion was subject to the approval of the

Haryana Staff Selection Commission, on 20.10.2010, the Commission recommended the appointment of other employees but the promotion of the petitioner was not approved.

Resultantly, after issuance of show-cause notice and consideration of the reply filed by the petitioner, the order of reversion dated 17.07.2012 was passed.

It is against this order of reversion that the petitioner has approached this Court through the present petition.

We have heard learned counsel for the parties and with their able assistance, have gone through the record of the case.

Before we proceed further with the matter, it would be appropriate for us to reproduce the relevant Rule under which the petitioner's case was considered and on the basis of which the reversion order was passed.

“7. No person shall be appointed to any post in the Service, unless he is in possession of qualifications and experience specified in column 3 of Appendix B to these rules in the case of direct recruitment and those specified in column 4 of the aforesaid Appendix in the case of persons appointed otherwise than by direct recruitment:

Provided that in the case of appointment by direct recruitment, the qualifications regarding experience shall be relaxable to the extent of 50% at the discretion of the Commission in case sufficient number of Candidates belonging to Scheduled Castes, Backward Classes, Ex-servicemen and Physically Handicapped categories possessing the requisite experience, are not available to fill up the vacancies reserved for them, after recording reasons for so doing in writing.

APPENDIX B

(See Rule 7)

Sr. No.	Designation of posts	Academic qualifications and experience, if any, for direct recruitment	Academic qualifications and experience, if any, for appointment other than by direct recruitment
1 to 14.	XX	XX	XX
15.	Clerk	(i) Matric Ist Division/Higher Secondary Second Division/Intermediate Second Division/10+2 (Vocational) Second Division/Graduate or equivalent; (ii) Knowledge of Hindi upto Matric Standard; (iii) should pass the prescribed test in Hindi or English typing at the speed of 25/30 words per minute respectively within a period of one year from the date of appointment, failing which he would not be allowed annual increment(s) till he passes the prescribed typing test. On passing the typing test, he will be allowed due increment(s) without arrears.	(i) Matric with English and Hindi; (ii) Should pass departmental written test in Hindi and English languages upto Matric Standard; (iii) 5 years experience as Restorer, Duplicating Machine Operator etc. or on any Group D post i.e. Peon, Chowkidar or Frash etc. or combined; (iv) Should pass the prescribed test in Hindi or English typing at the speed of 25/30 words per minute respectively within a period of one year from the date of appointment, failing which he would not be allowed annual increment(s) till he passes the prescribed typing test. On passing the typing test, he will be allowed due increment(s) without arrears; By transfer or deputation:- (i) Matric Ist Division/Higher Secondary Second Division/Intermediate Second Division/10+2

Sr. No.	Designation of posts	Academic qualifications and experience, if any, for direct recruitment	Academic qualifications and experience, if any, for appointment other than by direct recruitment
			(Vocational) Second Division/Graduate or equivalent; (For Ex-servicemen, Matric or 15 years service in the Army with Army Certificate of Class I; (ii) Knowledge of Hindi up to Matric standard; (iii) Should pass the prescribed test in Hindi or English typing at the speed of 25/30 words per minute respectively within a period of one year from the date of appointment, failing which he would not be allowed annual increment(s) till he passes the prescribed typing test. On passing the typing test, he will be allowed due increment(s) without arrears; (iv) 3 years experience as Clerk.

From the above reproduced Rule and Appendix, it is clear that for promotion to the post of Clerk, an employee who has passed Matric with English and Hindi is eligible. It is not in dispute that the petitioner has passed his Matriculation examination in which he studied the subjects of English and Hindi. Once the petitioner has been declared to have passed the Matriculation examination with the subjects of English and Hindi, according to us, the requirement under the

Rule for the purpose of promotion is satisfied. The certificate given by the Board of School Education Haryana (Annexure P-1) clearly shows that the petitioner had passed his matriculation examination in Second Division. This was irrespective of the fact that he had not obtained pass marks in the subject of English. The requirement of the Rule is only that an employee should have passed his Matriculation examination and while doing his Matric, English and Hindi should be there as two subjects. Requiring, the petitioner to have passed in the subject of English, in addition to passing the Matriculation examination, would be adding words to the Rule, which as per the settled law of statutory interpretation is not permissible, particularly when the Rule is unambiguous.

The action of the respondents in reverting the petitioner is also discriminatory. The petitioner had given several examples wherein the respondents had promoted several Class-IV employees to the post of Clerk who had also while failing in the subject of English had passed the Matriculation examination. The petitioner had specifically pleaded the case of one Raj Kumar, who was promoted to the post of a Clerk on adhoc basis and then regularized in the year 2000. He had not passed English but otherwise, had passed his Matriculation examination like the petitioner. This fact has been admitted by the respondent-State. In fact, counsel appearing on behalf of the State admitted that aforesaid Raj Kumar was promoted on officiating basis on 9.10.2000 and only after getting advice from the Chief Secretary to Government, Haryana, the service of the said Raj Kumar were regularized as a Clerk.

Similarly, the petitioner has pleaded that one Durga Dass, who was a Chowkidar was promoted to the post of Clerk on 16.10.2000. He also was identically situated like the petitioner. So far as the, Durga Dass's case is concerned, the same has also been admitted by the respondent-State.

The record reveals that another employee namely Rajesh Kumar Jaspal was promoted as a Clerk on 01.12.2009. He had failed in English but had passed his Matriculation examination. In his case, the Staff Selection Commission, Haryana, granted approval on the ground that he had passed 10+2 examination in which English was also a subject. This fact has also been admitted by the respondent-State.

In view of the above facts, we have no doubt in our minds that action of the State in reverting the petitioner is grossly discriminatory. It is, thus, violative of the Articles 14 and 16 of the Constitution of the India.

It may further be noticed that the petitioner joined as a Peon on 1.12.1997 and after putting in more than 12 years of unblemished service, he was promoted to the post of Clerk. His reversion order was stayed by this Court at the time of preliminary hearing. Moreover, as on date, the petitioner has served the department as a Clerk for over five years. We are informed that the service record of the petitioner is unblemished.

In view of the above, the present writ petition is allowed. Resultantly, the impugned order dated 17.07.2012 (Annexure P-9) is set aside with all consequential benefits.

(SATISH KUMAR MITTAL)
JUDGE

(DEEPAK SIBAL)
JUDGE

11.02.2015
Jyoti 1