

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C. W. P.No. 14759 of 2013

Reserved On : November 17, 2015

Pronounced On : 01.12.2015

Sunil Kumar and others Petitioners

vs.

State of Haryana and others Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL.

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To be referred to Reporters or not ?

Whether the judgment should be reported in the digest ?

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Present : Mr. R. K. Mallik, Senior Advocate
with Mr. Kuldeep Shoeran, Advocate
for the petitioners.

Mr. Harish Rathee, Senior DAG, Haryana.

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DEEPAK SIBAL, J. :

Through the present petition, the petitioners, who are Class IV employees, seek promotion to the post of Data Compilation Clerks.

Shorn of unnecessary details, the relevant facts, which are borne out from the record of the case and which have emerged from the arguments raised at the bar are that the Excise and Taxation Commissioner, Haryana decided to fill up 36 posts of Data Compilation Clerks from Class

IV employees, who, for being considered for such promotion, were required to pass a test, have five years of regular service, be matriculates and were required to have also passed one-year Computer Application course with 50% marks.

In pursuance to the aforesaid decision, a test for the eligible candidates was held, which was cleared by 10 persons, who were promoted as Data Compilation Clerks. For the remaining 26 posts, the Excise and Taxation Commissioner, Haryana wrote to all the concerned Officers in the State to fill them up from persons having the same eligibility and by following the same procedure, as had been followed while filling up the earlier 10 posts. The petitioners, who were eligible Class IV employees, appeared and cleared the test, which was conducted on 04.12.2012. However, they were not appointed on the ground that on 11.10.2013, the Government had taken a decision to change the nomenclature of the post of Data Compilation Clerk to Clerks and bring them under the purview of Haryana Excise and Taxation Commissioner's Office (Group-C) Service Rules, 1980 (hereinafter referred to as – the Rules). In view of the aforesaid decision taken by the Government, 10+2 now became the eligibility qualification and as all the petitioners were matriculates, they were denied promotion.

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

It is not disputed that the process of selection for appointment

against 26 vacancies commenced through letter dated 31.10.2012 issued by the Excise and Taxation Commissioner, Haryana and that in pursuance thereof, on 04.12.2012, the test was conducted for all eligible candidates, including the petitioners. The record reveals that the letter dated 31.10.2012 was issued after getting approval from the Finance Department. It further remains uncontroverted that the petitioners were declared to have passed the test on 10.12.2012 and thereafter, were only awaiting their respective appointment orders. At that stage, the eligibility was changed and the petitioners were denied promotions. Once the entire process of selection was over, at that stage, the respondents could not have changed the rules of the game and any change made by the Government at that stage would apply prospectively and not to the persons like the petitioners, who had already gone through the entire process of selection and were virtually awaiting their promotion orders. This view of mine finds support from a judgment of the Apex Court in **Hemani Malhotra vs. High Court of Delhi – 2008 (7) SCC 11**, wherein it has been held as under :-

“9. From the proposition of law laid down by this Court in the above mentioned case it is evident that previous procedure was not to have any minimum marks for vive-voce. Therefore, prescribing minimum marks for vive-voce was not permissible at all after written test was

conducted. There is no manner of doubt that the authority making rules regulating the selection can prescribe by rules the minimum marks both for written examination and vive-voce, but if minimum marks are not prescribed for vive-voce before the commencement of selection process, the authority concerned, cannot either during the selection process or after the selection process add an additional requirement/qualification that the candidate should also secure minimum marks in the interview. Therefore, this Court is of the opinion that prescription of minimum marks by the respondent at vive-voce, test was illegal. [Emphasis supplied]”

Admittedly, at the time when the case of the petitioners was considered, there were no Rules governing the service conditions laying down the qualifications with regard to the posts in question. Thus, at that time, the posts in question could have been filled up through qualifications laid down through an administrative order, as was done. In fact, there were 36 posts in all and 10 out of them were, in fact, filled up by following the same process, which the petitioners had also gone through. Once those 10

persons had been allowed to join on the promoted posts, then there is no reason in fact or in law to deny promotion to the petitioners, especially when there was no decision taken by the Government or amendment made to the Rules before the petitioners had gone through the entire process of selection and were only awaiting orders of their appointment by way of promotion.

As noticed above, the petitioners, who were eligible, were declared to have passed the test on 10.12.2012. Admittedly, the amendments, which are made the basis to deny promotion to the petitioners, were made on 11.10.2013 i.e. after a delay of over 10 months. The delay in issuing of promotion orders in the case of the petitioners can only be attributed to the respondents and for such delay, the petitioners cannot be made to suffer. Once the entire selection process was complete and there was no reason for the State to deny promotion to the petitioners, order with regard to their promotion should have been passed within a reasonable time. The delay on the part of the State cannot be allowed to act to the prejudice of the petitioners.

In view of the above, the writ petition is allowed. The cases of the petitioners be considered for promotion to the post of Data Compilation Clerks, in accordance with the eligibility prescribed in the letter dated 31.10.2012, issued by the Excise and Taxation Commissioner, Haryana (Annexure P-6). As three months' time would have been reasonable for issuance of orders of promotion after the petitioners had cleared the entire

process of selection on passing of the prescribed test on 10.12.2012, they are held entitled to all consequential benefits with effect from 10.03.2013.

No costs.

**(DEEPAK SIBAL)
JUDGE**

Pronounced On : 01.12.2015
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