

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

**CWP No.13606 of 2015
Date of decision: 2.12.2015**

Sunil Kumar ... Petitioner

Versus

State of Punjab & anr. ... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Inderjit Kaushal, Advocate,
for the petitioner.

Mr. Harkesh Manuja, Addl. A.G., Punjab.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.(Oral)

1. The petitioner was borne on the strength of the establishment of the Sessions Division, Ludhiana where he was working as an Ahlmad in one of the Courts there. He competed for direct appointment as a Senior Assistant in the Punjab State Legal Services Authority for which Hon'ble the Chief Justice granted him exemption from the computer type test as he was an amputee suffering loss of right forearm. That exemption was applicable to the post of Clerk in the Ministerial cadre. The prescription of type test exists for the post of Clerk in terms of Rule 15 of the Punjab Civil Service (General and Common Conditions of Service) Rules 1994 as amended up to January 15, 2015, but the qualification of passing type test does not travel beyond the post of Clerk.

2. Though the petitioner was selected for appointment to the Punjab State Legal Service Authority as a Clerk but he did not accept the offer as in the meanwhile he has competed successfully for the higher post of Senior Assistant in the department of General Administration, Government of Punjab, Chandigarh. His case has been rejected on account of being an amputee and by expressing doubts that he would not be able to cope up with the work of typing with the help of the computer keyboard.

3. However, the medical certificate issued to the petitioner by the Medical Board constituted by the Government certifies the petitioner as able to use the manual typewriter. But that restriction would cast its shadow only if he was a clerk. The petitioner has qualified the competitive examination on merits but since there was a condition that a Senior Assistant in the General Administration Department would have to do typing work on the computer he applied for exemption and relaxation of rule citing the decision of Hon'ble the Chief Justice in his favour when he applied for the post of Clerk in the Punjab State Legal Services Authority and permission was accorded in relaxation of rule governing the establishment of the State Legal Services Authority then his case be considered favourably by the respondent department/State. The request has been rejected by the Government ruling that to be a Senior Assistant in the Branch, the petitioner would have to discharge duties of typing on the computer and incumbent Senior Assistant would also have to record notings on the files of the Government.

4. This contention raised on behalf of the State is not

sustainable in the opinion of this Court. This is for the following reasons; firstly, the petitioner is already working as an Ahlmad in Sessions Division, Ludhiana and would obviously be discharging full duties of Ahlmad which are equally if not as onerous as the duties of the Senior Assistant in a General Administration Branch.

5. Mr. Inderjit Kaushal submits that if his client can work as an Ahlmad then he can discharge the duties of the post of Senior Assistant and the empirical test has not been allowed to be performed by actually seeing the work of the petitioner in the workplace in the General Administration Branch. This opportunity has been denied to him which if had been given he would easily demonstrate that he can discharge duties attached to the post. He can write with his good left hand.

6. In view of these facts, and in the special and peculiar circumstances of the case, this writ petition is allowed and the impugned order rejecting the case of the petitioner for appointment as Senior Assistant is quashed by issuing a writ of certiorari.

7. Resultantly, a writ of mandamus is issued to the respondents to consider appointing the petitioner as Senior Assistant against the vacancy earmarked for persons with disabilities under the provisions of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 which reserves 3% of the posts for appointment to public service. In the event of appointment offered and letter issued and accepted, then the Sessions Division, Ludhiana would relieve the petitioner of his duties without delay to enable him to join the post of Senior Assistant in the General Administration Department of the

Punjab Government within the time allowed to which he has been selected on merits in open competition.

(RAJIV NARAIN RAINA)
JUDGE

2.12.2015
monika