

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

Date of Decision : 17.03.2015

1. C.W.P. No. 28424 of 2013 (O&M)

Smt.Harsharan Kaur

..... Petitioner

versus

Haryana Urban Development Authority & anr.

..... Respondents

**2. CM No.14635 of 2014 in/and
C.W.P. No. 6245 of 2014 (O&M)**

Chander Parkash

..... Petitioner

versus

Haryana Urban Development Authority & anr.

..... Respondents

3. C.W.P. No. 26003 of 2014 (O&M)

Sahib Ram

..... Petitioner

versus

Haryana Urban Development Authority & anr.

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr.Ashok Tyagi, Advocate
for the petitioner/s in CWP No.28424 of 2013
and CWP No.26003 of 2014

Mr.Sourabh Goel, Advocate
for the petitioner in CWP No.6245 of 2014.

Mr.Ajay Nara, Advocate
for the respondent-HUDA
in CWP No.28428 of 2013

Mr.Amit Jaiswal, Advocate
for the respondent-HUDA
in CWP No.6245 of 2014.

Mr.Pritam Saini, Addl. A.G.,
for the respondent-HUDA
in CWP No.26003 of 2014.

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

AIJAY TEWARI, J. (Oral)

CM No.14635 of 2014 in CWP No.6245 of 2014

For the reasons recorded, the application is allowed.

Written statement alongwith annexures is taken on record.

CWP Nos. 28424 of 2013, 6245 and 26003 of 2014

This order shall dispose of all the three writ petitions. Since common questions of law and fact are involved therein, these petitions are being decided by this common order.

By these writ petitions, the petitioners have challenged the order of retiring them at the age of 55 and before the age of 58. All the petitioners were appointed as Clerks on daily wages/ad hoc basis and were ultimately regularized. One of the conditions of their regularization was that they would pass a typing test, failing which they would not be entitled to increments. Consequently the increments were stopped because the petitioners did not pass the typing test and prior to the date they attained the age of 58 they were sought to be compulsorily retired on the ground that having not learned typing for more than half a decade they had become deadwood and were lacking professional integrity. It is this action which has been challenged.

At the very outset, learned counsel for the respondents has argued that similar situated petitioners had filed CWP No. 13917 of 2010 titled as "*Kulwant Singh Vs. State of Haryana and another*" which was dismissed on 28.04.2011 and an appeal against that bearing LPA No.972 of 2011 was also dismissed on 30.05.2011 by the Division Bench holding as follows :-

"Having heard learned counsel we are of the considered view that once the appellant has continuously remained unsuccessful in passing of the type test then his professional utility as a Clerk is considerably reduced and no fault can be found if he has been compulsorily retired. After all the basic object of Rule 3.26(d) of the Punjab Civil Services Volume-I Part-I, which are applicable to the appellant, is only one i.e. to weed out the inefficient and corrupt who have lost their utility. Accordingly, we are of the view that the learned Single Judge has correctly applied the principle emanating from the judgment of Hon'ble the Supreme Court rendered in the cases of Baikuntha Nath Das v. Chief District Medical Officer, Baripada, AIR 1992 SC 1020. The appeal does not merit admission and the same is accordingly dismissed."

Learned counsel for the petitioners are not in a position to cite any contrary judgment on the point. However, they have cited "*District Rural Development Agency, Jind and another Vs. Wassan Singh & another*" reported as 2014 LIC 3390 and particularly paras 8 & 9 thereof which are as follows :-

"8. Learned Single Judge has rightly said that to invoke the provisions of the Rule, no material was available with the authorities. The relevant portion of the order dated 12.09.2012 reads thus:-

“Although Rule 3.26(d) of the Punjab Civil Service Rules do confer an absolute right on the employer to dispense with the services of an employee on attaining the age of 55 years but the same cannot be exercised in an arbitrary manner, especially when scope and ambit of the said rule is further qualified by the instructions dated 19.11.1991 issued by the State of Haryana in the light of fact that the said instructions were issued in exercise of the powers conferred on the Government. According to these instructions, the compulsory retirement of a Government employee can be made if he is a dead wood and for that parameters have been laid down. The Annual Confidential Reports have been held to be parameters to assess the competence of an employee. In the present case, it has not been disputed that the work and conduct of the petitioner was very good and, therefore, action of the respondents merely on the ground that there is no work available with them, cannot be accepted.”

9. There is nothing on the record to show that respondent No.1 was a dead wood or that he did not fulfill the parameters so far as standard of work is concerned. Admittedly, there is nothing against respondent No.1 so far as his confidential reports are concerned.”

In my opinion the judgment cited by learned counsel for the respondents has greater applicability since it is directly related to the persons who are identically situated as the petitioners.

No other point has been argued.

Consequently the petitions are dismissed.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

March 17, 2015

Pooja Sharma-I

**(AJAY TEWARI)
JUDGE**