

LPA No.557 of 2015(O&M)
Date of Decision: April 10, 2015

**CORAM: HON'BLE MR.JUSTICE SATISH KUMAR MITTAL
HON'BLEMR.JUSTICE HARINDER SINGH SIDHU**

HARINDER SINGH SIDHU, J.

The appellant was appointed as a Clerk in HUDA on ad-hoc basis on 02.09.1987. His services were regularized w.e.f. 01.04.1993 along with a number of other ad hoc clerks. It was one of conditions of the regularization that the ad-hoc clerks regularized would be required to pass a departmental type test either in English or Hindi typewriting with a speed of

30/25 WPM respectively within one year from the date of joining service failing which, they would not be allowed annual increment. It was specified that the annual increment would accrue only from the date of passing the said test. Despite his having served in HUDA for over 19 years, the appellant failed to clear the typewriting test

When the appellant's case for extension in service beyond the age of 55 years was considered and reviewed in the light of the Government instructions, he was found lacking in professional integrity for having failed to pass the type test as per the conditions of his appointment order. It was found that by not learning the typing skills, he had not been able to discharge the duty of a Clerk in an efficient manner. His retention in service beyond 55 years was considered to be against the public interest and vide order dated 13.10.2014, he was ordered to be retired on completion of three months from the date of issuance of notice.

It is this order, which, the appellant had impugned by filing the writ petition, which was dismissed.

Learned Single Judge while dismissing the writ petition relied on a decision of this Court in CWP No.13917 of 2010. That writ petition had been filed by similarly situated persons and was dismissed vide order dated 28.04.2011. LPA filed there against was dismissed on 30.05.2011 by observing

as under:

“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 appellant has argued that as per Government instructions dated 19.11.1991, an employee can be prematurely retired in public interest only if he has earned less than 50% to 70% good or above reports during the last 10 years and there should be an entry regarding doubtful integrity during this period. It is contended that there are no adverse reports against the appellant and his record is excellent and hence the impugned order is wholly unjustified.

It is not possible to agree with the contention of learned counsel for the appellant. The judgment relied on by the learned Single Judge, as extracted above, fully applies to the case of the petitioner. It has been held therein that once the employee has continuously remained unsuccessful in passing the typing test, his professional utility as a Clerk is reduced and no fault can be found if he is compulsorily retired.

It is settled by Hon'ble the Supreme Court that the order of compulsory retirement is neither punitive nor stigmatic. Government has an absolute right to prematurely retire an employee where his continuance is not in public interest and the Court will not interfere with such a decision unless it is shown to be arbitrary or perverse.

Considering the fact that the appellant who was working as a clerk failed to pass the typewriting test as stipulated in the order of his regularization, even 19 years after passing of such order, no fault can be found with the decision of the authorities to compulsorily retire him for his failure to discharge the duties of clerk in an efficient manner.

Accordingly, there is no merit in this appeal and the same is dismissed.

(SATISH KUMAR MITTAL)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

April 10, 2015

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