

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

**COCP No.2970 of 2012 (O&M)
Date of Decision:19.09.2016**

Harbans Singh Petitioner

Vs.

J.C. Sabharwal & anr.Respondents

CORAM:- HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present:- Mr. K.L. Arora, Advocate for the petitioner.

 Mr. Anant Kataria, DAG, Punjab.

 Mr. Sandeep Khunger, Advocate for respondent No.2.

RAKESH KUMAR JAIN, J.(Oral)

 This petition is filed for the alleged disobedience of the order dated 21.3.2012 passed in CWP No.12355 of 2005. The operative part of the order read as under:-

 “Admittedly, in the seniority list of Class IV employees, name of the petitioner falls at Serial No.5 as he joined the post of Peon on 26.12.1984, whereas, the name of respondent No.3 figures at Sr. No.20 who joined as Peon on 25.11.1992. This fact is not in dispute. It is also admitted by the Municipal Council that as per the Government instructions, 10% class III posts shall be filled up by way of promotion from Class IV employees, which has been further increased to 15%. It is also relevant to note that it is admitted by the Council that 27 newly created posts have been sanctioned which are temporary in

nature and were filled up on contract basis from transferred staff of PSIEL/L.TOP.

Admittedly, respondent No.3 is junior to the petitioner and has been promoted as Clerk from the post of Peon. As per the Government instructions at the relevant point of time that 10% posts of Class III category i.e. post of Clerk is available for promotion from Class IV posts i.e. Peons. Since the petitioner is senior than respondent No.3 and quota is also fixed by the State Government, the case of the petitioner is required to be considered for promotion in accordance with the provisions w.e.f. the date his junior has been promoted.

In view of this, the instant writ petition is allowed. Direction is issued to the respondents that in case, the petitioner is found fit for promotion, he will be promoted with effect from the date his junior respondent No.3- Ravinder Singh has been promoted as Clerk with all consequential benefits of service including seniority. The decision in this regard shall be taken within three months from the receipt of a certified copy of this order.”

After notice, respondents have filed the reply along with speaking order dated 17.1.2013. The relevant part of the speaking order is as under:-

“Sh. Ravinder Singh was promoted in year 2003. As per office record, the budget of year 2003-04 had 50 sanctioned posts of clerk and junior assistants out of which 49 posts were

filled and 1 post was vacant. As per Punjab Government Order No.1/94/2012-3SS1/3154-58, Dated 13-08-2012, 40 posts of clerks are sanctioned in Municipal Corporation. At present, 29 posts of Junior Assistants and Clerks including Ravinder Singh are filled and 11 posts are vacant.

Against the 40 sanctioned posts of clerks and as per Government policy, there are 6 posts as per 15% quota fixed for promotion. Out of these 6 posts, 5 posts including Sh. Ravinder Singh are filled.

Sh. Ravinder Singh was promoted in accordance with Punjab Government Letter No.FCA/12/10/96-3-PAII/14190 dated 27.10.1998 which read as;

“There should be a provision for filling up 15% of class-III (clerks) post by promotion from amongst class IV employees, who possess a minimum educational qualifications of matriculation (with Punjabi) and have a minimum of 5 years experience as such.

1. There should be a provision for qualifying test in Punjabi typewriting which should be equal to the one prescribed by the SSS board for such posts and it should be made essential to pass the test before a class IV employee is considered eligible for promotion. The test may be held by the appointing authority or any such authority to whom the power for doing so are eligible by the appointing authority.”

In the light of the above policy, the then Municipal

Council decided to conduct a type qualifying test on 08.11.2000 for promotion of Class IV (Peon) to Class III. Due to administrative reasons, the test was postponed to 10.11.2000. 25 Class IV employees, including 2 petitioners (Peon) noted this test and on 10.11.2000, 14 employees were present, out of these 14 employees, 11 employees sought time to practice typing, and 3 employees took the type test, but none of them passed the test. Municipal Council again fixed date for a type test on 10.08.2001, in which out of 16 employees, 8 employees appeared. Out of these 8 employees, 5 employees took the test and the remaining 3 again sought time to practice typing. Even these 5 employees could not pass the test. This test was again fixed for 06.03.2002, in which 4 employees appeared, of which 3 sought time again and only 1 peon Sh. Ravinder Singh took the test and passed it. The petitioners, despite having been given various opportunities, could not pass the type test, due to which they were not promoted.

In this way, as per records, before promoting Sh. Ravinder Singh, all the Peons were asked to take the type test and as per their demands, 17 months time was given to these employees for preparation, but none of the employees except Sh. Ravinder Singh passed this test., due to which in accordance with above mentioned instructions/ policy, through resolution no.376 dated 30.09.2002 only Sh. Ravinder Singh was promoted as clerk.

Whereas, now according to the recent Punjab Government Policy no.9/11/09-4PP1/9854 dated 25.08.09, for promotion to Class III from class IV, the employees should possess the following qualification:

1. Minimum matric pass with Punjabi and 5 years experience as such,

2. The employee should have passed a Punjabi type test, as per instructions of SSS board for the same; before he be considered for promotion to Class III.

As per the above policy, all Class IV employees are hereby given another chance to pass the type qualification test so that as per policy/ instructions and in compliance of orders of the Hon'ble High Court, a decision for their promotion can be taken. The type test for the same has now been fixed for 06.02.2013. On passing the said type test, the eligible candidates will be considered for promotion against the vacant posts.

Apart from this, the petitioners of CWP No.17193 of 2004 who have been working on the post of higher responsibility, will be paid the salary of the work done on the post of Octroi Clerk of higher responsibility, as per the orders of the Hon'ble High Court. The concerned petitioners are to file their respective claims for the same in this office within 15 days of the date of these orders. Their claim as per rules, after verification by this office shall be paid to them within next 15

days.”

Counsel for the petitioner has argued that the direction was issued by this Court to consider the case of the petitioner for promotion in accordance with the provisions with effect from the date his junior was promoted and in case he is found fit for promotion, he shall be promoted with effect from the date his junior- respondent No.3- Ravinder Singh was promoted as Clerk, with all consequential benefits including seniority whereas counsel for the respondents has submitted that both the directions issued by this Court have been duly complied with inasmuch as the case of the petitioner has been considered for promotion in accordance with the provisions from the date his junior was promoted but the petitioner was not found fit for promotion because he was not found qualified for it.

Counsel for the petitioner has submitted that the respondents could not have rejected the case of the petitioner on the ground that he had not passed the type test as it was not ordered by this Court. It is further submitted that it was only ordered that if the petitioner is found fit for promotion then he should be promoted from the date his juniors were promoted and insofar as the fitness is concerned, the respondents were required to consider only his service record and nothing else. In this regard he has relied upon the decisions of this Court in the case of Shri Vidya Ram v. State of Haryana, 1995(3) S.C.T. 50 and Joginder Singh v. State of Punjab, 1994(1) SLR 411, judgment of the Bombay High Court in the case of Chimanrao Morbaji Patil v. State of Maharashtra and others, 2012(4) S.C.T. 60 and a Division Bench judgment of the Andhra Pradesh High Court in the Case of A. Vema Reddy v. Controller General of Defence

Accounts, New Delhi, 2002(2) S.C.T. 147.

On the other hand, counsel for the respondents has submitted that the judgments relied upon by the petitioner are not applicable because even respondent No.3 who was allegedly junior to the petitioner was not promoted till he passed the type test, in consonance with the instructions issued by the State Government and the petitioner, though, had the opportunity to clear the type test but he never availed the said opportunity and thus in the absence of having cleared the type test, he was not found eligible for promotion.

I have heard learned counsel for the parties and after examining the available record, am of the considered opinion that the direction issued by this Court was two-fold i.e. consideration of the petitioner's case for promotion in accordance with the provisions and in case he is found fit then to be promoted from the date his junior was promoted. Both the directions have been duly complied with by the respondents as the case of the petitioner has been considered for promotion but it has been rejected by them by passing the order dated 17.1.2013. Consequently, the present contempt petition has virtually become redundant but in case the petitioner is not satisfied with the order passed by the respondents, rejecting his claim for promotion, he would be at liberty to avail his remedy, if any, in accordance with law, if so advised.

September 19, 2016
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(RAKESH KUMAR JAIN)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No