

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CWP No. 10329 of 2014

Date of decision : 26-02-2016

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Sohan Pal

.....Petitioner

Versus

State of Haryana and others

.....Respondents

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Amit Singla, Advocate for the petitioner.

Mr. Rajesh Gaur, Addl. A.G, Haryana.

Mr. Raman B. Garg, Advocate for
Mr. Hitesh Pandit, Advocate for respondents no. 2 to 4.

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1. *Whether Reporters of Local Newspapers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the digest?*

RITU BAHRI, J

The petitioner is seeking writ of certiorari for quashing the order dated 17.10.2013 (Annexure P-1) and the order dated 10.07.2013 (Annexure P-2) passed by respondent no.2, by which the petitioner has been retired on account of not passing the typing test.

The petitioner was appointed on the post of Oil man on 15.2.1980. Thereafter, he was promoted to the post of Clerk w.e.f

9.1.1988 with a probation period of one year extendable to 2 years. As per the condition no.3 of the promotion orders, the petitioner was required to pass the type test either in English or Hindi with a speed of 30/25 words per minute within one year from the date of joining at the post of Clerk. Condition no.3 is being reproduced herein below:-

“3. The officials will be required to pass the type test either in Hindi/English at a speed of 25/30 W.P.M respectively within one year from the date of joining as Celerk, failing which they will not be allowed an annual increment(s). The annual increment(s) due will be released from the date on which the test is qualified. The increments shall however, be released with retrospective effect, it was otherwise due, but no arrears will be paid for the past period”.

Counsel for the petitioners has argued that as per the Instructions dated 27.11.2007 (Annexure P-3) issued by the Chief Secretary to Government of Haryana, Civil Secretariat, Chandigarh to all Heads of Departments, Boards and Corporations, the employees who have crossed the age of 45 years, they shall be exempted from passing the departmental typing test. He has also made reference to the judgment passed by this Court in **CWP No. 6728 of 2013** titled, **‘Randjir Singh vs. Chief Administrator, HUDA and others’** and **CWP No. 4991 of 2013** titled, **‘Balwan Singh vs. HUDA and another’** decided on 14.1.2014, wherein the petitioner was promoted

from the post of Baildar to the post of Clerk in the year 1999 with the stipulation that he was to pass the type test either in Hindi or in English at the speed of 25-30 words per minute within a period of one year from the date of joining on the post of Clerk. The stand taken by the respondent in that case was that a condition of typing test had been imposed by the competent authority in terms of service rules called the Haryana Urban Development Authority Services Regulations, 1989. Ever since his promotion as Clerk since the year 1989, the petitioner could not clear the typing test. The order passed by the authorities of compulsory retirement was upheld in view of the the Division Bench judgment of this Court in the case of **Kulwant Singh vs. State of Haryana and another, 2011 (4) SLR 413** as it was neither malafide nor arbitrary. However, taking a lenient view, the petitioner was retained on the lower post of Peon where he had been working before his promotion to the post of Clerk. Against the above said judgment, HUDA had filed an LPA which was subsequently withdrawn on 18.11.2014.

Counsel for the respondent at the same time has referred to another judgment passed by a Coordinate Bench of this Court in the case of **Shri Momen Ram vs. State of Haryana and others (CWP No. 5491 of 2013)** decided on **19.3.2015**. In this case, the petitioner was promoted to the post of Clerk in the year 1993. In his promotion order, a condition had been imposed that he would have to pass type test in Hindi and English at the speed of 25 W.P.M and 30 W.P.M respectively within one year from the date of joining as Clerk

failing which, he shall not be allowed annual increments. The petitioner did not pass the type test and continued to work without earning any increments. He was compulsorily retired at the age of 55 on the ground that he did not make any efforts to pass the type test as per the condition of his promotion order. Following the ratio of judgment laid down in the case of ***Kulwant Singh (supra)***, the writ petition was dismissed by observing that the impugned order was neither stigmatic nor it had been passed as result of measure of punishment and that the Government has a right to weed out those officials who have lost their utility.

Heard counsel for the parties. The petitioner cannot derive any benefit from the judgment in ***Randjir Singh's case (supra)*** referred above as in that case, on merits, the order of compulsory retirement had been upheld. In ***Kulwant Singh's case (supra)***, there was a condition in the promotion order that the petitioner was to clear the type test but he could not qualify the same in spite of ample opportunities. Ultimately, he was retired on completion of 55 years of age and that order was challenged in the writ petition, which was dismissed. The order did not require further judicial scrutiny as it was neither malafide or arbitrary as per the principles laid down in the case of ***Baikuntha Nath Das and another vs. Chief District Medical Officer, Baripada and another AIR 1992 SC 1020***. The counsel for the petitioner cannot get the benefit of the judgment of this court passed in the case of ***Prem Chand and another vs. The state of Haryana and others 2010 (4)***

RSJ 694. In that case the benefit of increment was denied to the petitioners who had been promoted from Class IV Posts to Clerk but could not pass the type test. It was held that increment cannot be held for want of passing of type test. Condition of passing type test in the promotion letter itself is without statutory backing, therefore, liable to be quashed. Authority was directed to release the increments of the petitioner.

The petitioner was promoted on the post of Clerk way back on 9.1.1988. with the condition that he shall be required to pass the type test either in English or Hindi with a speed of 30/25 words per minute within one year from the date of joining at the post of Clerk. At this stage, he cannot raise a grievance that on account of non-passing of the typing test for the last 25 years, he should be retained in service beyond the age of 55 years. The respondents, at the same time, could have reverted him if he had not cleared the typing test within one year from the date of joining of the clerk but this has not been done. The prayer of the petitioner that he should be retained on the post of Peon is also liable to be rejected as after having worked on a higher post for 25 years reverting him to the post of peon would amount to retaining him in service. At the same time order dated 17.10.2013 (Annexure P-1) and the order dated 10.07.2013 (Annexure P-2) have been passed as per the guidelines laid down by the Supreme Court in the case of **Baikuntha Nath Das (supra)**.

Having regard to the aforesaid and in the facts and

circumstances of this case, the impugned order is neither stigmatic and malafide nor arbitrary. Hence the writ petition is dismissed.

26-02-2016
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(RITU BAHRI)
JUDGE