

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP NO. 17912 OF 2016 (O&M)
DECIDED ON : 31.08.2016

Hoshiyar Singh and another

...Petitioners

versus

State of Haryana and others

...Respondents

CORAM : HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present : Mr. Vivek Khatri, Advocate,
for the petitioners.

TEJINDER SINGH DHINDSA, J. (ORAL)

The petitioners herein serving as Clerks in the department of Horticulture, State of Haryana, are aggrieved of the order dated 28.12.2015 (Annexure P-5) in terms of which their claim for release of annual increments by giving them relaxation from passing the type test, has been declined.

Brief facts that would require notice are that petitioner No.1 joined as Beldar in the year 1981 on adhoc basis and his services were regularized w.e.f 17.01.1982. Petitioner No.2 joined the respondent department in the year 1981 on the post of Mali on adhoc basis and he was

granted the benefit of regularization w.e.f 03.03.1982. On 05.06.2014, a

letter was circulated by the Director General, Horticulture, Haryana, on the subject of promotion of Class-IV employees to the post of Clerk. Both the petitioners applied for promotion and were promoted to the post of Clerk vide order dated 29.08.2014 (Annexure P-3).

Learned counsel would vehemently argue that even though the condition for qualifying the test had been imposed in the promotion order itself, yet they are entitled to the grant of annual increments as at this advance stage of 52/54 years of age, it would be difficult for them to now pass the type test and that too, at the requisite speed. It has also been argued that in certain other departments, including the department of Education, similarly situated Class-IV employees who were promoted to the posts of Clerk have been granted benefit of relaxation and as such, without even qualifying the type test have been released annual increments. Yet another submission raised is that instructions have been issued by the Chief Secretary, State of Haryana dated 02.11.2006 containing the decision that benefit of annual increments be given to Class-IV employees who have been promoted to the post of Clerk and who may not have passed the type test but on the condition that they have knowledge of type writing.

Having heard learned counsel for the petitioners at length, this Court is of the considered view that there is no infirmity in the impugned order dated 28.12.2015 (Annexure P-5) in terms of which their claim has been rejected.

It has gone uncontroverted that the conditions of service of the post of Clerk in the Horticulture department are governed by the statutory

Staff (Group-C) Service Rules, 1998, In the relevant Rule, regulating method of recruitment in the case of Clerk, 20% of the posts are to be filled up by promotion from amongst Class-IV employees and 80% by direct recruitment or by transfer or deputation of officials already in service of State Government or Government of India. In Appendix 'B' of the Rules, the qualifications and experience for the purposes of direct recruitment and for appointment other than by direct recruitment have been stipulated. In so far as the post of Clerk is concerned, for the purposes of promotion, the eligibility and qualification laid down are as follows :-

“5 years experience as restorer, peon, chowkidar and sweeper. Passed matriculation examination. Knowledge of Hindi up to matric standard.

NOTE : *require to qualify a test of Hindi or English type at a speed of 25 or 30 words per minute within a period of one year respectively from the date of such appointment otherwise he will not be granted annual increment till he passes the said test.”*

The mandate of the Rule was also carried in the promotion order dated 29.08.2014 (Annexure P-3) issued by the Director, Horticulture Department, Haryana and in terms of which the present petitioners had been promoted to the post of Clerk. The stipulation as regards qualifying the test was specifically recited in the promotion order and it was made clear that in the eventuality of not qualifying the test within a period of one year, they would not be entitled to get annual increments.

The conceded position is that the petitioners have not qualified the type test. As such, there is no vested right with the petitioners to claim annual increments without fulfilling the mandate as per the statutory rules as also a condition imposed in the promotion order.

Even though the petitioners during the course of arguments has referred to certain instructions issued by the Chief Secretary, State of Haryana dated 02.11.2006 as regards benefit of annual increment to be given to Class-IV employees upon promotion to the post of Clerk and without qualifying the type test, yet such instructions have not been placed on record. This Court would proceed on the assumption that such instructions have in fact been issued. Even if that be so, any executive instructions that may have been issued by the State Government, cannot over ride and supersede the statutory rules governing conditions of service. The petitioners possibly cannot derive any benefit of the instructions having been issued which may be contrary to the rules governing service.

Even the submission made by learned counsel as regards certain other employees of the education department having been granted the benefit without qualifying the type test is being noticed is only to be rejected. The pre-requisite to set up a plea of discrimination is to first establish a right. As has been noticed herein above, the petitioners have not fulfilled the specific conditions of qualifying the type test as per statutory rule. It does not lie in their mouth to raise a plea of discrimination as such. It is not the case of petitioners that any counter part of theirs in the department of Horticulture has been granted such benefit.

For the reasons recorded above, the writ petition is dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

AUGUST 31, 2016
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Whether speaking/reasoned ?	YES/NO
Whether reportable ?	YES/NO