

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

**CWP No. 22491 of 2014 (O&M)
Date of decision: 21.03.2016**

Nita Mallick

....Petitioner

Versus

PGIMER Chandigarh and others

.... Respondents

**CORAM: Hon'ble Mr. Justice Surya Kant
Hon'ble Mr. Justice P.B. Bajanthri**

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?

Present: Mr. H.S. Saini, Advocate for the petitioner.

Mr. D.R.Sharma, Advocate for the respondents.

P.B. Bajanthri, J.

The petitioner has questioned the order dated 01.10.2014 (Annexure P-4) passed in O.A. No. 1657/CH/2013 by the Central Administrative Tribunal, Chandigarh Bench, Chandigarh (for short 'Tribunal').

2. The petitioner was appointed as a Class IV (Ward Servant) in the respondent organization on 17.11.1988, which has now been converted to Class III status.

3. The promotional post to Group 'C' is Lower Division Clerk, governed by the Recruitment Rules notified by the Department of Personnel and Training vide O.M.dated 07.10.2009. The office order was issued on 13.04.2011 (Annexure A3). The relevant rule reads as follows:-

MODIFIED RECRUITMENT RULES OF PGIMER CHANDIGARH

<i>1. Name of Posts</i>	<i>Lower Division Clerk</i>
<i>2. No. of Posts</i>	<i>167(2010)</i>
<i>3. classification</i>	<i>Group 'C'</i>
<i>4. scale of pay</i>	<i>Rs.3050-4590</i> <i>Rs. 5200-20200 Grade Pay Rs.1900 (revised)</i>
<i>5. Method of recruitment</i>	<i>1. 90% by direct recruitment</i> <i>2. 5% of vacancies shall be filled from amongst Group C staff of the Institute who possess 12th Class pass or equivalent qualification and have rendered 3 years of regular services in grade on the basis of a Departmental qualifying examination. The maximum age limit for eligibility for examination is 45 years (50 years of age for the SC/ST)</i> <i>Note:</i> <i>Unfilled vacancies pertaining to a particular year shall not be carried over.</i> <i>If more of such employees than the number of vacancies available under clause (ii) qualify at the said examination such excess number of employees shall be considered for filling the vacancies arising in the subsequent years so that the employees qualifying at an earlier examination are considered before those who qualify at a later examination.</i> <i>3. 5% of vacancies shall be filled on seniority-cum-fitness basis from Group C employees in the grade pay of Rs.1800 who possess 12th class pass or equivalent qualification.</i>
<i>6. Age limit for direct recruit</i>	<i>18-30 years (age relaxable for Government servant upto 40 years in accordance with the instruction or orders issued by Central Government.</i>

7. Educational and other qualification	3. 12 th class or equivalent qualification from a recognized Board or university. 4. A typing speed of 35 w.p.m. in English or 30 w.p.m. in Hindi or computer. (35 w.p.m. and 30 w.p.m. correspond to 10500KDPH/9000KDPH on an average of 5 key depression for each words.
8. Whether benefit of added years of service admissible under Rule 30 of the C.C.S. (Pension) Rules, 1972	N.A.
9 In case of recruitment by promotion	
a. whether by seniority cum fitness i.e. 'non selection' or by merit-seniority i.e. 'selection'	Seniority-cum-fitness
b. Grades from which promotion is to be made and eligibility	Group C employees in the grade pay of Rs.1800 with years of regular service in the grade.
c. Whether age and educational qualifications prescribed for direct recruitment will apply in the case of promotee.	N.A.
Normally the committee is constituted for two years. However, changes are affected in the eventuality of member resigning the committee/job, retirement, death etc.	
10. In case of deputation grades and sources from which deputation to be made and period of deputation	N.A.
11. Period of Probation	2 years for Direct recruitees

4. The post of Lower Division Clerk was advertised and on 23.09.2013 notice was issued in which type test was also included. An extract of the notice dated 23.09.2013 is reproduced herein:-

“N O T I C E

It is proposed to fill up 02 posts of Lower Division Clerk under 5% quota in the pay band of Rs.5200-20200 +Grade Pay Rs. 1900/- (PB-1). The posts are to be filled

*up on seniority-cum-fitness basis amongst the Group C employees of this Institute in the grade pay of Rs. 1800 who possess 12th class pass or equivalent qualification and to pass the type test at the speed of 35 w.p.m. In English or 30 w.p.m. In Hindi on computer. The applications of the eligible candidates on the prescribed proforma overleaf should reach in this office through proper channel **latest by 31.10.2013.** Application received after due date will not be considered.*

*Dated, Chandigarh, the
23rd September, 2013*

*DIRECTOR
PGIMER, Chandigarh”*

5. The petitioner also applied for the advertised post as she was statedly qualified to be appointed as LDC since she had qualified in the type test etc. however, ignoring her merit, others were appointed. In this regard, she had submitted a representation also. There was no response to her representation.

6. On 25.09.2013, the respondents again proposed to fill up two posts of LDC under 5 % quota. Thereafter, there was a partial modification to the advertisement to fill up 4 unreserved posts of LDC under 5 % quota. The petitioner was one of the candidate. The petitioner contended that since she had passed the type test in the year 1998 she be exempted from passing the type test again. In this regard, she also quoted Government of India instructions dated 29.09.1992.

7. The respondents informed the petitioner that her request was considered but the competent authority has rejected it and her name cannot be considered for the post of LDC without qualifying typing test as per Recruitment Rules of the Institute.

8. The aggrieved petitioner approached the Tribunal, who has

virtually rejected the petitioner's O.A. while giving him liberty to move the respondents for the relaxation as was granted to others, it being a hard case and also that the petitioner is the senior most person in the cadre. The petitioner is, however, not satisfied with the order of the Tribunal, hence this petition.

9. Learned counsel for the petitioner submitted that she is entitled to the relaxation of type test in view of the Government of India instructions as she had passed the type test in the earlier recruitment process. It was also contended that she has crossed the age of 50 years, therefore, also her claim for promotion has to be considered without insisting for passing of type test.

10. Per contra, learned counsel for the respondents submitted that the petitioner was required to pass type test as per notice dated 23.09.2013 at the speed of 35 w.p.m. in English or 30 w.p.m in Hindi on computer and as she failed to do so, there is no infirmity in rejecting her claim vide communication dated 02.12.2013, duly approved by the Tribunal vide order dated 01.10.2014.

11. Heard learned counsel for the parties.

12. The post of Lower Division Clerk is governed by the rules (modified recruitment Rules of PGIMER, Chandigarh) which are annexed to the office order dated 13.04.2011. The modified Recruitment Rules of PGIMER as approved by the governing body vide Agenda Item No. E-7 as well as by the Institute body vide Agenda Item No. C-7 in their meeting held on 17.01.2011. The method of recruitment to the post of LDC is 90% by direct recruitment and 5% from amongst group 'C' staff of the institute who possess 12th class pass or equivalent qualification with 3 years regular service in grade on the basis of departmental qualifying examination. The

maximum age limit for eligibility for examination is 45 years (50 years of age for SC/ST) and **remaining 5% of vacancies shall be filled on seniority cum fitness basis from Group 'C' employees in the grade pay of Rs.1800 who possess 12th class pass or equivalent qualification.**

13. From the reading of the item Nos. 6, 7, 9a, b, c of Modified Recruitment Rules of PGIMER dated 13.04.2011 (supra), it is evident that the third source of recruitment to the post of Lower Division Clerk i.e. 5% of vacancies be filled on seniority cum fitness basis from Group 'C' employees who are not required to pass any typing test as the typing test is specifically prescribed only for the direct recruitment (90%) which is evident from para 7 of Educational and Other Qualification in the Modified Recruitment Rules of PGIMER, Chandigarh. The notice dated 23.09.2013 wherein it is prescribed “to pass the type test at the speed of 35 w.p.m. in English or 30 w.p.m. in Hindi on computer” is without the authority of law for the reason that modified Recruitment Rules are issued by the Governing Body and approved by the Institute Body whereas the notice dated 23.09.2013 prescribing the type test is issued by the Director, PGIMER, Chandigarh. In view of these facts and circumstances, both the PGIMER Institute and Tribunal have wrongly interpreted modified Recruitment Rules of PGIMER Chandigarh for the post of LDC issued vide office order dated 13.04.2011 where under the candidates who applied for-5% of vacancies on seniority cum fitness basis created from Group 'C' employees are required to pass the type test on computer, is contrary to the Rules of Recruitment governing the post of Lower Division Clerk.

14. The Director PGIMER, Chandigarh, thus, cannot insist for passing of type test on computer overriding the Rules of Recruitment

governing the post of LDC (5%). It is well settled that the executive order cannot override statutory rules.

15. The Supreme Court in the case of ***Orissa Public Service Commission and another versus Rupashree Chowdhary and another***, reported in 2011(8)SCC 108 ruled as follows:

“13. When the words of a statute are clear, plain or unambiguous, i.e., they are reasonably susceptible to only one meaning, the courts are bound to give effect to that meaning irrespective of consequences, for the Act speaks for itself. There is no ambiguity in the language of Rule 24 leading to two conclusions and allowing an interpretation in favour of the respondent which would be different to what was intended by the Statute. Therefore, no rounding off of the aggregate marks is permitted in view of the clear and unambiguous language of Rule 24 of the Rules under consideration”.

16. In the case of ***Public Service Commissioner, Uttranchal versus Jagdish Chandra Singh Bora and another*** reported in 2014(8) SCC 644, the Supreme Court ruled as follows:

“28. However, we find substance in the submission made by Mr. C.U. Singh that 2004 clarification would not have the effect of amending 2003 Rules. Undoubtedly, 2004 clarification is only an executive order. It is settled proposition of law that the executive orders cannot supplant the rules framed under the proviso to Article 309 of the Constitution of India. Such executive orders/instructions can only supplement the rules framed under the proviso to Article 309 of the Constitution of India. In spite of accepting the submission of Mr. C.U. Singh that clarification dated 29th April, 2004 would not have the effect of superceding, amending or altering the 2003 Rules; it

would not be possible to give any relief to the respondents. The criteria under the 2003 Rules governs all future recruitments. We have earlier already concluded that no vested right had accrued to the respondents, the trained apprentices, under the 2001 Rules. We do not accept the submission of Mr. C.U. Singh that the claim of the respondents (trained apprentices) would be covered under the 2001 Rules by virtue of the so called amendment made by 2003 Rules. We are of the opinion that the High Court committed an error, firstly, in holding that the 2003 rules are applicable, and secondly, not taking into consideration that all the posts had been filled up by the time the decision had been rendered”.

17. For the reasons assigned above, the communication dated 02.12.2013 and Tribunal's order dated 01.10.2014 are set aside. The respondents No.1 and 2 are directed to reconsider the candidature of the petitioner to the post of Lower Division Clerk without insisting for passing the type test on computer, within a period of one month from the receipt of the order.

18. The writ petition stands allowed in above terms.

19. No order as to costs.

21.03. 2016
pooja saini

(SURYA KANT)
JUDGE

(P.B.BAJANTHRI)
JUDGE