

C.W.P No. 26083 of 2014

(1)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P No. 26083 of 2014

DATE OF DECISION:09.11.2016

Naresh Kumar

.....Petitioner

Versus

State of Punjab and others

.....Respondents

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. A.K. Khunger, Advocate
for the petitioner.

Mr. L.S. Virk, Addl. A.G., Punjab.

DAYA CHAUDHARY, J.

The prayer in the present petition is for issuance of a writ in the nature of mandamus directing the respondents to promote the petitioner from the post of Peon (Group-IV) to the post of Clerk (Group-III) from the date his juniors have been promoted.

Briefly, the facts of the case as made out in the present petition, are that the father of the petitioner died during service and by considering his qualification, the petitioner was appointed as Peon on 8.1.1993 on compassionate ground as he was only 9th class pass. The petitioner did his Secondary School Examination in the month of April, 2009 from National Institute of Open School. Before passing Secondary School Examination, the name of the petitioner was at Sr. No. 118 of the seniority list. Thereafter he made request to enter his name in the seniority list with qualification. The petitioner also made representation to the respondents to promote him against the post of Clerk but no action was taken thereupon.

Aggrieved by the action of the respondents in not promoting the petitioner to the post of Clerk, the petitioner approached this Court by way of filing the present petition for issuing of directions to the respondents to promote him as Clerk on the ground that juniors to him have been promoted.

In response to notice of motion, written statement has been filed, which is on record.

Learned counsel for the petitioner submits that the petitioner is entitled for promotion from the post of Peon to the post of Clerk by considering his qualification, which was improved during service. Learned counsel further contends that the petitioner is entitled for promotion as per instruction dated 23.12.2011, according to which passing of Punjabi Type Test is not mandatory. The petitioner has also made representation in this regard but no action has been taken so far.

Learned counsel for respondent-State has opposed the submission made by learned counsel for the petitioner. A preliminary objection has been raised by learned State counsel that the petitioner cannot claim parity as juniors to him were promoted by following the criteria and as per instructions issued by the State Government from time to time. Those candidates have passed the Punjabi test at the prescribed speed of 30 words per minute, which was conducted by the competent authority. The petitioner could not qualify the test and as such he was not entitled for promotion. Learned State counsel submits that the petitioner has relied upon the wrong instructions, whereas, instructions dated 25.8.2009 are relevant, wherein, it has specifically been mentioned that for promotion to the post of Clerk, passing of test is mandatory. Subsequently, instructions

dated 23.12.2014 were issued, which are applicable to the case of the petitioner, wherein, it has been mentioned that before promotion to the post of Clerk from amongst Group 'D' employees, there is a provision for qualifying type test as prescribed by the Government for the post of Clerk on computer but the petitioner has not cleared the test.

Heard the arguments advanced by learned counsel for the parties and have also perused the documents available on the file.

The petitioner has wrongly relied upon instructions dated 23.12.2011. The petitioner was initially appointed as Peon on compassionate ground and not as Clerk. Even he was not having qualification of matriculation at the time of his appointment on compassionate ground. By considering his qualification, he was appointed as Peon (Group 'D') and for promotion to the post of Clerk, instructions dated 25.8.2009 are applicable. As per said instructions, passing of typing test in Punjabi is necessary and as the petitioner has not cleared the said test, therefore, he was not promoted as Clerk. The petitioner has not brought to the notice of this Court any instance, wherein, any employee like the petitioner has been promoted to the post of Clerk from the post of Peon without clearing the type test.

Accordingly, there is no merit in the contentions raised by learned counsel for the petitioner and as such the petition being devoid of any merit is hereby dismissed.

November 09, 2016
pooja

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes