

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.962 of 2016

Date of Decision: 18.01.2016

Manjit Kaur and others

... Petitioners

Versus

State of Punjab and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Bikramjit Singh Bajwa, Advocate,
for the petitioners.

1. To be referred to the Reporters or not? Yes.
2. Whether the judgment should be reported in the Digest? Yes.

RAJIV NARAIN RAINA, J.

1. In the respondent department there is 10% quota for promotion to the post of Clerk in Class-III service from amongst Class-IV Water Carriers, Sweepers, Sewadars, Dhobis and Ward Attendants. To be qualified for consideration in the 10% reservation a Class-IV employee must hold the prescribed qualification of Matriculation pass with Punjabi subject with five years of regular service in Class-IV as a condition for eligibility. However, the Police Department, where the petitioners work, have issued instructions dated August 24, 1983 and October 27, 1998 vide which Punjabi/English typing test with speed of 30 words per minute was made condition precedent to qualify for promotion. Because of this condition, the Court is informed that no person has been promoted from Class-IV to Clerical cadre since the year 2008. As a result, there are vacancies lying unfilled from the

10% quota. The prevailing position is that though the rule does not provide for a test but the test is prescribed through executive instructions and in my opinion there is hardly anything offensive in this additional screening test applied as a qualifier. The aim is to bring up qualified rankers to promotional level as Clerks better equipped to discharge the duties and responsibilities of the higher post which entails office typing work. The petitioners claim that there are 46 posts of Clerks available to Class-IV employees in the cadre of Clerks. The service rules governing the conditions of service, recruitment and promotion to the post of Clerk are known as the Punjab Police Clerical Service (State Service Class-III), Rules, 1960 ("1960 Rules").

2. The first exercise to fill up the 10% quota in the cadre of Clerks from the category of the petitioners since the year 2008 was initiated on July 17, 2015 and they were called for a typewriting test. This circular inter alia prescribes the passing of a typing test in Punjabi.

3. Aggrieved by the notice calling applications, the petitioners filed a representation with the Department on July 28, 2015. The petitioners assert and say that the representation remains unattended so far nor have they been promoted despite passage of years of service in Class-IV. It is argued that instructions cannot supersede the statutory rules which do not prescribe the test as a qualification for eligibility. Can the department prescribe such a test is the question raised in this case.

4. It is well embedded in the law that executive instructions cannot supplant rules but can only supplement them. Prescribing a test does not supplant the rule, it only supplements it. The executive instructions

speak accordingly. It is then urged that the present instructions are illegal and arbitrary and have been issued with a view to deny an avenue of promotion to Class-IV employees to Class III by building a hurdle in their way. Hence this writ petition has been filed for directions.

5. It is the contention of the petitioners that the action of the respondents in prescribing a test is against the mandate of Rule 8 (1) (b) of the 1960 Rules. Rule 7 of the 1960 Rules prescribes the educational and other qualifications for appointment to the post of clerk. The rule mandates that no person shall be appointed directly to the service as a Clerk unless “he is at least first class Matriculate of a recognized University or has passed an equivalent examination”. The proviso to Rule 7 lays down that the appointing authority may, for sufficient reasons to be recorded in writing, appoint to any post in the Service any person who does not possess the qualifications prescribed by the Rule.

6. Rule 8 (1) (b) in the case of Clerks by three modes; (i) direct recruitment; or (ii) by transfer of officials already in the service of Government of a State or of the Government of India; or (iii) by promotion from amongst the Restorers in the Police Department who are either graduates; or who are Matriculates and have completed five years' service as such and have qualified in a departmental test. Rule 8 (4) lays down the proportion of direct appointments to the various posts in the service. In the case of Clerks 95% of the vacancies are by way of direct appointment.

7. The Punjab Civil Services (General and Common Conditions of Service) Rules, 1994 prescribes in Rule 17 knowledge of Punjabi language as essential to be appointed to any post in any Service by direct appointment

unless he possesses knowledge of Punjabi language of Matriculation standard or its equivalent.

8. Merely because no one has been promoted from the last 7/8 years from Class-IV to Class-III (Clerks) is not sufficient ground to hold that the quota rule has broken down. A percentage quota is still available for those Class IV employees who pass the typewriting test at the prescribed speed.

9. Learned counsel for the petitioners relies on the decision of the Division Bench of this Court in **Ramesh Chand and others v. Director, Department of Rural Dev. and Panchayats, Chandigarh and another**, 2005 (1) SCT 24. The litigation was brought to this Court asserting that person junior to the petitioners have been promoted by ignoring their claim. They were ignored for the reason that they had not qualified the typewriting test in Punjabi language. The rules under consideration were the Punjab Department of Rural Development and Panchayats (Class-III) Rules, 1988 ("1988 Rules"). It was not disputed that the rules regulate the conditions of service of the petitioners. Ten per cent of the cadre post of Clerks were earmarked in Appendix 'B' for appointment by way of promotion. The remaining 90% are to be filled by way of direct recruitment. Column 5 of Appendix 'B' of the 1988 Rules is similar to the present rule when it does not prescribe a test. However, Column 6 of Appendix 'B' of the 1988 Rules prescribes eligibility conditions for promotion to the post of Clerk to read thus:-

"Should be Matriculate or its equivalent and should have qualified the typewriting test in Punjabi language to be conducted by the Board at a speed of thirty words per

minute.”

10. The Division Bench in *Ramesh Chand* on a comparative assessment of Columns 5 & 6 of Schedule 'B' relating to Clerks found non-essential for a promotee to qualify the typing test in Punjabi language for promotion, whereas for direct recruitment the condition of the test was prescribed. In this way, Class-IV employees were governed by Column-5 of Appendix 'B' which did not prescribe the condition of typing test and typing test was meant for other categories of employees other than Class-IV in Head Quarters staff other than Intelligence Unit Staff. It was in this factual background amid the setting of the Rules that this Court held that the requirement for qualifying the typing test in Punjabi for Class-IV employees has not been prescribed for appointment by way of promotion. There were no statutory rules requiring persons similarly situated as the petitioners for claiming promotion to the post of Clerk that they would have to qualify the typewriting test in Punjabi language as a condition precedent for promotion to the post of Clerk. The State had relied on instructions dated October 27, 1998 which suggested only a proposal to amend the rules to make such a provision of typing test mandatory. It was in this background that the Court held that without amendment, the instructions would not hold water and *en passant* observed that even 'otherwise' instructions cannot overrule statutory rules. The ratio of the case depended on Column-5 and to the contrary Column-6 provided differently and when juxtaposed with Column-5 would stand out independently. The case is distinguishable on facts as in the present case, such a comparison cannot be made as was sought to be canvassed.

11. In the present case, there are many pitfalls in the matter of grant of relief of promotion. The rules do not support the case of the petitioners for promotion to the post of Clerk. Where rule is silent as to test a test can be imposed a qualifier because Clerks may need to have the minimum speed of 30 words per minute in the Punjabi typing to effectively discharge duties and responsibilities as a Clerk in the police department. Everyone yearns for promotion without introspecting whether they deserve it and are equipped to shoulder higher responsibilities. The condition of type test imposed is neither arbitrary, nor unreasonable, nor unconstitutional and is largely in accord with the modern times where the office environment is rapidly changing to meet future challenges in the workplace that makes for the police department. Innovation is not abhorrent to public interest when it is not in conflict with statutory rules. In carving out a qualifying test to promote the best talent available in Class IV to a superior post than one of the feeder category is in order. Be that as it may, interference in writ jurisdiction in the present case is not warranted when all is said and done.

12. For the above reasons the petition is found without any merit and is accordingly dismissed in limine.

(RAJIV NARAIN RAINA)
JUDGE

18.01.2016
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