

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

211

CWP-9672-2013
Decided on: 23.02.2017

SHASHI BALA

....PETITIONER

VS

STATE OF HARYANA & OTHERS

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AJAY TEWARI

Present: Mr. V.K.Sachdeva, Advocate
for the petitioner.

Ms. Shruti Jain Goyal, AAG, Haryana.

AJAY TEWARI, J.

By this petition the petitioner has challenged the action of the respondent for not granting the ACP to her. The petitioner was appointed as a clerk on compassionate grounds after the death of her husband vide order dated 26.03.1992. Condition No. 4 of the appointment order was as follows:

“You will be required to pass a test in Hindi & English type Writing at a speed of 25 and 30 words per minute within a period of one year of your joining the department, failing which you will not be allowed the increment accruing after your appointment in this Department, until you pass the said typewriting test. On passing test, you will be allowed increment from the date following the date of the test in which you pass without payment of arrears of increment for the post period. Your date of increment will, however, not be postponed on account of your failure to clear the test within the permissible period. During the period of service, you will be governed by the Haryana Police Clerical (State Service Class C) Rules, 1977 as may be amended

from time to time and also the Govt. instructions in this behalf.

As per the respondents, the petitioner did not clear the type test and consequently she was not entitled for grant of ACP.

Counsel for the petitioner has raised two arguments. His first argument is that the condition of employment itself envisages the prejudice which can result to the petitioner on account of not passing the test, viz. that she would not be entitled to annual increment and there was no stipulation that she would not be considered for ACP. A corollary of this argument is that as per the Rules there is no requirement of passing of type test for promotion to the post of Assistant and therefore this condition could not have been imposed to decline grant of ACP to the petitioner. The second argument is that Government has exempted widows above 45 years from passing of type test.

In my opinion all the arguments are misconceived. It is not disputed that passing of a type test is essential qualification for a Clerk. This is not only a position under the law but a common sense requirement. This can be also seen from the Rules which are annexed as Annexure R1. However for persons like the petitioner who had to be granted appointment a special provision was made whereby they were given time to clear the type test and that was not made as condition precedent for their appointment. In the circumstances even if the respondents had stipulated in the appointment order that services of the petitioner could be terminated if she did not pass the type test within a reasonable time that stipulation could not have been held to be illegal and thus the provision made in the appointment order was a concession

given to the petitioner but that could not render her otherwise eligible or suitable for the post of Clerk. If she is not eligible or suitable for post of Clerk she obviously can not be promoted to the next higher post of Assistant and this would be so even if there is no requirement for passing of type test for promotion from the post of Clerk to Assistant. This takes care of first two arguments.

As regard the third argument about the age; the perusal of the document Annexure P-2 clearly shows that exemption for type test was only granted to those widows who were appointed after the age of 45 as Clerk. Admittedly the petitioner was 35 years old when she was appointed as Clerk. No relief can be sought by the petitioner on this basis also. Learned counsel for the petitioner argued that at the time when the ACP grade was to be granted to the petitioner she was more than 45 years old. In my opinion Annexure P-2 could not be held to extend to such a situation also and this concession would be available only to those widows who were 45 year of age when they were appointed.

In the circumstances, I find no illegality in the action of the respondents and consequently the petition is dismissed.

23.02.2017
anuradha

(AJAY TEWARI)
JUDGE

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Whether speaking/reasoned	-	Yes/No
Whether reportable	-	Yes/No