

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

**CWP No. 1446 of 2016 (O&M)
Date of decision : 17.10.2018**

Kapoor Singh and others

..Petitioners

versus

State of Haryana and ors.

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. M.L. Singla, Advocate
for the applicants-petitioners.

Ms. Palika Monga, DAG, Haryana

RITU BAHRI, J.

C.M. No. 12262-2018

Application is allowed as prayed for.

Accordingly, additional affidavit of petitioner No. 1 is taken on record.

CWP No. 1446-2016

In the present civil writ petition, the petitioners are seeking quashing of order dated 05.10.2015 (Annexure P-4) and for quashing of condition of passing of State Eligibility test in Computer Appreciation and Application (for short 'SETC') and type test for the benefit of annual increment, imposed in the promotion order dated 25.06.2014 (Annexure P-2) and order dated 14.06.2011 (Annexure P-3) and further prayer is for issuance of direction to the respondents to exempt the petitioners for the condition of passing the above said test and benefit of annual increment

with all consequential benefits.

Brief facts of the case are that petitioners were appointed as Class IV employees in the respondent-department on different dates, which are mentioned in Annexure P-1. Thereafter, petitioner Nos. 1 to 5 were promoted as Clerk along with other employees, vide order dated 25.06.2014 (Annexure P-2) and petitioner Nos. 6 to 8 were promoted as Clerk along with other employees, vide order dated 14.06.2011 (Annexure P-3) with immediate effect.

The grievance of the petitioners before this Court in the above promotion orders dated 25.06.2014 and 14.06.2011 (Annexure P-2 and P-3 respectively), a condition has been imposed that the employees so promoted have to qualify SETC within probation period of one year from the date of promotion otherwise they will be reverted to their feeder post. Another condition has been imposed that employee so promoted shall not be entitled to earn any increment in his pay scale till he/she pass the computer type test with typing speed of 30 words per minute in English and 25 words per minute in Hindi converted with equivalent key depressions.

Now, the petitioners have not been granted annual increment, as they could not pass the computer and type test within the specified time period. They moved an application to the office of Civil Surgeon, Hisar for exemption from passing of computer type test and for grant of annual increment as they are more than 50 years of age and some employees are on the verge of their retirement. But the impugned order dated 05.10.2015 has been passed and hence the present writ petition.

Learned counsel for the petitioners submits that as per letter

dated 30.03.1973 (Annexure P-5), which was issued to head of all the departments regarding regularization of Class IV employees to the post of clerk on certain conditions to be fulfilled by the employee. In this letter, it has been mentioned that test/examination taken by the board for the post of Clerk shall not compulsory to pass for such employees.

Learned counsel has further referred to order dated 19.02.2009 (Annexure P-6) passed by the Chief Secretary Government of Haryana whereby 65 clerks have been exempted from passing of departmental type test. Further reference has been made to similar order dated 16.01.2013 passed by Deputy Commissioner, Hissar (Annexure P-7) whereby one clerk has been exempted from passing of departmental type test. Reference has been made to order dated 27.10.2006 and 17.11.2007 passed by Director, Department of Social Justice and Empowerment, Haryana Chandigarh and Registrar, Guru Jambheshwar University Hisar (Annexure P-8 and 9 respectively) whereby clerks have been exempted from passing of departmental type test.

Learned counsel has further relied upon judgments of this Court in cases of *Prem Chand and others vs. State of Haryana and others* passed in CWP No. 2159-2009, decided on 20.07.2010 (Annexure P-10) and *Prithvi Raj v. State of Haryana and others*, passed in CWP No. 5566-1999, decided on 03.09.2001 (Annexure P-11), wherein the petitioners were challenging the condition of passing of type test and this Court allowed the writ petitions.

At last, reference has been made to one Sh. Ajay Kant Clerk, who is working in the office of PMO, General Hospital Hisar, who has been

promoted to the post of clerk and annual increment has also been granted to him, exempting him from passing type test.

Learned State counsel on the other hand, has argued that the service conditions for the post of Clerks (petitioners) are governed within the purview of the *Haryana Health Department Subordinate Offices Ministerial Group C Service Rules, 1997 (Annexure R-1)*. As per appendix B, in case of promotion from Group D post to the post of Clerk, an employee has to qualify tests in Hindi or English typing at a speed of 25 or 30 words per minute respectively within one year of appointment. These Rules were further amended and notified vide notification dated 08.11.2013 as *Haryana Health Department Subordinate Offices Ministerial Group C Service (Amendment) Rules, 2013*. In said amendment, Rule 9-A was inserted which provides that SETC shall be a post requisite condition/qualification which all newly recruited/appointed/promoted from Group-D as Clerks etc shall have to qualify.

Learned State counsel has further argued that in the appointment letters of the petitioners (Annexure P-2 and P-3) the condition of passing type test, as the case may be, was imposed, hence the petitioners are abide by the above Rules and terms and conditions mentioned in the appointment letters. Learned State counsel has submitted that even prior to incorporating Rule 9 w.e.f 08.11.2013, there was a specific provisions in the Rules for passing of the test with prescribed speed in English and Hindi. The petitioners are liable to pass the type test or SETC, failing which the Rules provides for reversion rather than any relaxation.

Learned State counsel submits that the judgments (Annexure P-

10 and P-11) cited by learned counsel for the petitioners are not applicable in the case of the petitioners since there was no specific provisions in the regulating service rules in these cases. However, in the case of the petitioners, the passing of the type test on promotion from Group D post was mandatory since 30.06.1997, when the aforesaid Rules, 1997 were notified.

Learned State counsel has then referred to order dated 21.04.2016 whereby the benefit extended to Ajay Kant was withdrawn (Annexure R-2) and thus, now there is no discrimination against the petitioners.

An affidavit dated 22.10.2017 has been then filed by petitioner No. 6 stating therein that during the pendency of the writ petition, process for promotions from the post of Clerk to the post of Assistant in Haryana was initiated by the department and petitioner no. 6 has moved an application (Annexure P-12) to respondent No. 3 to consider his claim for promotion to the post of Assistant. Reference has been made to promotion list dated 08.12.2016 (Annexure P-14) whereby some of the similarly situated employees who have not passed the type test, have been promoted to the post of Assistant. Many of the junior clerks to the petitioners have been promoted as Assistant and the claim of the petitioners have been ignored. Reference has been made to ***CWP No. 21630-2010 titled as Jai Kanwar vs. State of Haryana and others, decided on 15.01.2014 (Annexure P-15), CWP No. 47-2016 titled as Dutta Ram and another vs. State of Haryana and another, decided on 23.05.2016(Annexure P-16)***

whereby this Court has issued direction to the respondent-department to

consider the case of the petitioners for promotion to the post of Assistant. In *CWP No. 28284-2013 titled as Ramesh Chand and others vs. State of Haryana and others, decided on 11.07.2017* (Annexure P-17) this Court directed the respondents to grant the benefit of increment from time to time with reference to the date of petitioner's promotion to the post of Clerk.

Heard learned counsel for the parties.

The judgments i.e *CWP No. 47-2016 titled as Dutta Ram and another vs. State of Haryana and another, decided on 23.05.2016* (Annexure P-16) and *CWP No. 28284-2013 titled as Ramesh Chand and others vs. State of Haryana and others, decided on 11.07.2017* (Annexure P-17) cited by learned counsel for the petitioners are not applicable to the facts of the present petition, as firstly in the above judgments, the departments are different and the Rules are different. In these departments, there was no condition of passing of type test as a mandatory condition for granting increments and other benefits. Further in the Rules, it was nowhere mentioned that if an employee fails to pass the type test at a prescribed speed as per the Government Instructions, he would be reverted to the post of Peon. In the present case, there are specific Rules to the effect that the petitioners are required to pass type test or SETC as per Rule 9-A of aforesaid Rules, 1997 (2013). The relevant amendment and provisions in Rules for passing of type test or SETC have been made keeping in view the importance of computerization and digitization of government machinery. The petitioners have rightly not granted increments, keeping in view instructions, terms and conditions mentioned in the appointment letter for promotion (Annexure P-2 and P-3). The petitioners cannot claim as a matter

of right that petitioners should be exempted from passing type test. The petitioners are only relying upon annual increment/promotion granted to Sh. Ajay Kant Clerk, who is working in the office of PMO, General Hospital Hisar. However, the respondents, vide order dated 21.04.2016 (Annexure R-2) withdrawn the benefit extended to Ajay Kant.

In view of the discussion made above, no ground is made out for quashing of order dated 05.10.2015 (Annexure P-4) and for issuance of directions to the respondents to exempt the petitioners from the condition of passing of type test/State Eligibility test, as the department rules do not provide type test as condition to grant increment.

The writ petition stands dismissed.

17.10.2018

G Arora

(RITU BAHRI)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

No