

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-11713-2017
Date of decision: 10.09.2018

Om Parkash

...Petitioner

V/s.

State of Haryana and another

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI.

Present: Mr. Sandeep K. Sharma, Advocate for the petitioner.

Mr. Gaurav Jindal, Addl.A.G., Haryana.

RITU BAHRI, J. (Oral).

The petitioner is seeking writ of certiorari for quashing order dated 27.01.2015 (Annexure P-7) whereby claim of the petitioner for exemption from passing type test has been rejected with a further direction not to revert him from the post of Clerk in terms of office memo dated 17.02.2017 (Annexure P-9).

The petitioner was appointed as Process Server in Special Environment Court, Hisar in the year 1997 (Annexure P-1). He was promoted as Clerk cum Data Entry Operator on 04.06.2009 with the condition that he has to qualify type test in English or Hindi at a speed of 25 or 30 w.p.m. within a period of one year from the date of promotion failing which he will not be entitled to annual increment (Annexure P-2).

The petitioner, after his promotion, was not granted annual increments on the ground that he had not qualified departmental type test in

English or Hindi at a speed of 25 or 30 w.p.m. within a period of one year from the date of promotion. The petitioner and other similarly situated persons made representations dated 03.01.2013 (Annexure P-3 colly) to grant them annual increments and exemption for type test. Legal notices dated 15.05.2013, 16.05.2013, 03.07.2013 and 08.07.2013 have been given to the respondents to release the arrears of the annual increments alongwith interest (Annexure P-4 colly). It was mentioned in the legal notices that Govt. of Haryana has granted exemption to pass type test for grant of annual increments to many employees working under the various departments of Haryana. He has also placed on record order dated 27.02.2009 passed by Chief Secretary to Government Haryana and the order dated 15.04.2010 passed by Kurukshetra University, Kurukshetra (Annexure P-5 colly) whereby Clerks appointed by promotion have been exempted from passing departmental type test. He, thereafter, placed on record judgment passed in ***CWP-13004-2014 Ram Pal and others V/s. State of Haryana, decided on 09.07.2014*** giving direction to the Director, Department of Environment, Haryana-respondent No. 2 to consider and decide the legal notices within a period of three months (Annexure P-6). Vide order dated 27.01.2015 (Annexure P-7), Director, Department of Environment, Haryana-respondent No. 2 accepted the claim of the co-petitioners and granted the benefit of annual increments. Subsequently, vide order dated 17.02.2017 (Annexure P-9), the petitioner was informed that he had not passed SETC from the date of his promotion and the Government is organizing training program to qualify the type test before 30.04.2017 and he has to pass type test within the period provided by the Government otherwise he will be reverted.

The stand taken by the petitioner is that at the time of making

promotion vide order dated 04.06.2009 (Annexure P-2), he was not entitled for increments if he does not qualify type test in English or Hindi at the speed of 25 or 30 wpm but there was no condition in the promotional order that he will be reverted.

Respondents had placed on record the instructions dated 24.04.1998 (Annexure R-2/1) and as per Sr. No. 11 of appendix B to Haryana Environment Department (Group C) Service Rules 1998, the eligibility conditions for promotion to the post of Clerk is as under:-,

“(i)Matric with Hindi.

(ii) Five years experience (Group C or Group D) employees.

(iii)Department type test of Hindi or English at the speed of 25 or 30 words per minute respectively within a period of one year from the date of appointment failing which no annual increment will be allowed.

(iv)Should qualify the written test in Hindi and English of Matric Level to be held by Director.”

Learned counsel for the respondents further stated that as per rule, there is no provision for reversion if a person does not qualify type test. As per the letter dated 07.11.2013 (Annexure R-2/2), the nomenclature of the post of Clerk-cum-Data Entry Operator and Clerk-cum-typist etc. is changed to a single and uniform nomenclature of Clerk in all the Government departments and the minimum qualification has been upgraded from matriculation to 10+2 and per condition No. 3, type test has been substituted with the State Eligibility Test in Computer Appreciation and Applications (SETC) as a part of service requirements for Clerks, Steno-typist, Junior Scale Stenographers & Sr. Scale Stenographers. This test will be requisite qualification for all the newly recruited Clerks, Steno-typist, Junior Scale Stenographers & Sr. Scale Stenographers. The Clerks who

have been promoted from Group-D and Restorer etc. and have not passed the type test till date, have an option either to pass the type test or SETC. It is further provided that persons who are promoted to the post of Clerk and Steno-typist shall also qualify SETC within the period of probation of one year extendable by one year failing which they will be reverted. Haryana State Electronic Development Corporation Limited (HARTRON) has been authorized agency for conducting SETC test. Passing of this type test is made mandatory w.e.f. 07.11.2013. Vide letter dated 02.02.2017 (Annexure R-2/3) training will be imparted by the HARTRON for the employees who were promoted to the post of Clerk. The HARTRON will also conduct SETC exam every month i.e. February, March and April, 2017 so that these persons will get adequate opportunity to clear the test by 30.04.2017. The above instructions were brought to knowledge of the petitioner vide letter dated 17.02.2017 (Annexure R-2/4). The petitioner was also granted personal hearing on 01.06.2017 before the Director, vide letter dated 30.05.2017 (Annexure R-2/5). The petitioner had appeared before the Director, Environment Department, Haryana asking him to grant 6 months time to pass the type test on the ground that he was busy in his son's marriage and a death took place in his family due to which he could not pass the type test vide letter dated 01.06.2017 (Annexure R-2/6).

After hearing learned counsel for the parties, this Court is of the view that since passing of STEC test has been made mandatory as per instructions (Annexure R-2/2). Hence the petitioner has to pass this test otherwise he shall be reverted. The petitionr was promoted as Clerk cum Data Entry Operator on 04.06.2009 and he has been granted several opportunities to clear the said exam. After organizing training, as it is

apparent from the letter dated 02.02.2017 (Annexure R-2/3) all the Clerks have to clear the test before 30.04.2017. From 07.11.2013 till 02.02.2017 within a period of almost 4 years, sufficient time has been given to the Clerks to clear the examination. In the facts of the case, petitioner was promoted on 04.06.2009 and as of today, he has been promoted for the last more than 9 years. As per the letter dated 01.06.2017 (Annexure R-2/6), that he was busy in his son's marriage and a death took place in his family due to which he could not pass the type test, last opportunity may be granted.

Hence, this writ petition is being disposed of by giving direction to the respondents to grant the petitioner last opportunity to pass STEC test within a period of six months from the date of receipt of certified copy of the order failing which respondents will be bounded by the instructions dated 07.11.2013 (Annexure R-2/2).

(RITU BAHRI)
JUDGE

10.09. 2018

Divyanshi

Whether speaking/reasoned

:

Yes/No

Whether reportable

:

Yes/No