

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.587 of 2017

Date of Decision: 29.08.2018

Lila Dhar and Anr.

.....Petitioners

Vs.

State of Haryana and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr.R.K.Malik, Sr.Advocate, with
Mr.Bhupinder Malik, Advocate for the petitioners.

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

RITU BAHRI, J. (ORAL)

Petitioners are praying for quashing of the orders dated 08.12.2016 and 27.12.2016 (Annexure P-10 and P-11) by which the exemption already granted to the petitioners has been withdrawn.

The brief facts of the case are that petitioner No.1 was appointed as Peon on 08.10.1982 and thereafter, he was promoted to the post of Clerk on 03.01.2001. Since the petitioner No.1 had passed Matric with English type test paper, so he was granted exemption for passing type test vide order dated 27.05.2002 (Annexure P-2). Petitioner No.2 was appointed as Library Attendant on 14.03.1996 and he was promoted to the post of Clerk vide order dated 13.09.2007 (Annexure P-3). Petitioner No.2 had passed English typing test as per certificate (Annexure P-4), he was granted exemption for passing the type test vide letter dated 11.11.2008 (Annexure P-5).

Subsequently, petitioners were issued show cause notices dated 16.08.2016

response thereof, they filed reply on 30.09.2016 and 04.10.2016 (Annexure P-8 and P-9 respectively) and thereafter, impugned order has been passed vide orders dated 08.12.2016/27.12.2016 (Annexure P-10 and P-11). Petitioners are seeking the quashing of abovesaid order on the ground that as per instruction issued by the Chief Secretary vide letter dated 06.04.2012 (Annexure P-12), petitioners were to be granted benefit of one increment who were promoted on the post of Clerks from Class-IV without passing type test on the condition that they **should have knowledge of type writing as per service rules**. The petitioners are also seeking benefit of instruction dated 27.11.2008 (Annexure P-13) whereby, those persons who have crossed the age of 45 years they may be granted exemptions from passing the typing test.

Upon notice, written statement has been filed by respondents No.1 to 3 stating therein that as per provision of Haryana State Cooperation Department Head Office and Sub-Offices (Group-C) Service Rules 1989, every clerk has to pass the type test within one year of his appointment otherwise he will not be entitled annual increment. In the promotion order of petitioner No.1, it was specifically mentioned that he has to qualify the departmental type test in Hindi/English at the speed of 25 or 30 words per minute respectively within the period of one year from the date of promotion failing which the annual increment will not be allowed to them. When he will qualify the type test, he shall be allowed increment due to him but no arrear should be given to him and this condition is also reiterates in the promotion order dated 21.12.2000 (Annexure R2/1) attached with the written statement. This matter was again referred to the Government vide

exemption on the basis of certificate of National Institute of Open Schooling (Govt. of India), New Delhi, from passing the type test as required in aforesaid service rules cannot be granted and thereafter a show cause notice was issued to the official vide order dated 19.09.2016 and after considering the reply thereof, exemption has been withdrawn vide order dated 08.12.2016 (Annexure P-10) and in the case of petitioner No.2, he was promoted on 13.09.2007. Since, he was not passed the typing test also as per terms and conditions of his promotion order 13.09.2007 (Annexure P-3), after getting instructions from the National Institute of Open Schooling (Government of India), New Delhi, show cause notice was issued to the petitioner No.2 and after considering his reply, the exemption has been withdrawn vide order dated 27.12.2016 (Annexure P-11).

Thereafter, petitioner No.2 had filed additional affidavit along with information obtained under the RTI Act as Annexure P-14. As per RTI information from the National Institute of Open Schooling from where he had passed the matriculation examination, it was cleared that petitioner has passed with English type test at the speed of 30 words per minutes and it was prescribed that candidate should have passed type test in English at the speed of 30 words per minute. Both the petitioners have passed type test in English at the speed of 30 words per minute in matriculation examination and that was the reason both of the petitioners were granted exemptions.

As per promotion order (Annexure R-2/1) both the petitioners were required to qualify the departmental type test in Hindi/English at the speed 25 of 30 words per minute respectively within the period of one year from the date of promotion, failing which the annual increment will not be

Act from National Institute of Open Schooling, New Delhi, it has been cleared that petitioners have passed their typing tests and as such, they are fulfilling the condition of appointment letter which was given to them at the time of appointment to the post of Clerk and both the petitioners were rightly granted exemptions for qualifying the typing test.

Petitioner No.1 was promoted way back in the year 03.01.2001. As per certificate (Annexure P-1), petitioner No.1 had passed his matriculation examination on 25.08.1999 and hence after having passed his typing test at the speed of 30 w.p.m. He was duly qualified to be appointed as Clerk and as such, he was rightly given exemption vide letter dated 27.05.2002 (Annexure P-2). Petitioner No.2 was promoted on 13.09.2007 to the post of Clerk as he passed his typing test from National Institute of Open Schooling, Government of India, New Delhi and as such, he was rightly granted exemption vide order (Annexure P-5). Moreover, petitioners have been working in the department for last more than 18 years.

As per instruction issued by the Chief Secretary vide letter dated 06.04.2012 (Annexure P-12), petitioners were to be granted benefit of one increment who were promoted on the post of Clerks from Class-IV without passing type test on the condition that they **should have knowledge of type writing as per service rules**. The petitioners are also seeking benefit of instruction dated 27.11.2008 (Annexure P-13) whereby, those persons who have crossed the age of 45 years they may be granted exemptions from passing the typing test. As such, the petitioners are liable to the promotion and exemption in this case.

A reference can be made to the judgment of the Hon'ble Supreme

others 1990 AIR (SC) 2021whereby, it has been held that experience gained for a sufficient time is itself a qualification. The question before the Hon'ble Supreme Court is that whether the petitioner possesses the prescribed qualification. The revised rules provide alternate qualifications for the post of Head Draftsman. The first part of the rule prescribes a diploma with a minimum of three years service as Senior Draftsman in the scale of Rs. 250-400. The second limb of the revised rule refers to the service rendered by the candidate. It provides for six years of service as Senior and Junior Draftsman. The Supreme Court has held with regard to second limb of the rule was evidently to benefit all those persons who have gained sufficient experience as Senior and Junior Draftsmen without possessing any qualification. Experience gained for a considerable length of time is itself a qualification (see the observation in State of U.P. And others Vs. J.P.Chaurasia, 1989(5) SLR 788 : 1988 (5) SLR 639 (SC)). It would be unreasonable to hold that in addition to this considerable experience, one must also have the diploma qualification prescribed under the first part. It could not have been the intention of the rule making authority that persons who were designated as Senior Draftsmen without any Diploma qualification should acquire such diploma qualification for further promotion. Such a view would not be consistent and coherent with the revised rule and its object. We have no doubt that the second limb of the revised rule is independent of the first. The High Court seems to have erred in this aspect of the matter.

So the ratio of the judgment of the Hon'ble Supreme Court as referred above and reasons mentioned above, petitioners were rightly given

qualified the typing test @ 30 w.p.m and this was duly qualified as per rules i.e. Haryan State Cooperation Department Head Office and sub-offices (Group-C) Service Rules 1989. Therefore, impugned orders dated 08.12.2016 and 27.12.2016 (Annexure P-10 and P-11) and the contents as reflected by the respondents No.1 to 3 in para 2 of the preliminary submissions of the reply i.e. the order withdrawing the exemptions from the petitioners is set aside. Accordingly, writ petition is allowed.

(RITU BAHRI)
JUDGE

29.08.2018

anil

Whether speaking/reasoned Yes/No

Whether reportable Yes/No