

CWP No. 11960 of 2016 (O&M),
CWP No. 12050 of 2016 (O&M),
CWP No. 28121 of 2017,
CWP No. 24737 of 2017 and
CWP No. 19679 of 2016 :1:

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CWP No. 11960 of 2016 (O&M)
Date of decision : May 27, 2019

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Bhag Mal
.....Petitioner

Versus

Haryana Urban Development Authority (HUDA) and another
.....Respondents

CWP No. 12050 of 2016 (O&M)
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Anil Kumar
.....Petitioner

Versus

Haryana Urban Development Authority (HUDA) and another
.....Respondents

CWP No. 28121 of 2017
* * * * *

Devi Lal
.....Petitioner

Versus

Haryana Urban Development Authority (HUDA) and others
.....Respondents

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CWP No. 24737 of 2017

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Attar Singh
.....Petitioner

Versus

Haryana Urban Development Authority (HUDA) and others
.....Respondents

CWP No. 19679 of 2016

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Hanuman Singh
.....Petitioner

Versus

Haryana Urban Development Authority (HUDA) and others
.....Respondents

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI
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Present: Mr. R.K Malik, Sr. Advocate with
Mr. Sandeep Dhull, Advocate for the petitioner.
(in CWPs No. 11960 and 12050 of 2016)

Mr. Sumit Sharma, Advocate for
Mr. Ashwani Bhardwaj, Advocate for the petitioners
(in CWPs No. 24737, 28121 of 2017 and 19679 of 2016)

Mr. Hitesh Pandit, Advocate for respondents
(in CWPs No. 11960 and 12050 of 2016)

Mr. Rajesh Gaur, Advocate for the respondents
(in CWP No. 19679 of 2016)

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Mr. Vivek Chauhan, Advocate for the respondents
(in CWP No. 24737 of 2017)

Mr. Deepak Manchanda, Advocate for the respondents
(in CWP No. 28121 of 2017)

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RITU BAHRI, J.

Through this common judgment, five writ petitions bearing **CWP No. 11960 of 2016** (Bhag Mal Vs. Haryana Urban Development Authority and another), **CWP No. 12050 of 2016** (Anil Kumar Vs. Haryana Urban Development Authority and another), **CWP No. 28121 of 2017** (Devi Lal Vs. Haryana Urban Development Authority (HUDA) and others), **CWP No. 24737 of 2017** (Attar Singh Vs. Haryana Urban Development Authority (HUDA) and others) and **CWP No. 19679 of 2016** (Hanuman Singh Vs. Haryana Urban Development Authority (HUDA) and others) shall be decided as a common question of law arises for consideration in these writ petitions. For the sake of convenience facts are being extracted from **CWP No. 11960 of 2016** (Bhag Mal Vs. Haryana Urban Development Authority and another).

The petitioner is seeking writ of certiorari for quashing the order dated 30.4.2016/13.5.2016 (Annexure P-3), whereby the petitioner was ordered to be compulsorily retired by observing that he lacks professional integrity and burden on the ex-chequer.

The petitioner was appointed to the post of Clerk on 29.10.1987 on ad hoc basis. His services to the post of Clerk were

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regularised w.e.f 1.4.1993 vide order dated 25.1.1995 (Annexure P-1). As per condition No.7 of his regularization letter he was required to pass the type test either in English or Hindi at the speed of 30/25 WPM respectively within one year from the date of his regular joining as Clerk. He joined on 25.1.1995, he was required to pass the type test within one year i.e up to 24.1.1996 but he failed to pass the type test even after more than 20 years of his joining as regular Clerk. While considering his case for extension in service beyond the age of 55 years, it was observed that he has been lacking in professional integrity by not making efforts to pass the type test as per condition of his regularization letter. It was further observed that he has deprived the organization of the efficient services expected from an employee as Clerk. In fact by not learning the typing skills, he has not been able to discharge the duties of a Clerk in efficient manner and in public interest. Thus, the petitioner was compulsorily retired from his services vide order dated 30.4.2016/13.5.2016 (Annexure P-3).

On notice of the writ petition, written statement has been filed by the respondent. In the written statement, reference has been made to a judgment passed by a coordinate Bench of this Court in ***Kulwant Singh vs. State of Haryana and another*** (CWP No. 13917 of 2010) decided on 28.4.2011 which has been placed on record along with the written statement as Annexure R-1. In this case, the petitioner was appointed as a Peon on ad hoc basis on 26.12.1977 and promoted as a Clerk on 8.4.1993. In the promotion order, it was mentioned that the petitioner would have to pass the

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type test in Hindi or English at the speed of 25-30 words per minute. The petitioner was not allowed increments as per the terms and conditions of his promotion order and he was served a notice on 23.7.2010 that he would not be retained beyond 55 years of age in public interest and it has been decided to retire him as per the provisions contained in Rule 3.26 (d) of Punjab Civil Service Rules. The petitioner challenged the same by filing writ petition which was dismissed by this Court by referring to the judgment of Hon'ble the Supreme Court in the case of ***Baikuntha Nath Das and another vs. Chief District Medical Officer, Baripada and another, AIR 1992 SC 1020.*** This Court observed that the order of compulsory retirement can only be interfered when it is passed with mala fide or it is based on no evidence or it is found to be perverse in the sense that no reasonable person would form the requisite opinion on given material. The writ petition was dismissed keeping in view that the petitioner had not passed the type test after being promoted as Clerk. The order of compulsory retirement was held to be not suffering from any mala fide or perverse. LPA No. 972 of 2011 filed against the said judgment was also dismissed on 30.5.2011. Reference was also made to another judgment of this Court in the case of CWP No. 5491 of 2013 (***Shri Momen Ram vs. State of Haryana and others***), wherein the petitioner joined as Chowkidar/Watchman on 25.3.1983. On 08.02.1985, he was promoted as Peon. In the year 1992, the petitioner passed the Matriculation Examination after taking due permission and consequently, he was recommended for promotion and was promoted as Clerk on 08.04.1993.

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In his promotion order, a condition had been imposed that he would have to pass type test in Hindi and English at the speed of 25 W.P.M and 30 W.P.M respectively within one year from the date of joining as Clerk, failing which, he shall not be allowed annual increments. He did not pass the type test and continued to work without earning any increments. He was compulsorily retired at the age of 55 on the ground that he did not make any efforts to pass the type test as per the condition of his promotion order. While referring to the case of *Kulwant Singh (supra)*, this writ petition was dismissed. LPA No. 656 of 2015 filed against this judgment was also dismissed on 26.5.2015. Reference was also made to a judgment in the case of *Smt. Harsharan Kaur vs. Haryana Urban Development Authority and another (CWP No.28424 of 2013) and other connected cases* decided on **17.3.2015**, wherein petitioners were appointed as Clerks on daily wages/ad hoc basis and were ultimately regularized. One of the conditions of their regularization was that they would pass a typing test, failing which they would not be entitled to increments. Consequently, the increments were stopped because the petitioners did not pass the typing test and prior to that date, they attained the age of 58 years. They were sought to be compulsorily retired on the ground that having not learned typing for more than half a decade they had become deadwood and were lacking professional integrity. The petitions were dismissed by relying on *Kulwant Singh's case (supra)*.

Heard counsel for the parties and thoroughly gone through the

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records of the case.

The ratio of the judgment in *Kulwant Singh's case (supra)* and subsequent judgments passed by this Court are applicable to the facts of the present case. The petitioner in this case after being promoted as Clerk has not qualified typing test till he attained the age of 55 years. Keeping in view this fact, he has been compulsorily retired from service. Non passing of type test has been reflected as lack in professional integrity. Moreover, he has deprived the organization of the services which are expected from a Clerk. In this context word 'professional integrity' has been used and it does not reflect that the petitioner was ever dishonest in discharging his duties.

In view of all that has been discussed above, present petitions are dismissed. However, no recovery be affected from the petitioners.

May 27, 2019
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(RITU BAHRI)
JUDGE

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