

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

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**CWP-22226-2016 (O&M)
Date of Decision: 05.09.2019**

Harbans Singh

... Petitioner

vs.

State of Punjab & Ors

.. Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. K.L.Arora, Advocate, for the petitioner.

Mr. Mehardeep Singh, Additional Advocate General, Punjab.

Mr. Sandeep Khunger, Advocate, for respondent No.2.

ARUN MONGA, J.(ORAL)

In the judgment rendered by a Division Bench of this Court in CWP-13607-1990 (Annexure P-4) and followed by a Coordinate Bench of this Court in CWP-12355-2005 (Annexure P-13), wherein similarly situated persons (Class-IV employees/Peons) were given the benefit of promotion by exempting them from typing test, since their juniors had been promoted as a Clerk from the post of Peon against 10% reservation provided in Class-III category by way of promotion from Class-IV as per relevant applicable instructions dated 24.08.1983 contained at Annexure P-2.

2. Petitioner, herein, is stated to be handicapped owing to the paralysis in his right hand fingers caused by Polio. Given the physical condition of the petitioner, he is, in any case, unable to take the typing test. Apart from the same, the petitioner has taken a pointed stand in the petition (Para Nos. 24 and 26), wherein he has given instances of other Class-IV employees who were promoted to the post of Clerk by granting exemption from typing test. The said averments have not been denied in the return filed by either respondent No.1 or respondent No.2.

3. Learned counsel for the petitioner points out that during pendency of the writ petition, vide order dated 28.08.2017 (Annexure R2/2), though the petitioner was promoted as a Clerk but a condition was put that he had to pass typing test within a period of six months, failing which he would be reverted back. Since the petitioner was not in a position to clear the typing test, he was reverted to the post of Peon vide order dated 10.01.2019 (Annexure P-17) and the said order was stayed by this Court, during the proceedings of the present petition.

5. I am unable to accept the argument of learned counsel for respondent No.2 that the petitioner cannot be treated at par with the persons who are stated to be junior to him but were granted the exemptions, as the promotion was accorded to them prior to coming into force of 1998 Rules and the said Rules say that the promotion can only be granted to the Class-IV employee, if he passes the typing test.

6. The petitioner was, admittedly, eligible for promotion to Class-III from Class-IV prior to coming of the 1998 Rules and his juniors are stated to have been promoted prior to the said Rules. Therefore, the old Rules should also apply to the petitioner and he cannot be denied the benefit, particularly, his juniors having been accorded the same.

7. Having heard the rival contentions of the learned counsels for the parties and gone through the order dated 10.01.2019 (Annexure P-17), wherein, the only ground of reversion of the petitioner is that he has not passed the typing test, therefore, he is not entitled to be promoted as Clerk, which flies in the face of promotion having been granted to the other similarly situated persons without conducting the typing test. The reversion of the petitioner/non-grant of promotion by exempting him from typing test

is, therefore, not sustainable when tested it on a parity under Article 14 of Constitution of India. Even otherwise, I am of the opinion that the case of the petitioner is squarely covered by the judgment rendered by Division a Bench of this Court and later on followed by a Coordinate Bench of this Court, the writ petition is allowed. Respondents are directed to pass appropriate orders after considering the case of the petitioner for promotion without insisting on his passing the typing test.

8. Needless to say, in case, the petitioner is found fit and eligible for promotion as stated above without insisting on the typing test, the benefit shall be accorded to him in accordance with law within a period of 60 days.

05.09.2019
smriti

(ARUN MONGA)
JUDGE

Whether speaking/reasoned	: Yes/No
Whether Reportable	: Yes/No