

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

**CWP No. 24164-2017
Date of decision : 22.01.2019**

Ram Mehar

.....Petitioner

versus

Uttar Haryana Bijli Vitran Nigam and others

...Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. V.D. Sharma, Advocate
for the petitioner.

Mr. Inder Singh, Advocate
for the respondents.

RITU BAHRI, J. (Oral)

Petitioner is seeking issuance of writ in the nature of certiorari for quashing impugned condition mentioned in promotion order dated 02.06.1995 (P-2) i.e to qualify type test within one year of the promotion to the post of Clerk, failing which the annual increment shall not be allowed. Further prayer of the petitioner is for issuance of directions to the respondents to exempt him from passing type test on the ground of his age more than 45 years.

On notice of the petition, a reply has been filed on behalf of respondent Nos. 1 to 3 stating therein that petitioner was promoted on 19.05.1995 by Chief Engineer "OP" Z-II, HSEB Delhi and further ordered by XEN Sub Urban Division Panipat in OP Sub Division Assandh vide office order dated 02.06.1995. He joined on the post of LDC after accepting all the terms and conditions on 07.06.1995. The petitioner joined the services of erstwhile HSEB on 01.09.1986 on the post of Ferro Khalasi and was promoted on 19.05.1995 to

the post of LDC under 20% quota for Class IV employees. The condition was imposed in the promotion order of the petitioner, in view of regulation No. 1 (b) (ii) of the Recruitment and Promotion Policy dated 23.02.1989. Further the persons juniors to the petitioner were promoted as Assistant/F/Deputy Superintendent/F but the petitioner chooses to remain silent. The petitioner was given a number of opportunities to qualify his mandatory condition of passing of type test till 2012, the details of which are mentioned in para No. 4 of the reply. Further the annual increment has already been granted to the petitioner up to 01.06.2003 as inadvertently increments were further stopped.

Learned counsel at the very outset has referred to letter dated 01.10.2010 (P-3) whereby LDCs/Meter Readers were exempted from the departmental test for the grant of ACP's. Reference has further been made to instructions dated 07.06.1990 whereby the condition of passing typewriting test for the purpose of drawl of increment against the quota prescribed for Group D employees working in Ministries/Departments has been exempted (P-4). As per these instructions, all those employees who already crossed 45 years of age on the date of appointment (from Class IV to Clerks, Class III) were exempted from passing typewriting test from the date of issuance of this order.

Further Chief Secretary to Government of Haryan has exempted 65 persons from passing departmental type test who were promoted as Clerks from Class IV posts, as per order dated 27.02.2009 (P-5).

Learned counsel is relying upon **CWP No. 2872-2010 titled as Darshna Devi vs. UHBVNL and connected case** wherein this Court held that there is only requirement to have the knowledge of computer and the petitioner who was having the knowledge of computer was exempted from passing type writing test and the respondents were directed to give them annual increment, as

per their entitlement.

Learned counsel for the respondents has referred to judgment of Hon'ble the Supreme Court of India in a case of ***State of Punjab and others vs. Jagdish Kaur, 2011 (4) SCT 109*** wherein it has been held that in case a promotee does not fulfill the requisite conditions for the promoted post, he cannot retain the said promoted post and the respondents are well within their purview to even revert the promoted employee to his earlier post.

Learned counsel for the petitioner has produced the copy of letter dated 10.05.1989, which is taken on record as Annexure A-1. This letter was written by Under Secretary/C&R for Secretary, HSEB Panchkula to the Secretary, HSEB Panchkula to clarify that the promotion of Class IV employee to the rank of LDCs/MRs against 20% quota will be regularized as under:-

(i) 20% posts of LDCs/MRs are to be worked out on the basis of the existing vacancies which occurred on or after 20.12.1988

(ii) Class IV employees are required to satisfy two conditions independently i.e (i) passing the matriculation examination and (ii) 5 years service then they would be eligible for their promotion/appointment to the post of LDC/MRs. Total period of 05 years is to be taken into account irrespective the date of passing the matric examination.

Learned counsel submits that this letter has been considered by this Court in a case of Shankar Dass vs. UHBVN and others, wherein this Court on 17.08.2010 allowed the writ petition and respondents were directed to grant the benefit of first ACP to the petitioner w.e.f the date it was due to him.

Reference has further been made to letter dated 23.07.2018 wherein the Legal Remembrancer, HPU, Panchkula has written a letter to the XEN Op Divn, UHBVN Assandh that the addition of condition of passing of type test in

petitioner's offer of appointment is bad in law and the same be deleted in the retrospective effect paving way of entitled for all consequential benefits in favour of the petitioner.

Heard learned counsel for the parties

The present petition deserves to be allowed as in the policy dated 10.05.1989 there was no condition of passing type test and further as per letter dated 23.07.2018, it has been clearly mentioned that the condition of passing of type test in the appointment letter of the petitioner is bad in law and the same is required to be deleted.

In view of the above factual position, the present writ petition is allowed. Order dated 02.06.1995 (P-2) is being modified to the extent that the petitioner is not required to qualify type test for the purpose of promotion. The petitioner is also entitled to payment of notional increment and ACP and consequential benefits with 6% interest, as per letter dated 01.10.2010 (P-3). This exercise shall be completed within a period of four months from the date of receipt of certified copy of this order.

January 22, 2019
G Arora

(RITU BAHRI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No