

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

Date of decision: 23.04.2019

CWP No.92 of 2016

1.

Shashi Kanta

.....Petitioner

Versus

Uttar Haryana Bijli Vitran Nigam Limited and others

.....Respondents

2.

CWP No.3747 of 2016

Ghansham

.....Petitioner

Versus

Uttar Haryana Bijli Vitran Nigam Limited and others

.....Respondents

3.

CWP No.6148 of 2016

Narain Singh

.....Petitioner

Versus

Uttar Haryana Bijli Vitran Nigam Limited and others

.....Respondents

4.

CWP No.9562 of 2016

Ashok Kumar

.....Petitioner

Versus

Uttar Haryana Bijli Vitran Nigam Limited and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

**Present: Mr. K.L. Dhingra, Advocate,
for the petitioner(s).**

**Ms. Chhavi Sharma, Advocate,
for Mr. P.S. Chauhan, Advocate,
for the respondent-Nigam.**

Ritu Bahri, J.

This judgment will dispose of CWP Nos.92, 3747, 6148 and 9562 of 2016 together as common questions of law and facts are involved in all the petitions. For reference, facts are taken up from CWP No.92 of 2016.

Petitioner(s) are seeking direction to the respondents to grant them annual increments as has been granted to their junior employees by withdrawing condition of passing of type test in Hindi/English.

As per letter dated 02.07.2002 (Annexure P-1), petitioner-Shashi Kanta was granted compassionate appointment as Peon under one step lower policy on account of death of her husband, who was working as Assistant Lineman with the Uttar Haryana Bijli Vitran Nigam. Petitioner was a matriculate with second division from Haryana School Education Board. Copy of matriculation certificate issued by the Education Board has been attached as Annexure P-2. Later on, she was promoted as Lower Division Clerk (LDC) vide order dated 28.07.2010 (Annexure P-3). As per condition No.5 of the above order, she and other employees mentioned at Sr. Nos.1 to 5 in the said letter, were to pass type test in English/Hindi at the prescribed speed of 30/25 w.p.m. respectively from the date of joining as LDC, failing which, their annual increments would not be released. In case, they failed to qualify the test in Type Writing within the prescribed extended period, they would be liable to be reverted to the post from which the appointed/promoted as LDC as per Secy./Nigam O/o No.32/REG-114 Dt. 23.02.1989.

The aforementioned condition of passing of type test came up for consideration in CWP No.2083 of 2014, which was disposed of by this Court vide order dated 09.10.2014 (Annexure P-6). Similarly, another petition i.e. CWP No.13658 of 2013, titled as **Chiranji Lal vs. Uttar**

Haryana Bijli Vitran Nigam Limited and others, (Annexure P-7) was disposed of by this Court on 01.07.2013 directing the Managing Director, UHBVNL to consider and decide the claim of the petitioner for grant of increments and not insisting on passing of the type test. Pursuant to the direction given by this Court in that case, necessary benefits have been granted to the petitioner (therein) by the Superintending Engineer. Aforesaid Rakesh (petitioner in CWP No.20863 of 2014) was junior to petitioner-Shashi Kanta as he was appointed vide order dated 28.07.2010 (Annexure P-3). It is further pleaded by the petitioner that as per policy of the respondent-Nigam, persons appointed under the ex-gratia scheme having first and second divisions in matriculate are not required to pass any type test while promoting as LDC. The Superintending Engineer (Operation) while passing order dated 16.03.2015 (Annexure P-9) in favour of one Rajinder Singh has observed as under:-

“According to the existing ex-gratia employment practice, one dependent family member of deceased employee with minimum prescribed qualification of matric in 1st & 2nd Division is considered eligible for his/her direct appointment as LDC without type test and in case of 3rd Division matriculation, the type test at the prescribed speed of 30/25 w.p.m. in English/Hindi respectively is required to be qualified before his/her appointment.”

Upon notice, written statement on behalf of the respondents has been filed, wherein it has not been denied that pursuant to the petitions filed Rakesh, Chiranji Lal and Rajinder Singh, benefit of increments have been given to them without insisting on the condition of passing of type test after being appointed as LDC. Moreover, Hon'ble the Supreme Court in **State of Karnataka and others vs. C. Lalitha,** 2006 (1) SCT 596 has held that the State authorities cannot make classification between persons, who are

similarly situated. Only if, one person has approached the Court that would not be mean that persons similarly situated should be treated differently. In para No.18 of the judgment, it has been further observed as under:-

“18. Service jurisprudence evolved by this Court from time to time postulates that all persons similarly situated should be treated similarly. Only because one person has approached the Court that would not mean that persons similarly situated should be treated differently. It is furthermore well-settled that the question of seniority should be governed by the rules. It may be true that this Court took notice of the subsequent events, namely, that in the meantime, she had also been promoted as Assistant Commissioner which was a Category – I Post but the direction to create a supernumerary post to adjust her must be held to have been issued only with a view to accommodate her therein as otherwise she might have been reverted and not for the purpose of conferring a benefit to which she was not otherwise entitled to.”

More so, keeping in view the order dated 16.03.2015 (Annexure P-9) passed in favour of Rajinder Singh, who was appointed on compassionate grounds, the present petitioners also deserve the same benefit.

In view of the above discussion, all the petitions i.e. CWP Nos.92, 3747, 6148 and 9562 of 2016 are allowed and respondents are directed to grant annual increments to the petitioner(s) along with all consequential benefits, without insisting on passing of type test in English/Hindi at the speed of 30/25 w.p.m.

23.04.2019
ajp

(RITU BAHRI)
JUDGE

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