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

**CWP-31109-2018 (O&M)
Date of decision : 18.07.2019**

Manoj Kumar

... Petitioner(s)

Versus

State of Haryana and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Parveen Kumar Rohilla, Advocate
for the petitioner.

Mr. Hitesh Pandit, Addl. A.G., Haryana.

AMIT RAWAL, J. (ORAL)

The grievance of the petitioner, in the present writ petition, is for going away with the condition of passing the typing test and for quashing the order dated 19.11.2018 (Annexure P-13), whereby he has been called to pass the State Eligibility Test in Computer Appreciation and Application (SETC), in view of instructions dated 01.05.2019.

Learned counsel for the petitioner submitted that on 11.07.2001, the petitioner was appointed to the post of Chowkidar under Ex-gratia Scheme and after rendering the services and being eligible, was promoted to the post of Clerk w.e.f. 31.01.2014. The petitioner unfortunately met with an accident and lost his ring and little fingers. He sustained 3% disability, therefore, was incapable for performing the computer test. In this regard, he has drawn the attention of this Court to the letter of the Managing Director dated 22.03.2017 written to the Civil

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Surgeon, Panipat, as well as 27.04.2017, whereby, as per report of Orthopedic Surgeon of Civil Hospital, Panipat, he is not able to perform type test. As per the provisions of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, as amended in 2016, promotion cannot be denied to a person merely on the ground of his disability. The person can always be placed in supernumerary post, where there is no requirement of computer appreciation test.

Mr. Hitesh Pandit, Addl. A.G., Haryana, submitted that 3% disability cannot be a ground of removing the condition of undertaking SETC Test and in view of the interim order dated 21.02.2019 passed by this Court in “Uma Kant & others V/s State of Haryana”, the State Government has come out with instructions dated 01.05.2019, making the eligibility test compulsory for all the employees, who were promoted after 07.11.2013 and the petitioner's case is also covered under the said instructions, thus, urges this Court for dismissal of the present writ petition.

I have heard learned counsel for parties, appraised paper book and of view that the petitioner deserves to the benefit of Section 47 of the 1995 Act, which reads as under:-

"47. Non-discrimination in Government employments.—

(1) No establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service: Provided that, if an employee, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits: Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post

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until a suitable post is available or he attains the age of superannuation, whichever is earlier.

(2) No promotion shall be denied to a person merely on the ground of his disability: Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section."

In my view, the impugned order dated 19.11.2018 (Annexure P-13) would not be sustainable in the eyes of law as the Department was not sensitive of the aforementioned provisions, which are applicable to the person having the disability. Even if, the petitioner is having 3% disability, but report of Civil Surgeon, Panipat (Annexure P-7), reveals that little and ring fingers of the petitioner are amputated, therefore, would not be able to perform typing work. No argument has been raised that there is no supernumerary post, where the petitioner, on promotion, can discharge the duties, without involving the State Eligibility Test. Accordingly, the impugned order, under challenge, is hereby set aside and the respondents are directed to consider the case of the petitioner for posting him under supernumerary post, where there is no involvement of the State Eligibility Test.

With the aforesaid observations, the present writ petition is allowed.

18.07.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

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