

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

L.P.A. No.1500 of 2019 (O&M) in
Civil Writ Petition No.22559 of 2019
Date of decision: August 30, 2019

Mehak Huria and others

...Appellants

Versus

Punjab and Haryana High Court at Chandigarh and another

...Respondents

L.P.A. No.1501 of 2019 (O&M) in
Civil Writ Petition No.22557 of 2019

Maninder and others

...Appellants

Versus

Punjab and Haryana High Court at Chandigarh and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA,
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU**

Present: Mr. Akshay Bhan, Senior Advocate with
Mr. A.S. Talwar, Advocate
for the appellant(s).

HARINDER SINGH SIDHU, J.

1. This order shall dispose of Letter Patent Appeal Nos.1500 & 1501 of 2019. These LPAs have been filed against against the common judgment dated 26.08.2019 whereby Civil Writ Petition Nos. 22557 and 22559 of 2019 filed by the appellants have been dismissed.
2. The appellants had filed the petitions seeking quashing of the

minutes of the meetings dated 09.04.20019, 09.05.2019 and 22.07.2019 of the Hon'ble Departmental Promotion and Recruitment Committee (High Court) (for short "the Committee") pursuant whereto a common shorthand /typing test had been scheduled to be conducted for promotion to the post of Judgment Writers from Senior Scale Stenographers in the High Court.

3. The appellants are working as Senior Scale Stenographers in the High Court. They are eligible for promotion to the post of Judgment Writers as they have worked for more than two years as Senior Scale Stenographers.

4. Appointment to the post of Judgment Writers is governed by Rule 11 of the High Court Establishment (Conditions and Appointment of Service) Rules 1973 (for short "1973 Rules") which is as under:

"11. (1) Appointment to the post of Judgement Writers shall be made from the following sources:-

a) Fifty percent posts of Judgement Writers shall be filled in by way of competitive examination from open market, subject to following conditions:-

(i) No person shall be eligible for direct recruitment to the service if he/she is less than 21 years or more than 30 years of age.

However, upper age limit will be relaxed up to 10 years for the candidates who are already working in Government departments/Semi Government departments /Corporations/ Boards.

(ii) The candidate should be at least Graduate or equivalent thereto of a recognized university

(iii) The candidate should have proficiency in operation of Computers (Word Processing and Spread Sheets).

(iv) The candidate shall have to pass the test in English Shorthand at a speed of 120 W.P.M. and its transcription at 24 W.P.M. The test shall be of at least 10 minutes duration. No candidate shall be considered to have qualified the test, if he / she commits more than 5% mistakes. The list of qualified candidates shall remain valid for a period of one year from the date of examination and shall lapse thereafter.

b) Fifty percent posts shall be filled in by promotion from amongst the Senior Scale Stenographers, having worked as such for a minimum period of 2 years in the High Court, on the basis of merit-cum Seniority, and further subject to the following conditions :-

(i) Selected candidate should be at least Graduate or equivalent thereto of a recognized university.

(ii) The candidate should have proficiency in operation of Computers (Word Processing and Spread Sheets).”

5. As per this Rule fifty per cent of the posts of Judgment Writers are to be filled by competitive examination from the open market. The other fifty percent are to be filled by promotion from amongst Senior Scale Stenographers who have worked as such for a minimum period of 2 years in the High Court. The promotion is to be on the basis of merit-cum Seniority. The candidate should be at least a graduate and should have proficiency in operation of Computers (Word Processing and Spread Sheets).

6. The Hon'ble Departmental Promotion and Recruitment Committee (High Court) held a meeting on 26.10.2017 for consideration of a joint representation dated 9.8.2017 submitted by some Sr. Scale

Stenographers for their promotion to the post of Judgment Writers from the due dates. After perusing their service records, the Committee recommended the promotion of twenty senior most Sr. Scale Stenographers who had completed two years of service as such.

7. A meeting of the Committee was held on 09.04.2019 to consider the filling up 20 vacant posts of Judgment Writers from amongst eligible Senior Scale Stenographers. In this meeting it was decided that a common short hand/ typing test be held to see their practical performance.

8. The minutes of the meeting are reproduced below:

“Meeting note perused. The Committee, after having interacted just about 19 candidates, came to the conclusion that through interaction and perusal of personal record of the candidates, it is not possible to select the best for promotion on merit. Hence, the Committee resolves that to ensure that the competent and meritorious Senior Scale Stenographers are promoted to the post of Judgment Writers, keeping in mind the nature of job to be performed by them on promotion, let they be subjected to a common short-hand/typing test to see their practical performance, time and place to be informed later. The manner in which it is to be conducted shall be decided by the Committee itself, it being an internal affair of this Court for the purposes of promotion.”

9. Thereafter the Committee again met on 09.05.2019 wherein it was decided as under:

“Meeting note perused. The Committee recommends that in order to have the competent and meritorious Senior Scale Stenographers to be promoted

as Judgment Writers, a Stenography test for all the eligible 33 candidates be conducted with a speed as already prescribed in Rule 11 of High Court Establishment (Appointment and Conditions of Service) Rules, 1973 on 27th May, 2019 at 4.30 PM at High Court Museum and to put up its compiled report before the Committee on the next date of meeting.”

10. The appellants submitted representations requesting that they be promoted to the post of Judgment Writers without insisting on the test. They claimed parity with their senior colleagues who were promoted based on their service record without subjecting them to any test. The representations having been rejected, they filed the writ petitions.

11. The contention of the appellants before the Ld. Single Judge as also in the present appeals was that there is no provision in the 1973 Rules for holding any test for promotion. A test is only prescribed in cases of direct recruitment. Twenty three Senior Scale Stenographers out of the batch of 33, were promoted in the year 2017 on completion of 2 years based on their service record without having to take any test.

12. It was also their contention that decisions of the Committee were in contravention of Rule 24 of the 1973 Rules which prescribes as under:

“24. Promotion in the High Court Establishment from one grade to the next higher one shall except in cases where competitive examination is prescribed, be by selection and no one shall have a right to claim promotion.

Service record of the Officers/Officials for

preceding 5 years shall be taken into consideration except for the posts for which a specific criteria for promotion is laid down.

The Officers/Officials should have earned at least three 'Good' reports in his ACRs in last 5 years without any entry of 'doubtful integrity' for a period of 10 years preceding the month of consideration for promotion.”

13. As per this Rule, except in cases where competitive examination is prescribed, the promotions are to be made by selection. No such competitive exam has been provided for promotion as Judgment Writers in Rule 11. Furthermore, except for the post for which a specific criteria for promotion is laid down, the service record is to be taken in consideration. The ACRs of the appellants provide an assessment of their performance as Sr. Scale Stenographers. It is thus argued that the respondents are acting illegally and against the Rules by insisting on the test.

14. The Ld. Single Judge rejected their contentions and dismissed the writ petitions observing as under:

“11. I have considered the submissions advanced by the learned Sr. Counsel and perused the paper-book and the rules involved.

12. To start with, no rule is impermeable. It is subject to change and alteration to meet the need of the hour. So long as an administrative decision is not contrary to rule or in abrogation of it, it is widely acceptable as supplemental to Rule and not aimed to supplant it. The introduction of the common test in Shorthand/typing test for promotion is supplemental to the rule. The impugned

decisions are in the nature of executive instructions and are made eminently to fill in the gaps in the rules and the present felt requirements of the job. In an ever increasing workload upon the High Court, the place of Stenographers is vital to the existence of the High Court as an institution in both administrative and judicial work. The suitability is to be determined on the touchstone of merit-cum-seniority and not seniority-cum-merit. The principles of seniority-cum-merit and the reverse in service jurisprudence are well known. Merit is predominant and seniority is subordinate. In other words, 'merit-cum-seniority' lays greater emphasis on merit and ability and seniority plays a less significant role. The way in which merit is to be determined is not defined in Rule 11 (1) (b) and that is what has apparently prompted the authority to fill in the gaps by the impugned decisions of the Hon'ble Committee. The decision to put the petitioners to a test may be hybrid solution to chose the most efficient to discharge with ability the duties and responsibilities of the higher post but is not illegal or unjustified as a new-deal policy. It has become a rampant notion among the sloths and the malingerers that promotion only means easy access to higher salary viewed as an automatic birthright. To break this cacoon butterflies will not fly out. The transformation comes with pain and fear of being passed over to merit but it will secure in some measure the future of the institution that the best stenographers of keenest competitive talent go up the ladder of promotion and success strengthening human resources for years to come. This I believe is the philosophy of the decisions taken in 2019.

13. I have, therefore, no doubt in my mind that both the writ petitions are misconceived and deserve not to be entertained in exercise of writ jurisdiction under Article 226 of the Constitution of India. There is no error or arbitrariness, unconstitutionality, discrimination and illegality in the impugned decisions of the Hon’ble Committee. Merely because past precedents have been departed from is not a valid ground to upset the impugned decisions and invoke the writ jurisdiction of this Court. No one has an indefeasible right to promotion nor are chances justiciable. Their right to promotion exists but it stands pruned by a test of merit. Merit must prevail if public interest is to be wholesomely served.

14. For the foregoing reasons, I find no merit in both the writ petitions and the same are dismissed in limine.”

15. The reasoning of the Ld. Single Judge is unexceptionable and is as per settled principles in service law. We find no reason to disagree with the same.

16. The appeals are accordingly dismissed.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

August 30, 2019
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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No