

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

**CWP NO. 24471 OF 2014 (O&M)
DATE OF DECISION : 27.05.2019**

Dinesh Kumar Sharma

...Petitioner

versus

**Punjab Small Industries and Export
Corporation Limited**

...Respondent

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

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

Mr. Indresh Goel, Advocate,
for the respondent.

ARUN MONGA, J. (ORAL)

1. Petitioner herein seeks quashing of the order dated 15.07.2014 (Annexure P-15), whereby claim of the petitioner for absorption/promotion to the post of Salesman has been negated. Further prayer has been made to direct the respondents to pay the salary and allowances commensurate with his post of officiating Salesman.

2. Learned counsel for the petitioner contends that the petitioner is officiating as Salesman, yet he is being paid salary of a Peon, since he was recruited originally as Peon at Chandigarh.

3. Learned counsel for the petitioner contends that the petitioner was in fact officiating Salesman since 2002 until 15.05.2018 for continuous period of 16 years. As a counter blast

to the present writ proceedings, he was asked to start working as Peon once again.

4. The petitioner has the requisite computer knowledge, but lacks expertise in Punjabi Type Test and therefore, he is not being considered for promotion to the post of Salesman by relaxing the requirement of clearing the typing test.

5. This Court, vide order dated 21.05.2018, had directed the respondent-Corporation to disclose as to why the petitioner is not entitled to higher wages for the period he performed his duties as Salesman and; whether another co-employee namely Waryam Singh, who has been promoted from the post of Peon to Salesman/Clerk qualified the type test ? Pursuant thereto, an affidavit/statement dated 26.09.2018 of Shri V. P. Goyal, Manager (Personnel), has been filed. It is stated therein that option for promotion to Salesman from all Class IV employees was sought subject to the condition of being posted at Phulkari counter of Himachal Emporium, Shimla. Waryam Singh opted for it and was promoted by granting relaxation of Punjabi Type Test, only on the condition that he will be posted at Himachal Emporium, Shimla.

6. A perusal of the affidavit clearly reflects that the respondent-Corporation has been indulging in pick and choose policy. The justification rendered by Corporation is that option was given to Class IV employees to be posted at Shimla, which is way outside Chandigarh, and since said Waryam Singh exercised

his option, therefore, he was granted exemption from passing the Punjabi Type Test.

7. In the course of arguments, learned counsel for the respondent-Corporation submits that Shimla being a harsh place of posting, not many employee are willing to be posted there. In the circumstances, therefore, relaxation of the type test was granted to Waryam Singh.

8. Learned counsel for the petitioner contends that said Waryam Singh after being promoted as Salesman, was brought back to Chandigarh. The said factual assertion is not controverted by learned counsel for the respondent for lack of instructions qua the same.

9. Be that as it may, from the affidavit filed in the Court what emerges is that if an employee opts to be posted at a place outside Chandigarh, which is stated to be harsh as per argument of learned counsel for the respondent, then the mandatory condition of passing the Punjabi Typing Test can be relaxed.

10. My attention has also been drawn to an order/judgment dated 21.04.2014 (Annexure P-14), rendered by a coordinate Bench of this Court in CWP No. 4817 of 2012 instituted by the petitioner. In the said writ petition, he had sought a similar relief of being considered for promotion to the post of Salesman, by giving relaxation of passing the Punjabi Type Test, as he had been continuously working on the said post since 2002. The writ petition was disposed of giving directions to the

respondents to reconsider the case of petitioner by keeping in view the proceedings of the meeting of the Sales Managers of the respondent-Corporation held on 19.06.2013. In view of the ground reality of the nature of work discharged by the Salesman, it was recommended that there is no use of Punjabi typing by the Salesman for working in an Emporium. The relevant extract of the judgment *ibid* is reproduced herein below :

" Petitioner had moved a representation (Annexure P-11) through his counsel for redressal of his grievance. Respondents in their reply averred that petitioner could not be promoted as a Clerk as he had failed to qualify the type test in Punjabi as per promotion policy of the corporation.

During the course of arguments, learned counsel for the petitioner has placed on record copy of the proceedings of the meeting of Sales Managers, held on 19.6.2013. Para 3(c) of the said proceedings reads as under:-

DGM (Emporia) apprised worthy MD about the disadvantageous position of the class-IV employees working in the emporiums as compared to their counter parts in the other units as regards their promotion is concerned. There is condition of clearing of type test for the promotion of clerk, but due to the nature of work, odd working hours, six days working, lessor numbers of holidays, it is difficult for class-IV employees posted in the emporiums to learn typing. Moreover, there is no use of typing in the emporiums. GM (emporia) emphasized that instead of type test, the condition of knowledge of computer may be levied on the class-IV employees for promotion to class-III. MD desired to evolve a policy for the same."

In view of the above proceedings, it would be just and expedient to dispose of this petition by giving a direction to the respondents to re-consider the case of the petitioner for promotion to the post of Clerk in view of the proceedings of meeting dated 19.6.2013.

Accordingly, this petition is disposed of with a direction to the respondents to re-consider the case of the petitioner for promotion to the post of Clerk, in view of the proceedings of the meeting dated 19.6.2013, expeditiously, preferably within three months from the receipt of the certified copy of this order."

11. As regards the claim of petitioner to seek higher wages commensurate with his post of officiating Salesman, the same has been resisted by learned counsel for the respondent in the course of arguments, stating that posting letter dated 20.02.2004 (Annexure P-8), whereby the petitioner was posted as Salesman clearly states that he will work as such, without any extra remuneration. Thus, it is a conceded position that the petitioner had been working as officiating Salesman, but merely because of posting letter he will not be entitled to any extra remuneration. The respondent-Corporation being in dominating position, indulged in exploitation of the worker by denying them the wages commensurate with the work which was extracted from them.

12. Learned counsel for the petitioner relies on a judgment rendered by a co-ordinate Bench of this Court in CWP

No. 4552 of 2003 titled as "Darshan Singh and another v. The State of Punjab and others" (Annexure P-17). Relevant thereof is extracted herein below:

" Learned DAG has argued that even though he is not in a position to cite any judgment contrary to this, yet the distinguishing factors are that in the order relating to the petitioners it was specifically mentioned that they would not be entitled to any such pay while there was no such stipulation in the case of Selvaraj (supra).

In my opinion this would not be determinative. What the Hon'ble Supreme Court has decided in the case of Selvaraj (supra) is the entitlement of an employee to get the emoluments of the post against which he actually worked."

13. I am in respectful agreement with the aforesaid observations. In the premise, the respondent-Corporation is directed to calculate the arrears of wages of the petitioner with effect from the date he first caused legal notice dated 20.01.2011 (Annexure P-12) and demanded the same. The petitioner shall be entitled to interest @ 6% per annum on the arrears of his wages commensurate with his posting with effect from the date of legal notice until the actual date of entitlement when he was relieved from the charge of officiating Salesman till its actual disbursement.

14. Furthermore, the writ petition is disposed of with a direction to respondent-Corporation to reconsider the case of petitioner by granting relaxation of Punjabi Typing Test.

However, the respondents are at liberty to consider the said relaxation only if the petitioner is willing to give the same consent, as given by his co-employee Waryam Singh, that he is willing to be posted anywhere outside Chandigarh.

15. With the aforesaid observations, the writ petition stands disposed of. No order as to costs.

(ARUN MONGA)
JUDGE

MAY 27, 2019
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No