

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

CWP-11842-2020
Date of Decision:-24.09.2020

Surinder Singh and others

..... Petitioners

Versus

State of Haryana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR

Present: Mr. Sunil K. Nehra, Advocate for the petitioners.

Mr. Rajesh Gaur, Additional A.G., Haryana and
Mr. Minderjeet Yadav, DAG, Haryana.

SANJAY KUMAR, J. (Oral):

The petitioners, 43 in number, are working as Clerks or Steno-typists in the offices of the Deputy Commissioners at Ambala, Kurukshetra and Yamunanagar in the State of Haryana. They claim to have been promoted/appointed to the said posts before 07.11.2013. Their grievance presently is that they are being denied annual increments and the benefit of the Assured Career Progression Scheme (ACP) on the ground that they have not passed the State Eligibility Test in Computer Appreciation and Application (SETC). They assail the letter dated 22.05.2020 (Annexure P-9) addressed by the Financial Commissioner and Additional Chief

Secretary, Revenue and Disaster Management Department, Government of Haryana, to the Commissioner, Ambala Division, requiring him to take necessary action regarding the SETC apropos all the Clerks working in Ambala Division. According to them, this direction is in violation of the Division Bench order dated 21.02.2019 passed by this Court in ***CWP-18143-2018*** and batch, titled ***Nissar Ahmed Vs. State of Haryana and others***, and also the instructions dated 01.05.2019 issued by the General Administration Department, Government of Haryana (Annexure P-8). They seek a consequential direction to the authorities to grant them increments from the year 2019 and onwards, which were stopped without justification, apart from granting them ACP benefits and further promotions, on the basis of seniority-cum-merit.

The Government of Haryana issued certain instructions on 07.11.2013 (Annexure P-4) with regard to upgradation of the minimum educational qualifications for Clerks, Steno-typists etc. Thereunder, the earlier Type Test was substituted with the SETC as part of the service requirement for Clerks, Steno-typists, Junior Scale Stenographers and Senior Scale Stenographers. Existing Clerks, who had been promoted but had not passed the Type Test till that date, were given the option of either passing the Type Test or the SETC but all newly recruited/appointed Clerks, Steno-typists, Junior and Senior Scale Stenographers were required to qualify in the SETC.

Thereafter, owing to the observations made by a Division Bench of this Court on 04.09.2018 in ***Uma Kant and others Vs. State of***

Haryana and others (CWP-7630-2016, CWP-4053-2017, CWP-18084-2016 and CWP-17278-2018) to the effect that passing of the SETC ought to be made compulsory for all Clerks, the Government of Haryana issued instructions on 17.11.2018 (Annexure P-6) stating that the condition of passing the SETC would apply to all Clerks appointed by any mode of recruitment and that it would be mandatory for all Clerks to qualify in the SETC within six months.

However, when these instructions were brought to the notice of another Division Bench of this Court in **Nissar Ahmed Vs. State of Haryana and others** (CWP-18143-2018 and batch), the Division Bench noted in its order dated 21.02.2019 that, as per the earlier Notification dated 07.11.2013 (Annexure P-4), the cut-off date was stipulated to be 07.11.2013 and those who were promoted after the said date would have to compulsorily pass the SETC or else, consequences would follow. Thus, the Division Bench accepted the said cut-off date in order to avoid chaos and directed that only those promoted after 07.11.2013 had to pass the SETC.

The Government of Haryana accordingly issued a clarification on 01.05.2019 (Annexure P-8). Therein, referring to the aforesaid Division Bench order dated 21.02.2019, the Government stated that a decision had been taken that all persons who were promoted as Clerks after 07.11.2013 had to clear the SETC and that 10 chances would be provided.

This being the factual scenario, the Deputy Commissioner, Kurukshetra, the fifth respondent, filed a written statement on behalf of the first, second and third respondents, apart from himself. Therein, he adverted

to the facts set out *supra* and pointed out that, in terms of the earlier Division Bench order dated 04.09.2018 passed in ***Uma Kant*** (*supra*), all Clerks were required to pass the SETC. He, however, did not dispute the fact that the later order dated 21.02.2019 of the other Division Bench in ***Nissar Ahmed*** (*supra*) accepted the cut-off date, 07.11.2013.

On the same lines, the Deputy Commissioner, Yamunanagar, the sixth respondent, filed a separate written statement. Surprisingly, he deposed to this written statement, not only for himself, but also for the first, second and third respondents.

Thus, as matters stand, there is no dispute that all the petitioners were promoted/appointed as Clerks or Steno-typists before 07.11.2013. In the light of the later Division Bench order dated 21.02.2019, accepting the cut-off date 07.11.2013, they are not required to pass the SETC, as the Division Bench had categorically held therein that only those who were appointed as Clerks after the said date were required to pass the SETC compulsorily.

Though the authorities seek to place reliance on the earlier order dated 04.09.2018, passed in ***Uma Kant*** (*supra*), ignoring the order dated 21.02.2019 passed in ***Nissar Ahmed*** (*supra*), it may be noted that the very same learned Judge presided over both the Division Benches. Therefore, the later view should prevail. The Government of Haryana also accepted this and issued the clarification dated 01.05.2019 (Annexure P-8), stating to the same effect as in ***Nissar Ahmed*** (*supra*).

It is therefore too late in the day for the authorities to claim that the cut-off date has no sanctity and insist upon all Clerks and Steno-typists, irrespective of the date of their appointment/promotion, to compulsorily pass the SETC. As per the stand to which it committed itself, the Government of Haryana cannot insist upon such qualification from those who were promoted/appointed as Clerks or Steno-typists before 07.11.2013.

The writ petition is accordingly allowed to the extent of making this position clear and directing the respondents not to insist upon the petitioners passing the SETC. Subject to their being eligible in all other respects, the petitioners shall be granted the benefits due to them, including pending increments, promotions on seniority-cum-merit basis and ACP benefits.

In the circumstances, there shall be no order as to costs.

(SANJAY KUMAR)
JUDGE

September 24, 2020.

sandeep

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.