

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

**CWP-12603-2020(O&M)
Date of Decision:12.11.2020**

Arun Kumar (Ahlmad) and another Petitioners

versus

State of Punjab and another Respondents

**CORAM : HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present: Mr.Rishu Garg, Advocate for the petitioners.

Mr.APS Gill, AAG, Punjab.

TEJINDER SINGH DHINDSA, J. (ORAL)

This case has been taken up through Video Conferencing via Webex facility in the light of Pandemic Covid-19 situation and as per instructions.

Petitioners who are two in number are stated to be serving on the post of Ahlmad and attached to different Courts in District Ferozepur, State of Punjab.

The instant writ petition has been filed seeking a mandamus directing the respondent-authorities to re-conduct a type test for purposes of recruitment of Clerks by way of transfer in the Financial Commissioners Secretariat.

Brief facts that would require notice are that a notice dated 27.09.2019 (Annexure P-1) was issued from the office of the Department of

Revenue and Rehabilitation, Financial Commissioners Secretariat (Administration-I Branch) and circulated across different departments of the State of Punjab on the subject of recruitment of Clerks by way of transfer in the Financial Commissioners Secretariat. As per such notice applications from eligible candidates were invited and a type test on computer was to be taken. Apparently a type test was conducted on 13.02.2020 in which both the petitioners participated. It so transpires that other candidates who had also appeared in the test raised a grievance that the key boards of the computers that had been provided at the time of conduct of the type test were not functioning properly. The State Government acting on such complaint having been filed at the hands of other candidates took a retype test on 04.06.2020.

Petitioners herein also filed a representation dated 16.06.2020 raising identical grievance as regards the computer key boards not functioning properly. Having evoked no positive response the instant writ petition has been filed.

The writ petition came up for preliminary hearing on 08.09.2020 and the following order came to be passed:-

“ Matter has been taken up through Video Conferencing via Webex facility in the light of the Pandemic Covid-19 situation and as per instructions.

A complete copy of the writ petition has been furnished to Mr. Suveer Sheokand, learned Additional Advocate General, Punjab.

Learned State counsel is requested to complete instructions on the following counts:

(i) A type test for recruitment of Clerks by way of

transfer in the Financial Commissioner's Secretariat was conducted on 13.02.2020. It be verified as to whether any re-type test was conducted in the month of June, 2020 on the basis of representation(s) having been made regarding there being any fault in the keyboard of the computer set.

(ii) If the response to query No.1 is in the affirmative, whether any notice had been issued by the concerned authority informing all the candidates who had appeared in the test on 13.02.2020 so as to avail of the chance of re-type test.

(iii) Learned State counsel to also inform the Court as regards the number of posts of Clerks sought to be filled up by way of transfer in the Financial Commissioner's Secretariat and whether all such posts have been filled up as of date.

List on 11.09.2020.”

During the course of hearing thereafter two affidavits dated 14.09.2020 and 07.10.2020 have been filed on behalf of the State. Copies were duly furnished to counsel opposite.

The factual premise pertaining to the number of vacancies, conduct of the type test, retype test, the number of vacancies filled up and posts remaining vacant has been furnished in the second affidavit dated 07.10.2020. Perusal thereof would reveal that against 109 vacant posts of Clerks, 42 candidates were taken from other departments of the Government of Punjab. 104 applications from eligible candidates were received from the offices of District and Sessions Judges in the State of Punjab as also the Punjab and Haryana High Court for appointment by way of transfer to the Financial Commissioners Secretariat. Out of the 104 applicants, 71

candidates had appeared in the type test which was held on 13.02.2020 and 14.02.2020. 42 candidates qualified the type test and were issued appointment letters. 40 of such candidates actually joined on the posts. Resultantly 78 out of 109 posts were filled up after the type test leaving 31 vacancies available. It has further been stated on behalf of the State that candidates who had made representations were allowed to take a retype test and notices were issued only to them for the retype test which was held on 04.06.2020. Out of 16 candidates who appeared for the retype test, 13 candidates qualified and were issued appointment letters. Resultantly against 31 vacancies 13 more came to be appointed by virtue of the retype test leaving 18 vacancies still available with the department.

Insofar as the present petitioners are concerned, their prayer for a retype test is being opposed on the sole ground that their claim is belated inasmuch as the first representation filed by them was only on 16.06.2020 as opposed to the initial type test that had been conducted in the month of February, 2020. State counsel has vehemently contended that in case the prayer of the petitioners was to be accepted it would open the flood gates for other candidates also to approach this Court seeking identical relief and as such it would be a never ending exercise.

Having heard counsel for the parties at length and having perused the pleadings on record this Court is of the considered view that the course of action adopted by the State Government in the matter has been patently unfair and unjust.

Apparently the notice dated 27.09.2019 at Annexure P-1 had been issued to fill up some vacant posts of Clerks at the Financial

Commissioners Secretariat, Punjab out of the Clerks working in different Government departments in the State. In the first instance the notice dated 27.09.2019 (Annexure P-1) does not even identify the number of vacant posts sought to be filled up. Be that as it may, such exercise of filling up the posts of Clerks by way of transfer was under the provisions of the Financial Commissioners Secretariat Service Rules, 1986 read with Punjab Civil Service (General and Common Conditions of Service) Rules, 1994. As per notice a type test of the eligible candidates and who have already completed two years of service was to be conducted on a computer. Petitioners herein were otherwise eligible and submitted their applications through proper channel. They participated in a type test which was conducted in the month of February, 2020. Certain candidates other than the petitioners raised an issue soon thereafter that the key boards of the computers that had been provided at the stage of the type test were not functioning properly. State Government concededly examined such representations and took a decision to conduct a retype test on 04.06.2020. In other words the flaw in the key boards of the computer sets provided to the candidates who had appeared in type test in the month of February, 2020 was acknowledged. As a model employer the State Government in all fairness ought to have at such stage, issued a notice to all the candidates who had appeared in the initial type test to be given a chance to appear in the retype test. The option certainly should have been granted to all who had participated in the initial type test. However, for reasons best known to the State Government, the notice regarding retype test was confined only to such candidates who had submitted a representation. As per pleadings on record even after the

conduct of the retype test on 04.06.2020, 18 vacancies are still available with the department.

Even though the petitioners raised the claim with some delay by filing a representation dated 16.06.2020 but such delay in the peculiar facts and circumstances of the case cannot be treated as fatal. Concededly the representation dated 16.06.2020 of the petitioners has been kept pending and it is under such circumstances that the instant writ petition was filed in the month of August, 2020. The vacancies being available even as of date and pertaining to the same very recruitment drive as was initiated vide notice dated 27.09.2019 (Annexure P-1) stands conceded. Fair play and equity demand that a chance be afforded to the petitioners herein by way of a retype test and at par with the other candidates who had also appeared in the initial type test conducted in the month of February, 2020. Such chance if afforded even as of date would not cause any prejudice to either party.

For the reasons recorded above writ petition is allowed. Directions are issued to the respondent-authorities to hold a retype test for the petitioners for purposes of considering their claim to be appointed as Clerks by way of transfer in the Financial Commissioners Secretariat. A date in such regard be fixed and be conveyed to the petitioners. Such exercise be concluded within a period of two months from today.

It is, however, clarified that pertaining to the type test conducted in February, 2020 it is only the two petitioners herein who have approached this Court and as such the concession of a retype test would be confined to them alone and this order would not be taken as a precedent by any other candidate who may have otherwise appeared in the type test in

February, 2020 and have chosen not to agitate their grievance till date.

Petition allowed.

(TEJINDER SINGH DHINDSA)
JUDGE

12.11. 2020
sunita

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