

CWP-9004-2006

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

CWP-9004-2006

Date of Decision: 4th March, 2020

Nand Ram

...Petitioner

Versus

State of Punjab & others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: None for the petitioner.

Mr. Charanpreet Singh, Asstt. A.G., Punjab.

Mr. Satnam Chauhan, Advocate
for respondents No.3 to 8.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Petitioner has approached this Court challenging the order dated 20.02.2006 (Annexure P-6), vide which his claim for promotion to the post of Clerk has been rejected on the ground that he did not clear the typing test and those peons, who have cleared the type test, have been appointed to the said post.

2. This ground, which has been taken by the respondents for rejecting the claim of the petitioner is contrary to the Division Bench judgment of this Court in CWP No.5401 of 2003, titled as 'Ramesh Chand & others Vs. The Director, Department of Rural Development and Panchayats, Punjab & another', decided on 04.08.2003, wherein, it has been held as follows:-

“Attention of this Court has been invited to the Punjab Department of Rural Development and Panchayats (Class III) Rules, 1988 (hereinafter referred to as '1988 Rules'). It is not a matter of dispute between the parties that the 1988 Rules regulate the conditions of service of the petitioners. Rule 8 of the 1988 Rules delineates the method of appointment. Qualifications required for appointment against the posts regulated by the 1988 Rules have been stipulated in Appendix B. So far as the post of Clerk is concerned, Appendix B makes a reservation of 10% of the cadre posts of Clerks for appointment by way of promotion. The remaining 90% of the cadre posts of Clerks are to be filled up by way of direct recruitment. Column 5 of Appendix B of the 1988 Rules lays down the following parameters for promotion to the post of Clerk:-

“From amongst Class IV employees working in Directorate of Panchayats (head Quarters staff other than intelligence unit staff) cadre who are Matriculates and who have an experience of working as such for a minimum period of five year.

Column 6 of Appendix B of the 1988 Rules lays down the following eligibility conditions for promotion to the post of Clerk:-

Should be Matriculate or its equivalent and should have qualified the type writing test in Punjabi language to be conducted by the Board at a speed of thirty words per minute”.

It is apparent from a comparative assessment of columns 5 and 6 of Schedule B pertaining to posts of Clerk that it is not essential for a promotee, to qualify the typewriting test in Punjabi language for promotion,

whereas for direct recruitment a candidate selected for appointment as Clerk is required to qualify the typewriting test in Punjabi.

In view of the above, we are satisfied that the petitioners could not have been denied consideration for promotion to the posts of Clerk merely on account of the fact that they had not qualified the typewriting test in Punjabi, or on account of the fact that persons junior to them had qualified the typewriting test.

Learned counsel for the petitioners has also invited the attention of this Court to the Punjab civil Services (General & Common Conditions) Rules, 1994 (hereinafter referred to as the '1994 Rules') which were notified on 23.6.1999, whereby the method of appointment and qualifications for posts including the posts of Clerk were redetermined. The competent authority while promulgating the 1994 Rules under Article 305 of the Constitution of India has reiterated the requirement of qualifying the typewriting test in Punjabi with a minimum speed of 30 w.p.m. within one year of the date of appointment by direct recruitment. The requirement for qualifying the typewriting test in Punjabi has not been made for appointment by way of promotion. It is, therefore, evidence that till today, no statutory rules requires person similarly situated as the petitioners claiming promotion to the post of Clerk to qualify the test typewriting test in Punjabi language as a pre-requisite for promotion to the post of Clerk.

Learned counsel for the respondents has however, vehemently relied on the instructions dated 27.10.1998 appended with the written statement as Annexure R1/T. Even a perusal of Annexure R1/T

suggests only a proposal at the hands of the authorities, in fact clause (iii) of para 1 of the aforesaid instructions is relevant in this behalf and is being extracted hereunder:-

“The service rules of all the departments including those in which a provision for promotion of class-IV employees to class III (clerks) posts has already been made, should be amended in accordance with the aforesaid decisions.”

In view of the aforesaid, it was imperative for the authorities to have amend the statutory rules before insisting on anybody to qualify the typewriting test in Punjabi before promotion to the post of Clerk. No such amendment has admittedly been made till date. Even otherwise instructions cannot over rule statutory rules.

In view of the statutory rules noticed above we are satisfied that the claim of the petitioners should have been considered while persons junior to them were promoted to the post of Clerk. Accordingly, we direct respondent No.2 to consider the claim of the petitioners for promotion to the posts of Clerk within three months from today. In case one or more petitioners or all of them are found suitable for promotion, they shall be promoted from the date persons junior to them were promoted. They shall also be entitled to all consequential reliefs.”

3. In view of the above judgment and keeping in view the judgment of the Hon'ble Supreme Court in State of Punjab & others Vs. Jagdish Kaur {2011 (4) S.C.T. 109}, where again the same proposition has been upheld, the impugned order cannot sustain and deserved to be set

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aside.

4. In view of the above, the present writ petition is allowed and the impugned order dated 20.02.2006 (Annexure P-6) is hereby quashed. Direction is issued to the respondents to consider the claim of the petitioner for promotion in accordance with the abovesaid judgment of the Division Bench of this Court, from the date his juniors were promoted to the post of Clerk as it is admitted by the respondents in the affidavit dated 16.07.2019 filed in Court that the petitioner is senior to private respondents No.3 to 8, who already stand promoted to the post of Clerk.

5. The said exercise be carried out by the official respondents within a period of two months from the date of receipt of certified copy of this order. The consequential benefits be released to the petitioner within a further period of one month.

(AUGUSTINE GEORGE MASIH)
JUDGE

4th March, 2020

Harish

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