

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

**C.W.P No 23403 of 2019
Date of decision : 09.01.2020**

Surender and ors.Petitioners

versus

State of Haryana and ors. ...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Jasbir Mor, Advocate
for the petitioners.

Mr. Hitesh Pandit, Addl.A.G. Haryana

RITU BAHRI, J. (Oral)

Petitioners are seeking quashing of order/letter dated 01.05.2019 (P-14) whereby a condition was imposed upon the petitioners of SETC.

The grievance of the petitioners before this Court is that they were appointed as Clerks in the year 1991 and 2012 and now the condition of SETC is not applicable to them.

On notice of the petition, a written statement has been filed on behalf of respondent Nos. 1 to 3 and it has been stated that the petitioners were appointed as Clerks after accepting the terms and conditions mentioned in their appointment letter wherein the condition of passing SETC also stands mandated in Para 3. (vi) of the appointment letter (P-7), which reads as under:-

(vi) They will have to qualify the State Eligibility Test in Computer Appreciation and applications (SETC) as well as to pass/clear the typing test in English and Hindi Language at the speed of 2530 w.p.m being part of the State Eligibility Test in Computer

Appreciation and Applications (SETC) with in the probation period of one year, extendable by one year as per notification dated 09.11.2013 failing which they will be reverted back to their parent department.

Reference has been made to notification dated 09.11.2013 (R-1) whereby respondent No. 1 made amendment in the Punjab Civil Secretariat (State Services Class III) Rules, 1952, in their application to the State of Haryana, which came to be known as Punjab Civil Secretariat (State Services Class III) Haryana Amendment Rules, 2013 and as per amended Rules, typing has been substituted with SETC. This condition has been made mandatory for earning any increment.

Reference has further been made to interim order dated 04.09.2016 passed in CWP No. 7630-2016 wherein challenge was to the condition of SETC to the serving clerks who had been appointed after clearing type test at the initial stage.

“In response to order dated 06.08.2018 made by this Court Mrs. Tanisha Peshawaria, DAG Haryana, has placed on record affidavit of Sh. Nikhil Gajraj, IAS, Director, Consolidation of Holdings, Haryana dated 04.09.2018, which is taken on record. It is stated therein that the matter has been referred to the Chief Secretary of the State of Haryana for compliance of the order made by this Court. However, in para 3 of the affidavit it is stated that in the consolidation department Rule 9A of Haryana Consolidation of Holdings Department Ministerial Staff (Emp.) Service Rules, 1998, as amended by Rules of 2013, provides for passing of SETC as a post-requisite condition. Same has to be passed during the total period of two years. The condition was also mentioned in the promotion order. It appears from the affidavit that the deponent wants that it will be in the interest of justice, equity and fair play if the decision is taken by the Chief Secretary. On behalf of Additional Chief

*Secretary to Government of Haryana, Home Department the State Government filed a note along with some papers in which there is reference to notification dated 09.11.2013 in the form of amendment and it is contended that the requirement of type test is prospective in nature. Referring to notification dated 17.03.1978 it is stated that there is no requirement of passing such type of test. In CWP No.17278 of 2018 there is reference to one order dated 01.08.2013 passed in LPA No.847 of 2013 titled **Lal Chand versus State of Haryana & others** passed by Division Bench of this Court, on the basis of which it is contended that this Court had asked the Government to consider the claim for relaxation sympathetically.*

Perusal of order dated 01.08.2013 passed in LPA No.847 of 2012 cited supra, does not anywhere show that this Court had directed grant of outright exemption from passing the type test. We, therefore, do not agree that this Court had made an order for granting exemptions.

It is a well settled legal position that the grant of exemption is always by way of exception. However, as observed in the earlier order dated 06.08.2018 total 96 persons were granted exemption from passing type test. Citing the said examples, the petitioners in the present petition Uma Kant and others, have stated that they are also entitled to exemption in the same manner as was granted to those 96 persons.

This Court is of the firm opinion that promotion to the post of Clerk necessarily involves skill required for the post of the Clerk at least knowing about the typing and the computer application in order to perform the duties of Clerk in the Government offices. Nay it would be a fundamental requirement for a Clerk to have skilled knowledge about the computer application and the typing (English/Hindi) for discharging the functions as such. There can not be a Clerk without the knowledge of computer application and typing etc. There is no question of prospective application of notification dated 09.11.2013. It must apply to all who are working as Clerks and taking salary of Clerk. However, the note shown to us by the learned State counsel that

type test would be necessarily prospective as per notification dated 09.11.2013 is absurd. By saying so, the result would be that there would be one set of Clerks in the exempted. application and or SETC qualification. Another set would be of Clerks having SETC qualification working in the same Government office. The Clerks in the exempted category would chuckle at the others having SETC. The present petitioners have claimed that there is discrimination and they should also be granted exemption. Thus if all the Clerks are granted exemption from passing SETC, the working in the offices of the Government is bound to be severely affected apart from increase in favouritism and nepotism.

The State of Haryana is a progressive State and the step in question to continue to grant exemptions to the favourites on such excuses including the alleged prospective application, is bound to result in a retrograde step. We cannot countenance such a thought and move on the part of the high ranking officer like Additional Chief Secretary to reduce the standard in such a manner that too when huge salary with 7th recommendation is being paid without accountability. We, therefore, find that passing of SETC type test (English/Hindi) ought to be made compulsory for one and all who want to work as a Clerk on promotion or by direct recruitment. It is a different matter that Government may give chances and chances to them to appear in the said test.

We hope, trust and request the Chief Secretary of the State of Haryana to look into the matter personally and take decision in the interest of public and the State rather than granting exemptions which obviously has given rise to the present litigation.

List on 26.09.2018.

A photocopy of this order be placed on files of connected matters.”

In compliance of order dated 04.09.2018, the instructions dated 17.11.2018 was issued by the Government, mentioned at Page No. 175 of the paper book. Further learned State counsel has informed the Court that

instructions dated 07.11.2013 is not applicable to the employees who have been promoted after 07.11.2013. Hence all those employees who have been promoted before 07.11.2013 were exempted from passing SETC. Thereafter, the notification dated 01.05.2019 was passed by the Government and has taken the following decisions:-

(a) That all those persons who have been promoted to the post of Clerk after 07.11.2013 shall have to clear SETC test.

(b) 10 (Ten) chances to qualify the SETC exam shall be provided to those who have been promoted after 07.11.2013, during maximum duration of two years irrespective of the chances availed earlier. The ten chances (irrespective of any chances availed earlier) shall also be allowed to all the persons who have been reverted due to non-passing of SETC.

The above instructions were accepted by the Division Bench of this Court and CWP No. 18143-2008 stands disposed of on 08.05.2019.

The petitioners at the time of their appointments accepting the terms and conditions mentioned in their appointment letter as mentioned above, thus now they cannot challenge the order/letter dated 01.05.2019 (P-14) whereby condition of passing of SETC was imposed. They are bound by the appointment letter and order dated 01.05.2019.

The writ petition is disposed of by giving liberty to the petitioners to qualify the SETC, within a period of six months.

January 09, 2020
G Arora

(RITU BAHRI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No