

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

LPA No. 1684 of 2019 (O&M)

Date of decision: 04.02.2020

Haryana Women Development Corporation

... Appellant

Versus

Manoj Kumar and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAVI SHANKER JHA,
CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI, JUDGE

Present: Mr. Samarth Sagar, Advocate,
for the appellant.

Mr. Arjun Sheoran, Advocate,
for the respondent.

RAVI SHANKER JHA, CHIEF JUSTICE (Oral)

This appeal has been filed by the Haryana Women Development Corporation against an order dated 18.7.2019 passed in CWP No. 31109 of 2018, wherein the petitioner (Manoj Kumar) prayed for quashing the order dated 19.11.2018, whereby he had been informed that on account of the fact that he had failed to pass the State Eligibility Test in Computer Appreciation and Application (for short, 'SETC'), he would be reverted to his original post of Chowkidar.

The brief facts, leading to filing of the present appeal, are that the petitioner was appointed as Chowkidar on 11.7.2001, under the Ex-gratia Scheme and was subsequently promoted to the post of Clerk on 31.1.2014, with a condition that he was required to pass the SETC within the

period of probation. Admittedly, the petitioner met with an accident some time in the year 2015 in which he lost his ring and little fingers of the left hand. The petitioner being unable to participate in the typing test, approached the authorities. The authorities sent him for medical examination to the Civil Surgeon, Panipat. The Civil Surgeon, Panipat, vide his report dated 27.4.2017, informed the authorities that the petitioner had lost his ring and little fingers of left hand and he would not be able to perform the typing work.

It is stated that subsequently as the petitioner failed to pass the typing test, the order dated 19.11.2018 was passed by the authorities, being aggrieved by which he approached this Court by filing a writ petition, which has been allowed vide impugned order dated 18.7.2019.

The learned Single Judge, while allowing the petition with reference to Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, (for short, 'Act of 1995'), has directed the authorities to consider the case of the petitioner for posting him on some supernumerary post, where there is no involvement of the State Eligibility Test, and quashed the order dated 19.11.2018. Being aggrieved by the aforesaid directions of the learned Single Judge, this appeal has been filed.

We have extensively heard the learned counsel for the parties.

The issue raised in the petition relates to exemption from passing the typing test on account of the fact that petitioner has lost his ring and little fingers.

A perusal of the documents as well as representation filed by the petitioner indicates that no issue or ground based on the provisions of the

Act of 1995 was ever raised by the petitioner before the authorities, and therefore, the authorities had no occasion to apply their mind to the provisions of the Act of 1995 and take a decision in that regard. It is also evident that this issue was neither raised in the petition nor the factual background or foundation for the same was laid. In the absence of this issue ever been raised by the petitioner, we are of the considered opinion that the same could not have been taken up, considered and decided by the learned Single Judge in the petition, nor could a direction have been issued to post the petitioner on a supernumerary post. We are constrained to say so, as firstly, provisions of the Act of 1995 have subsequently been repealed and replaced by the Rights of Persons with Disabilities Act, 2016, (for short, 'the Act of 2016') and secondly, claim regarding entitlement of the petitioner for any benefit under the Act of 2016 is yet to be raised by the petitioner and considered by the authorities.

In the circumstances, while setting aside the order passed by the learned Single Judge, dated 18.7.2019, we dispose of this appeal, with a direction, on the statement made by learned counsel for the parties, that the petitioner shall file an application/representation seeking benefit of the Act of 2016, before the authorities, and the authorities, as undertaken before this Court, would consider the same and take a decision thereon, in accordance with law, expeditiously, preferably within a period of one month from the date of filing the application/representation by the petitioner. However, it is made clear that as this Court has not expressed any opinion in respect of the benefits that are required to be given to the petitioner under the provisions of the Act of 2016, the authorities would examine the case of the petitioner, taking into consideration all the relevant provisions of the Act of 2016, the

admitted fact that the petitioner is suffering from disability having lost his ring and little fingers, and the medical report given by the Civil Surgeon, while taking the decision. The aforesaid exercise shall be undertaken and completed by the parties before any decision in respect of the continuance of the petitioner on the post is taken by the authorities.

(RAVI SHANKER JHA)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

February 04, 2020
AK Sharma

Whether speaking / reasoned: YES
Whether Reportable: NO