

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

131

CIVIL WRIT PETITION NO.2473 OF 2020
DATE OF DECISION: JANUARY 30, 2020

Harmesh Kumar

.....Petitioner

VERSUS

State of Punjab and Ors.

....Respondents

CORAM:- HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. B.S. Seemar, Advocate
for the petitioner.

Ms. Anu Pal, DAG, Punjab.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Petitioner has approached this Court praying for quashing of the order dated 04.06.2019 (Annexure P-9) passed by the Deputy Commissioner, Fatehgarh Sahib, whereby respondent No.3 Gurbhag Singh Sewadar has been promoted to the post of a Clerk, who is junior to the petitioner, as in seniority list dated 06.06.2016 (Annexure P-4) the name of the petitioner figures at Sr. No.41, whereas that of respondent No.3 figures at Sr. No.74. He thus contends that the petitioner having been ignored for consideration for promotion to the post of Clerk from Class-IV, as per the quota fixed would amount to denying him a chance of promotion. His further contention is that the Punjab Civil Services (General and Common Conditions) Rules 1994 (Annexure P-10) had not prescribed passing of the test on computer in English and Punjabi. He contends that as per Rule 15 sub Rule(2) of the said qualification has been prescribed for appointment on direct

recruitment basis and not for the promotional posts. He asserts that the claim of

the petitioner has been declined firstly on this ground and secondly on the basis of the Punjab Government Instructions dated 23.12.2014 (Annexure P-8) which prescribed typing test on computer at the speed of 30 w.p.m. both in Punjabi and English. He asserts that statutory rules have to be given precedent and instructions cannot over-rule the same and nor it can be contradictory to the same. He thus places reliance upon the judgment of the Division Bench of this Court in ***Jagdish Kaur Vs. State of Punjab and Ors, 2004 (5) SLR 657*** to contend that the action of the respondent in denying promotion to the petitioner on the ground that he has not passed the type test in English is unsustainable. Thus, the counsel contends for exemption of the petitioner to qualify the same test as the respondents have not conveyed any decision with regard to the claim of the petitioner that has not been considered. He thus contends that the action of the respondents in superseding the petitioner by promoting respondent No.3 is not sustainable specially in the light of the fact that the petitioner all though has been claiming promotion by way of approaching the respondent.

I have considered the submissions made by the counsel for the petitioner and with his assistance, have gone through the 1994 Rules dated 19.08.2016 (Annexure P-10) and the Punjab Government Instructions dated 23.12.2014 (Annexure P-8), and also the judgement passed by the Division Bench of this Court.

The only rules which has been brought to the notice of this Court are the 1994 rules which govern the service. A perusal of the same would show that the said rules regulate the recruitment of General and Common Conditions of Service of the person appointed to Group-A, Group-B and Group-C services in connection with the affairs of the State of Punjab. The said rules are not restricted only to the direct recruitment but also to the promotion as well. The qualification

for appointing a person on the post of Clerk has admittedly been provided in Para-

III under Rule 15 thereof. The said rules reads as follows:

“15.Minimum educational and other qualifications:

(1) (i) No person shall be given direct appointment to the post of Clerk under the Punjab Government unless he possesses the Bachelor's Degree from a recognized University or Institution; and

(ii) Possesses at least one hundred and twenty hours course with hands on experience in the use of Personal Computer or Information Technology in Office Productivity applications or Desktop Publishing applications from a Government recognized institution or a reputed institution, which is ISO 9001, certified.

OR

Possesses a Computer information Technology course equivalent to 'O' level certificate of Department of Electronics Accreditation of Computer Course (DOEACC) of Government of India;

(2) The person so appointed as Clerk in terms of the provisions of sub-rule (1), shall have, before his appointment, passed a test in English and Punjabi, respectively, on computer to be conducted by the Board or the appointing authority or the Department of Information Technology as the case may be, at the speed of thirty words per minutes.

Provided that where appointment of Group 'C' non-technical post is offered to a War Hero, who has been discharged from Defence Service or dependent member of his family, under the instructions issued in this behalf by the Government, the educational qualifications to be possessed by such person shall be Graduate from a recognized University or Institution. However, such person shall not be required to qualify the test in Punjabi type-writing as specified in sub-rule (2)”.

A perusal of the sub-Rule 2 of Rule 15 would clearly indicate that a person who has passed the English and Punjabi Test can only be appointed as a Clerk as per the speed which is prescribed therein. There is nothing which has been brought to the notice of the Court, which would indicate that in the promotion, there has been either any exemption granted or the same is not made applicable. Rather to the contrary instructions dated 23.12.2014 clarifies position

With regard to the qualifications which are required for promotion of the employee

Group 'C' (Clerks) from Group 'D'. The said aspect relating to the type test reads as follows as provided under the instructions;

“(ii)Before promotion to the post of clerk from amongst the Group-D employees, there should be a provision for qualifying type test, as prescribed by the government for the post of clerk on computer, to be conducted by the competent authority or the department of information technology at a speed of 30 words per minutes both in Punjabi and English.”

Para 2 of Clause-(ii) of these very instructions would also relate to the said purpose and therefore are reproduced hereunder:

“Before promoting the interested Group-D employees for the post of clerks, type test in Punjabi and English will be conducted at a fix speed by the department”.

In the light of the above statutory rules/instructions are covering the conditions for appointment to the post of Clerk and promotion, the petitioner admittedly has not passed the type test in English and therefore, would not be eligible for promotion to the post of Clerk. To the contrary, it is not in dispute that respondent No.3 fulfills those conditions.

At this stage, learned counsel for the petitioner has referred to the notification dated 08.06.2011 issued by the Government of Punjab, Department of Personnel to contend that in Sub-Rule 2, a substitution had taken place according to which one year time can be granted to a person who is appointed to the post of Clerk for passing the type test. This contention of learned counsel for the petitioner cannot be accepted in the light of the subsequent notification (Annexure P-8) dated 23.12.2014, which clarifies the position as has been reproduced above. The subsequent notification/instructions will have precedent and application over the earlier notifications/instructions.

Learned counsel for the petitioner has placed reliance upon the judgment in Jagdish Kaur's case (Supra), the said judgment would not be

applicable to the facts and circumstances of the present case, as the subsequent notifications issued in the year 2011 and 2014 were not taken into consideration as obviously at that time these instructions/notifications had not been issued.

In view of the above, finding no merits in the present writ petition, the same stands dismissed.

30th January, 2020
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(AUGUSTINE GEORGE MASIH)
JUDGE

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