

CWP No. 11006 of 2016 (O&M)

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

(Sr. No. 215)

(1)

**CWP No. 11006 of 2016 (O&M)
Date of Decision : 25.07.2022**

Bharat and others

...Petitioners

Versus

State of Haryana and others

...Respondents

(2)

CWP No. 12606 of 2016

Mam Raj Sharma

...Petitioner

Versus

State of Haryana and others

...Respondents

(3)

CWP No. 4060 of 2021 (O&M)

Rajender Singh and others

...Petitioners

Versus

State of Haryana and others

...Respondents

(4)

CWP No. 23860 of 2017

Balwinder Singh and others

...Petitioners

Versus

State of Haryana and others

...Respondents

CWP No. 11006 of 2016 (O&M)

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(5)

CWP No. 25130 of 2021

Ramesh Chand

...Petitioner

Versus

State of Haryana and others

...Respondents

(6)

CWP No. 13321 of 2016 (O&M)

Satish Kumar and another

...Petitioners

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Sunil Kumar Bhardwaj, Advocate
for the petitioners in CWP Nos. 11006, 12606 of 2016,
CWP No. 4060 and 25130 of 2021.

Mr. Lekh Raj Sharma, Advocate
for the petitioners in CWP No. 23860 of 2017.

Mr. Kiran Pal Singh, Assistant Advocate General, Haryana.

Mr. Jasbir Mor, Advocate
for respondents No. 4 and 5.

Harsimran Singh Sethi J. (Oral)

By this common order, six writ petitions, the details of which have been given above, are being disposed of as all the writ petitions involve the same question of law on similar facts.

For the sake of convenience, the facts are being taken from

CWP No. 11006 of 2016.

The present petition has been filed challenging the order passed by the respondents by which, the petitioners have not been granted the exemption from passing of the typing test so as to become eligible for the grant of annual increment.

As per the facts mentioned in the petition, the petitioners competed for appointment to the post of Clerks in pursuance to the Advertisement No. 4 of 1987 dated 27.07.1987. The petitioners competed and were declared successful in the result, which was declared on 15.10.1989 but the appointments were not made as the said selection became the subject matter of litigation before this Court. As per the averments made, the petitioners were proficient in typing in the year 1987 and in case they would have been appointed then they would have cleared the said typing test but the matter with regard to their selection remained pending and subjudiced in the Court and it was only in the year 2013, the petitioners were granted appointment in pursuance to their selection, which was done in the year 1989. The appointment order has been appended as Annexure P-3 dated 08.05.2013. As per Clause-6, the petitioners were required to pass typing test so as to get the annual increment.

The petitioners, unfortunately, could not pass the said typing test and requested the respondents to grant them exemption from passing of the said typing test, which request has been turned down by the respondents. In the present petition, the challenge is to the denial of the exemption to the petitioners from passing the said typing test so as to become eligible for the grant of annual increment.

Learned counsel for the petitioners argues that in the present

case, the petitioners were proficient in typing when they competed for the post in the 1987 but as the petitioners were granted appointment after a period of approximately 24 years, the petitioners' proficiency in the typing was not to the said extent as in 1987 hence, the petitioners could not clear the said typing test. Learned counsel for the petitioners submits that State of Haryana in respect of Clerks, who were appointed on the said post after being retrenched from the various other institutions, who were above 45 years of age, has already granted exemption. Even in the case of Ex-servicemen the respondent-State has granted the similar exemption and, therefore, the petitioners are also entitled for the grant of exemption keeping in view the fact that the said exemption has already been extended to the various other Clerks on various grounds/reasons.

After notice of motion, the respondents have filed the reply. The respondents have submitted that once, there was a specific Clause in the appointment of the petitioners that it is only after the clearing of the typing test, the petitioners will be granted the concession of increment, no grievance can be made. The grant of exemption to the Clerks i.e. retrenched employees as well as the Ex-servicemen and the Clerks, who were above 45 years of age, has not been denied by the respondents but submits that the case of the petitioners is entirely different from the Clerks, who have been extended the concession of exemption from passing the typing test.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

It is a conceded position before this Court that as per the rules governing the service, the respondent-department has a power to grant the

exemption from the application of certain Clauses of the rules keeping in hardships being faced by the employees concerned. Further, it is not disputed before this Court that the Clerks, who were appointed after being retrenched from various other departments and the Ex-servicemen and the Clerks, who were above the age of 45 years, have already been granted exemption by the respondent-department from passing the typing test.

Keeping in view the said facts, it is a conceded position that the department can consider the hardship being faced by an employee and grant the relaxation. In the present case, the petitioners competed for the post of Clerks in the year 1987 but waited for 24 years to be appointed. The proficiency of an employee is reduced by passing years and is co-related to the age. Once, the petitioners were appointed after they have already attained the age of 45 years, the petitioners' case could have been considered on a sympathetic ground so as to decide whether, the respondents should exercise their power for the grant of exemption to them. In the impugned order, the grounds, which were raised by the petitioners, have not at all been considered by the respondent-department and the claim of the petitioners has been declined merely on the ground that the petitioners were required to pass the typing test as per the condition of their appointments.

Keeping in view the above, the present petition is allowed to the extent that the order passed by the respondents declining the grant of exemption to the petitioners only on the basis of the condition of the appointment order is set-aside. Let the respondent-department consider the claim of the petitioners afresh keeping in view the various facts including

that when the petitioners were appointed, they were already above the age of 45 years and their proficiency in typing must have gone down by passing years as the petitioners were appointed after 24 years of competing for the post of Clerks. Further, the respondents may also keep in mind that the Clerks, who were appointed after being retrenchment and the Clerks, who were appointed against the reserve quota of Ex-servicemen, have already been granted this benefit by the respondents, then why the same cannot be extended to the petitioners. Let the respondents pass a fresh order upon re-consideration of the case of the petitioners within a period of two months of the passing of this order.

Petition is disposed of in above terms.

CM-21-CWP-2022 in CWP No. 11006 of 2016 and CM-8630-CWP-2018 in CWP No. 13321 of 2016

As the main petitions have been disposed of, the present miscellaneous applications stand disposed of.

A photocopy of this order be placed on the files of other connected cases.

July 25, 2022
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No