IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.24524 of 2019 (O&M)
Reserved on:08.09.2022
Pronounced on:29.09.2022

Mohan Ram and others …Petitioners

Versus

State of Haryana and others …Respondents

2. **CWP No.2908 of 2020 (O&M)**

Padam Singh and others …Petitioners

Versus

State of Haryana and others …Respondents

3. **CWP No.1485 of 2021 (O&M)**

Surinder …Petitioner

Versus

State of Haryana and others …Respondents

CORAM:HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Ravinder Malik (Ravi), Advocate
for the petitioners.

Mr. Tapan Kumar Yadav, DAG, Haryana.

JAISHREE THAKUR, J.

1. This order of mine shall dispose of writ petitions bearing Nos.24524 of 2019, 2908 of 2020 and 1485 of 2021, as identical question for consideration arises in all three writ petitions.

2. In brief, the facts as emerge, are that Surinder-petitioner in CWP No.1485 of 2021 was appointed directly as Clerk whereas petitioners in CWP No.25424 of 2019 and 2908 of 2020 were initially appointed on the posts of Cook, Dhobi and Chowkidar etc. in the Haryana Police Department and their

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services were ordered to be regularized by the competent authority. The petitioners performed their duties diligently and to the satisfaction of the respondent authorities. The petitioners in CWP No.25424 of 2019 and 2908 of 2020 came to be promoted on the post of Clerk from Class-IV posts against 10% promotion quota as prescribed under the Haryana Police Clerical (State Service Class-C) Service Rules, 1977. As per the promotion orders whereby the petitioners were promoted, it was made clear that they would be made regular after six months with the approval of Haryana Staff Selection Commission and they shall also have to qualify the type test at the required speed prescribed in Clerical Rules of 1977 within a period of one year of taking over as Clerk. As per the rules, the qualification and experience as required for appointment as Clerk other than direct recruitment, was by way of promotion on the basis of seniority subject to fitness among the Restorers, Book Binders and Class IV government servants in the police department, who are either graduate or matriculates with a minimum of five years' service as such. Though there was a condition of Hindi/English typing at a speed of 25/30 words per minutes respectively, for recruitment to the post of Clerk by direct recruitment but there was no such condition in case of appointment by promotion. However, vide notification dated 12.04.1979, the aforesaid Rules of 1977 were amended by incorporating condition No.III in Appendix B in case of appointment of Clerks other than by direct recruitment. As per said amendment, for appointment to the post of Clerk other than direct recruitment, a candidate shall have to pass the prescribed test in typing to be conducted by the appointing authority within a period of one year of his

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appointment. The grant of annual increment have to be regulated in accordance with the instructions issued by the Government.

3. The petitioners, who had been promoted as Clerks approached the respondent authorities seeking exemption from passing the type test and for striking the condition of type test from their promotion orders, which was not acceded to, thus, resulted into a legal notice being issued on 11.07.2012. Since no action was taken on the legal notice, the petitioners were constrained to approach this Court by way of filing CWP No.1433 of 2013 titled as *Uma Kant and others Vs. State of Haryana and others*, which was disposed of vide order dated 24.01.2013 with a direction for the respondents to consider the claim of the petitioners. In compliance of the order passed by this Court on 24.01.2013, the claim of the petitioners was considered by the respondent authorities and was rejected vide orders dated 19.03.2013 and 12.04.2013 passed by respondent No.2 on the ground that passing the type test after promotion as a Clerk is an essential qualification for the said post as per amendment carried out in Rules of 1977 vide notification dated 12.04.1979. Aggrieved against the orders so passed by respondent No.2, the petitioners again approached this Court by way of CWP No.15330 of 2013 titled as *Uma Kant and others VS. State of Haryana and others,* which stood dismissed vide order dated 19.07.2013 holding that Court cannot direct the government to exercise its power of relaxation under rules to undo hardship as it remains in the domain of the executive. The order dated 19.07.2013 was challenged by the petitioners before the Division Bench in LPA No.1508 of 2013, which was decided vide order dated 23.08.2013 holding that once there existed a power of relaxation under Rule 17 of the Haryana Police Clerical

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(State Service Class 'C') Rules, 1977, the competent authority can be asked to look into the mitigating circumstances or the hardships, if any and in case, it is found that any one deserves such relaxation, the same ought to be accorded. Basically, the Division Bench had held that condition to relax the Rules can be exercised and therefore, order passed by the Single Judge was modified and the LPA was disposed of with the direction to respondent No.2 to consider the claim of the petitioners for relaxation of the condition of *'type test'* sympathetically. In view of the decision passed by the Division Bench in LPA No.1508 of 2013, the respondent No.2 wrote a letter on 03.04.2014 to respondent No.1 regarding relaxation to the petitioners from passing the type test, however, in response to the same, respondent No.1 i.e. Additional Chief Secretary to Government of Haryana advised that the department is unable to relax the provisions of the service rules. Thereafter, respondent No.2 i.e. Director General of Police, Haryana vide order dated 27.12.2014 ordered that as per the notification dated 12.04.1979 passing of type test is essential qualification for the post of Clerk and therefore, claim of the petitioners for grant of annual increments from the date of promotion as Clerk was rejected.

4. Having left with no other option but to challenge the notification dated 12.04.1979 vide which the Haryana Police Clerical (State Service Class 'C') Rules, 1977 were amended, the petitioners again approached this Court by filing CWP No.7630 of 2016 titled as *Uma Kant and others VS. State of Haryana and others.* However, the State Government had issued notification dated 07.11.2013 whereby type test was substituted with State Eligibility Test in Computer Appreciation and Applications (SETC) and passing of the said test for promotion to the post of Clerk was made

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compulsory during the total period of two years. As far as the existing Clerks, who had been promoted from Group D posts and Restorer etc. and had not been able to pass the type till date, they had an option either to pass the type test or SETC. In pursuance to the aforesaid notification, service rules of various departments were amended accordingly, which became subject of challenge in various writ petitions, which were clubbed together including the writ filed by the petitioners. During the course of hearing of such writ petitions on 04.09.2018, though the respondent-State took a plea that the requirement of passing the SETC as per notification dated 07.11.2013 is prospective in nature and as per notification dated 17.03.1978, there is no requirement of passing such type test, the Division Bench rejected the said plea while holding that there is no question of prospective application of notification dated 07.11.2013. The plea that similarly situated persons were granted exemption vide order dated 01.08.2013 passed in LPA No.847 of 2013 titled as *Lal Chand and others Vs. State of Haryana and others* passed by the Division Bench was also rejected by holding that the judgment passed in aforesaid LPA does not anywhere show that this Court had directed grant of outright exemption from passing the type test.

5. On 21.02.2019 when the aforesaid writ petition bearing No.7630 of 2016 along with connected matters came up for hearing before the Division Bench, learned State counsel had relied upon the notification dated 07.11.2013 and has made a statement that 07.11.2013 is the cut-off date which means that those who have been promoted after the said date will have to compulsorily pass the SETC test, else the consequence will follow. The said cut-off date was accepted by the Court in order to avoid any chaotic

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condition, however, it was made clear that those who have been promoted after 07.11.2013 only shall have to pass the test. It was further made clear that State shall now decide the number of chances to be given to those who are required to pass the said test and give sufficient number of chances for passing the said test, even to those who have been reverted to Class-IV posts due to non-passing of the test.

6. Thereafter, vide letter dated 01.05.2019 of the Govt. of Haryana issued in view of interim order dated 21.02.2019 passed in CWP Nos.18143 of 2018, 7630 of 2018 and 4053 of 2017, a decision was taken to the effect that all those persons who have been promoted to the post of Clerk after 07.11.2013 shall have to clear SETC test and 10 chances to qualify the SETC exam shall be provided to all 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) were also decided to be allowed to all the persons who have been reverted due to non-passing of SETC. The aforesaid civil writ petitions again came up for hearing on 08.05.2019 and were disposed of in view of letter dated 01.05.2019 issued by the respondent State, as having been rendered infructuous. There are clear instructions that persons who have been promoted after 07.11.2013 are required to pass SETC test. Since the petitioners had been promoted before 07.11.2013, therefore, annual increments ought to have been granted and released to them. Since the respondents have not granted annual increments to the petitioners, the petitioner sought redressal of their grievance through the instant petition.

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7. Learned counsel appearing for the petitioners would contend that petitioners have already been promoted prior to 07.11.2013 and therefore, they need not pass the type test and they are also entitled to annual increments, which have been withheld by the respondents. He relied upon letter dated 02.07.2019 (Annexure P-18) whereby one Hariom, Clerk who was promoted on 26.10.2010 was allowed annual increments by stating that only those persons who have been promoted to the post of Clerk after 07.11.2013 shall have to clear SETC test and since he was promoted to the post of Clerk before 07.11.2013, those instructions are not applicable to him and he is not required to pass the SETC test. The petitioners herein are on the same footing and therefore, they ought to have been allowed the benefit of annual increments.

8. Per contra, learned counsel appearing on behalf of the respondent-State would argue that the matter has been considered at various levels and a conscious decision has been taken and the petitioners' claim for grant of annual increment without passing type test from the date of promotion as Clerk stood rejected. It is further submitted that in view of notification dated 07.11.2013, necessary amendment in Rule 9 of the Haryana Police Clerical (State Service Class-III) Rules, 1977 was carried out and as per Rule 9A(1), the existing Clerks who have been promoted from Group-D and Restorer etc., who have not passed the typing test till date as required under the Service Rules, shall have an option either to pass the typing test or the State Eligibility Test in Computer Appreciation and Applications (SETC). Further a clarification was sought on the issue of applicability of instructions dated 01.05.2009 on Group D employees, who have been promoted to the post of

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Clerk after 07.11.2013 and vide memo dated 21.01.2020 issued by the Additional Chief Secretary to Government of Haryana, Home Department, it was clarified that the department is advised that the persons, who have been promoted as Clerk before 07.11.2013 are required to pass the type test as per condition in service rules. Therefore, the plea of petitioners for grant of annual increments without passing the type test cannot be acceded to.

9. I have heard learned counsel for the parties and with their assistance have gone through the paper book. The short question that needs to be considered and answered is whether the petitioners, who were promoted as far back as 2010, can be denied increments based on the fact that they have not been able to pass their type test. The admitted position is that petitioners were promoted from Class-IV posts in the year 2010 and their promotion order specifically reads that they have to qualify the type test at the required speed mentioned in the Clerical Rules, 1977. The litigation was started by the petitioners seeking exemption from passing the type test, which prayer was not acceded to, however, vide order dated 23.08.2013 passed in LPA No.1508 of 2013, a direction was issued to the respondents to consider the claim of petitioners for relaxation of the condition of passing type test under Rule 17 of the 1977 Rules sympathetically. The Director General of Police considered the case of the petitioners and at one stage, decided to grant exemption to the petitioners from passing the type test, however, the said decision did not find favour with the State Government and the case of the petitioners was ultimately rejected by passing a speaking order. Subsequent thereto, the writ petitions were filed by similarly situated persons from various departments including the petitioners herein, who sought exemption

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from passing the type test/SETC, as in the meantime, vide instructions dated 07.11.2013, the Government of Haryana substituted the type test with State Eligibility Test in Computer Appreciation and Applications (SETC). This matter was deliberated before the Division Bench of this Court, as in the said writ petitions the notifications on the basis of which amendment in service rules of said departments was carried out, making passing of SETC mandatory for promotion to the post of Clerk from Class-IV posts as well as for grant of increment had been challenged . In the bunch of writ petitions filed, a further prayer was sought seeking exemption from passing SETC on the ground that on earlier occasions, exemptions had been granted to certain persons. During the course of proceedings, the Division Bench which was seized of the matter, in its order dated 04.09.2018 though took note of the fact that 96 persons had been granted exemptions from passing the type test, however, expressed its firm opinion that promotion to the post of Clerk would necessarily involve skilled knowledge of computer application and the skill of typing for discharging the functions of a Clerk. The question arose as to whether or not application of notification dated 07.11.2013 would be prospective and the Court was of the opinion that the said notification must be applied to those, who are working as Clerk and taking salary of a Clerk, but as there was the question that certain departments were giving exemptions, which would cause discrimination, the Chief Secretary of the State of Haryana was asked to look into the matter personally rather than allowing exemption to be granted , which would cause rise to litigation.

10. On 21.02.2019, in pursuance of the direction given by the Division Bench, an affidavit came to be filed in the Court by the Chief Secretary to the

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Government of Haryana wherein it was stated that condition of SETC has been made compulsory for all currently working Clerks and for all those who want to work as Clerk on promotion or by direct recruitment. The State Government by relying upon the notification dated 07.11.2013 made a statement that 07.11.2013 is the cut-off date, which would mean that only those who have been promoted after 07.11.2013 shall have to necessarily pass the SETC. The cut-off was accepted by the Court holding that those who have been promoted after 07.11.2013 only shall have to pass the type test/SETC. Furthermore, the State was to decide the number of chances to be given to those who are required to pass the type test. Sufficient number of chances were to be given for passing the test, with further clarification that those who have been reverted to the Class IV posts due to non-passing of the test, will be given chance to pass the test in question, failing which consequences to follow. It was clearly opined in the said order that '*We do not think that we are living in the days of granting exemptions at the costs of running the administration.'*

11. The petitioners herein as noted above, have not cleared the type test, which was a condition imposed in their order of promotion in consonance with Service Rules of 1977. The question posed here is that, would they be entitled to exemption from passing the type test, the answer is in negative. A perusal of the notification dated 07.11.2013 would only reflect that there is difference in the nomenclature of the test that has to be passed. The type test was substituted with State Eligibility Test in Computer Appreciation and Applications (SETC) as part of service requirements of Clerk, Steno-Typists, Junior Scale Stenographers and Sr. Scale Stenographers etc. and an

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opportunity was given to the existing Clerks, who have been promoted from Class-IV posts and have not passed the type test till date as required under the Service Rules to submit their options either to pass the type test or SETC. On plain reading of the said instructions, it is amply clear that a Clerk, who stood promoted from Class IV post would have the option either to pass the type test or SETC. These instructions were further taken note of and approved by the Division Bench of this Court. The statement qua cut-off date as 07.11.2013 would be strictly adhered to and anyone who stood promoted after the said cut-off date will compulsorily have to pass the test, would necessarily mean that such person would have to pass the SETC. But that statement cannot be read to construe that that those, who stood promoted prior in time, under the 1997 Rules with the condition that they would have to pass the type test, would stand exempted and therefore, this Court is of the opinion that prayer of the petitioners seeking exemption from passing the type test cannot be acceded to.

12. Furthermore, it is a matter of consideration whether claim of the petitioners seeking exemption from passing the type test, based on parity with others, can be allowed. In the opinion of this Court, this argument again cannot sustain, considering the fact that petitioners here have been knocking doors of this Court by filing various writ petitions whereby they had initially sought exemption from passing the type test and necessary relief had not been allowed to them. In LPA No.1508 of 2013, though a direction was issued to the respondents to consider the case of the petitioners for granting exemption from passing the type test sympathetically, these matters were considered and rejected by passing the speaking order. In the opinion of the

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Court, reading of the orders passed by the Division Bench in earlier bunch of writ petitions, CWP No.18143 of 2018 being the lead case, would not reflect that there was any intention of granting exemption from passing the type test to the petitioners. It was only the SETC test which was made mandatory to be passed by the persons, who were appointed/promoted on the post of Clerk after 07.11.2013 and to the persons, who had been promoted to the post of Clerk but did not pass the type test, an option was given either to pass the type test or the SETC and 10 chances were decided to be given to do the same. The condition of type test imposed is neither arbitrary, nor unreasonable, nor unconstitutional and is largely in accordance with the modern times where the office environment is rapidly changing to meet future challenges at the workplace.

13. The counsel for the petitioner has vehemently argued that persons have been exempted from passing the type test as in the case of Hari Om and therefore on the basis of parity, the essential qualification of passing the type test for the post of Clerk be exempted and increments be released. As per the settled proposition of law, Article 14 of the Constitution of India embodies concept of positive equality alone and not negative equality. Even if the Rules were bent to accommodate a few, this court can not issue any such mandamus to the respondents to exempt the petitioners from passing the type test as provided under the rules and under the appointment letter, otherwise the Court itself will be perpetuating an illegality. In the case of **State of West Bengal v. Debasish Mukherjee, (2011) 14 SCC 187** while dealing with the concept of equality it is observed in paragraph 26 as under:

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"26. It is now well settled that guarantee of equality before law is a positive concept and cannot be enforced in a negative manner. If an illegality or an irregularity has been committed in favour of any individual or group of individuals, others cannot invoke the jurisdiction of Courts and Tribunals to require the state to commit the same irregularity or illegality in their favour on the reasoning that they have been denied the benefits which have been illegally or arbitrarily extended to others."

14. The respondent-State have not reverted the petitioners to their feeder post and allowed to continue on the post of Clerk despite the fact that they have not been able to pass the type test, and their grievance on account of not being given annual increments, cannot be redressed through this writ petition

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15. In view of the finding rendered by this Court, the writ petitions stand dismissed.

(JAISHREE THAKUR)
JUDGE

September 29, 2022
Pankaj*

Whether speaking/reasoned Yes/No
Whether reportable Yes/No

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