

CWP-12180-2018

2023:PHHC:166477

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

**CWP-12180-2018
DECIDED ON: 04th JULY, 2023**

SUDARSHAN KUMAR

.....PETITIONER

VERSUS

UTTAR HARYANA BIJLI VITRAN NIGAM AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. V.D. Sharma, Advocate
for the petitioner.

Ms. Aditi Sharma, Advocate for
Mr. C.S. Bakshi, Advocate
for the respondents.

SANDEEP MOUDGIL, J

1. By way of instant petition, this Court has been approached under Article 226/227 of the Constitution of India seeking issuance of a writ in the nature of *Certiorari* for quashing the impugned rejection order (Annexure P-12) dated 11.12.2017 vide which the claim of annual increment has been rejected and also to set aside the condition No.5 stipulated in the promotion order dated 11.08.1994 (Annexure P-2) i.e “to qualify the type test within one year of the promotion to the post of LDC, failing which the annual increment shall not be allowed” and also writ of Mandamus for exemption from passing the type test on the

ground of his age being more than 45 years, as the Government of Haryana has also granted exemptions in certain departments.

2. The gist of facts can be culled out to the effect that the petitioner joined erstwhile Haryana State Electricity Board on 19.03.1980 as a regular peon, who was promoted to the post of LDC vide order dated 11.08.1994 (Annexure P-2) under 20% promotional quota reserved for class-IV employees as per the policy (Annexure P-1).
3. The said clause 5 of the promotion order dated 11.08.1994 (Annexure P-2) stipulates a prerequisite condition for the petitioner to pass typing test at a prescribed speed of 25/30 W.P.M. either in English/Hindi within one year of promotion, failing which annual increment shall not be granted.
4. The petitioner cleared the type test on 11.05.2012 and accordingly earned the promotion to the post of UDC on 29.10.2012, but the annual increments has not been granted to him.
5. While referring the instant petition, it is the case set up on behalf of the petitioner that numerous representations were made, but no heed was being paid and aggrieved against such inaction of the respondent/erstwhile HSEB preferred a Civil Writ Petition No.18610 of 2016 tilted as ***Sudarshan Kumar vs. State of Haryana and Ors.*** The said writ petition

was disposed of with direction to the Managing Director, UHBVN to decide the representation by passing a speaking order in accordance with law and the judgment passed in CWP-2872-2010 titled as '*Darshna Devi vs. UHBVN* and Ors.'" In pursuance of the aforesaid order the Respondent no.1 rejected the representation vide order dated 11.12.2017 (Annexure P-12).

6. It is against this order, the petitioner has come before this Court vehemently contending that Clause 5 of the promotion order dated 11.08.1994 (Annexure P-2) is bad in law being contrary to the Service Rules applicable to the service condition of the petitioner at the time of joining his services.
7. Mr. V.D., Sharma, learned Advocate for the petitioner also submits that as per the revised recruitment and promotion policy, class IV employees are required to satisfy only two conditions i.e., must have passed matriculation examination and second should have five years service and the petitioner fulfils both these conditions, accordingly, the benefit of exemption from passing type test ought to have been extended to the petitioner as well and relied upon a judgment rendered in CWP-2872-2010 titled as "*Darshana Devi vs. Uttar Haryana Bijli Vitran Nigm*" dated 28.07.2011 (Annexure P-11).
8. On the other hand, Ms. Aditi Sharma, Advocate appearing for respondents would contend that the petitioner has

accepted the promotion to the post of LDC vide order dated 11.08.1994 (Annexure P-2), wherein there was a specific condition to pass the type test for earning the annual increment, which was never objected too by the petitioner or challenged at any stage prior to CWP No.18610-2016 after almost 22 years of accepting the appointment on such condition. She has submitted that now it does not lie in the mouth of petitioner to challenge the said condition at a much belated stage, since law of estoppel would come into play. On merits, it is asserted that the petitioner was provided ample opportunities to pass the type test, but she remained unsuccessful uptill 11.05.2012, though, according to Clause 1 to 3 of the order dated 19.10.1990 (Annexure R-1) and 18.10.2006, the annual increments have already been granted to him and, therefore, the present petition deserves to be dismissed on this score itself.

9. Lastly, it has been submitted on behalf of the respondents that the respondent-Nigam is a company registered under the Companies Act and any instructions of the Government of Haryana are not *ipso facto* applicable to the Nigam until and unless adopted by way of prescribed procedure.
10. Heard, learned counsel for respective parties.
11. It is not in dispute that the Government had already exempted the Lower Division Clerk from the condition of passing the type test for the purpose of grant of increments

qua those who had already crossed the age of 45 years as per office order dated 07.06.1990 (Annexure P-4). The relevant part of which reads as under:-

“2. The existing instructions for granting exemption to different age groups of LDCs promoted from Group D contained in this Department's O.M. No. 16/2/82-CS.II dated 15.5.1982 are as under:-

i) all those who had already crossed 45 years of age on the date of appointment may be exempted from passing the typewriting test from the date of issue of these orders;
ii) those who were above 40 years of age on the date of appointment may be exempted on attaining the age of 45 years, or the date of issue of the orders, whichever is later, irrespective of any attempt to pass the test;”

12. This Court is not in doubt to the effect that the petitioner has attained the age of 45 years, but the prime question revolves around the issue as to whether such Government notifications would ipso facto apply to the case in hand, which is related to Uttar Haryana Bijli Vitran Nigam (erstwhile HSEB). There is also no dispute to the existence of clause 5 in the appointment letter dated 11.08.1994 (Annexure P-2), whereby condition/clause 5 reads as under:-

“5. The above officials are required to qualify the test in type writing in Hindi/English at the speed of 25/30 W.P.M. respectively within one year from their date of joining as LDCs. In case, they fail to qualify the prescribed test within the stipulated period they shall not

be allowed any annual increment till the passing of the said type-test.”

13. The reliance by the petitioner in the case of ***Darshana Devi's*** (supra) has also been considered and the order dated 28.07.2011 (Annexure P-11) has been considered, whereby the reliance is made on another order passed in CWP-5566-1999 '***Prithvi Raj vs. State of Haryana and ors.***' Having recorded the observations made therein, which reads as under:-

“So far as appointment other than by direct recruitment is concerned which is to be considered in the present case as the petitioner in this case is a promotee, the requirement is knowledge of Hindi or English type writing. This is the basic difference between the requirements for the direct recruits and the promotee. When the rule does not specify passing of typing test, the respondents cannot insist that the petitioner should pass typing test for getting his increment/s released.”

14. This Court cannot be ignorant to the contention of the respondent/UHBVN, wherefrom it is abundantly clear and also not denied by the petitioner that he had already availed numerous opportunities to pass the said test, but failed on each account. Another material aspect is also to be borne in mind that the petitioner was recruited in the service on 19.03.1980 as a regular peon and thereafter got promoted as LDC vide order dated 11.08.1994 (Annexure P-2) under 20 % quota reserved for class IV employees and at that time,

the recruitment and promotion policy dated 19.10.1990 (Annexure R-1) was in vogue. Under that policy vide Regulation No.1.2.3, petitioner was bound to qualify the type test, which reads as under:-

"Such official shall have to qualify test in type writing in Hindi/ English at the speed of 25/30 W.P.M respectively within one year of his promotion in case, a promote fails to qualify the prescribed test within the stipulated period, he/she shall not be allowed any annual increment till passing of the said test. However, no reversion will be made on lower post from which he/she was promoted as LDC. The benefits of all increments earned but not allowed due to non-passing of test will be allowed from the date of passing of the prescribed test. The benefits of increments, so allowed be given towards pay fixation only and no arrear will be paid for the period during which he/she could not qualify the test."

15. It is also apparent from the record and from the submissions made before this Court that the petitioner did not object to Clause 5 of the appointment letter dated 11.08.1994 (Annexure P-2) and rather appeared on more than one occasion in an attempt to qualify the type test upto the year 2012. He never challenged the said clause until he had exhausted all the chances unsuccessfully. This Court would not be justified if the opportunity so granted are not given a look with the date of type test so conducted by the respondents which is reflected in the tabulate form reproduced hereinbelow.

Sr. No.	Date of Type Test
1.	11.08.1994
2.	24.11.1998
3.	28.02.2001
4.	04.04.2001
5.	31.05.2001
6.	30.06.2001
7.	07.09.2002
8.	29.05.2003
9.	28.11.2003
10.	06.09.2005
11.	09.05.2006
12.	21.05.2007
13.	11.10.2007
14.	22.12.2008
15.	18.12.2009
16.	10.08.2011
17.	19.03.2012
18.	19.12.2012

16. A perusal of the order under challenge dated 11.12.2017 (Annexure P-12) crystallize the fact that the petitioner qualify the type test as notified vide order dated 11.05.2012 after expiry of more than 17 years till the date he never represented to seek any such exemption or questioned the validity of clause 5 in the order of promotion dated 11.08.1994 (Annexure P-2). After passing of the said test, the respondents have released the annual increment in favour of the petitioner strictly adhering to clause 1.2.3 of the Recruitment and Promotional Policy of Ministerial Service Staff dated 19.10.1990 and as such no cause of action arises to him now to challenge the order impugned before this Court and to claim the annual increments by seeking exemption from passing such type test.
17. In the light of aforesaid discussions and the scrutiny of submissions made hereinabove, this Court is not inconsonance with the orders passed in Darshana Devi's

case (Supra) on account of the fact that the applicability of instructions dated 07.06.1990 to the employees of erstwhile HSEB (now UHBVNL) has not been examined or tested. In fact these instructions were never adopted by the respondent/UHBVNL, which is a company registered under the Companies Act and have its own set of Service Rules distinct from the Service Rules of Government of Haryana for such similarly situated employees of the same cadre. No Government instructions are ipso facto would be applicable upon the employees of respondent/UHBVNL until and unless duly adopted by acceptance through resolution passed by its Board of Directors.

18. Hence, in the absence of any such adoptability of the instructions dated 19.10.1990, no benefit could be derived to the petitioner.

19. In view of the above, I do not find any infirmity or perversity in the impugned order dated 11.12.2017 (Annexure P-12), and therefore, this Court decline to interfere.

20. Hence, the petition stands dismissed being devoid of merits with no order as to costs.

04th JULY, 2023

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**(SANDEEP MOUDGIL)
JUDGE**

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