

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(210) CWP-18282-2017 (O&M)
Date of Decision : July 27, 2023

Hemant and another .. Petitioners

Versus

State of Haryana and others .. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Kartar Singh Malik-I, Advocate, for the petitioners.

Mr. Saurabh Mohunta, Deputy Advocate General, Haryana.

HARSIMRAN SINGH SETHI J. (ORAL)

CM-12124-CWP-2017

As prayed for, the application is allowed.

Annexure P-4 and P-5 are taken on record.

CWP-18282-2017

1. Present petition has been filed challenging the order dated 20.02.2017 (Annexure P-3) as well as order dated 22.08.2017 (Annexure P-4) by which, the petitioners were directed to pass typing test and upon failure to pass the same, they have been reverted to the post of Peon i.e. class IV post.

2. Certain facts needs to be mentioned for the correct appreciation of the issue in hand.

3. The petitioner No.1 joined as a Peon in the Office of Deputy Commissioner, Rohtak on 02.02.1996. Similarly, petitioner No.2 joined on

the same post on 09.12.2004. The promotion from the post of Peon which is class IV post, is to the post of Clerk. In the year 2013, the respondents issued administrative instructions giving the eligibility for promotion from class IV post to class III post wherein, it was envisaged that a Peon who gets promotion to the post of Clerk, is required to pass the type test in a time bound manner.

4. The petitioners were promoted by the respondents to the post of Clerk vide order dated 04.11.2014. In the order of promotion, as per clause 2, the petitioners were to remain on probation for a period of one year and were required to pass the computer appreciation and application eligibility test in Hindi/English at the speed of 25/30 words per minute within a period of one year failing which, they were liable to be reverted to the post of Peon.

5. The respondents issued a direction vide impugned order dated 20.02.2017 (Annexure P-3) directing the class III employees, who were yet to pass the test as envisaged in paragraph 2 of the appointment order that the required type test should be cleared by 30.04.2017 failing which they will be reverted to the post of Peon.

6. Keeping in view the fact that the petitioners failed to pass the said type test despite availing adequate opportunities, the impugned order was passed on 22.08.2017 (Annexure P-4) reverting the petitioner from the post of Clerk to the post of Peon as per the conditions mentioned in the appointment order. The said order of reversion is under challenge in the present petition.

7. Upon notice of motion, the respondents have appeared and filed the reply wherein, the respondents have taken a stand that as per the instructions issued by the Government of Haryana, every Clerk is required

to pass the type test, which was also one of the condition mentioned in the order of promotion of the petitioners and as the petitioners failed to pass the said test within the time frame prescribed, they have been reverted to the post of Peon, has the order impugned is consonance with the conditions imposed in the order of promotion as well as instructions issued by the Government of Haryana on the relevant issue.

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

9. Leaned counsel for the petitioners has argued that though there was a condition of passing of the type test within a period of one year of promotion but as no such condition exist in the Rules, the said condition imposed upon the petitioners is arbitrary and illegal hence, no action could have been taken on the basis of the said condition No.2 of the promotion order so as to revert the petitioners.

10. In this regard, it may be noticed that it is a settled principle of law that in case the statutory rule does not cover any eventuality and the said issue is covered by the administrative instructions issued by the Government, the administrative instructions so issued will also govern the aspect in question. In the present case, Annexure R-1 are the instructions which have been issued by the Government of Haryana, which deals with the eligibility for promotion to the post of Clerk, which clearly envisage the passing of the test in question.

11. It is also a matter of fact that the said instructions were in operation and were applicable on the date when the petitioners were promoted as Clerks in the year 2014 and the said requirement/eligibility envisaged in those instructions was made part of the promotion order and were mentioned in the paragraph 2 of the order of promotion. Once, the

petitioners were promoted with the condition and passing of the type test was mandatory within the time frame granted, the failure of the petitioners to pass the said test, will result in the outcome of reversion as envisaged under the instructions Annexure R-1 coupled with the condition No.2 of the order of promotion, hence, the assertion of the petitioners that the petitioners were not required to pass the said type test, is not at all maintainable and cannot be accepted.

12. Further, as per the judgment of the Hon'ble Supreme Court of India in ***Civil Appeal No.2897 of 2006 titled as State of Punjab and others vs. Jagdish Kaur, decided on 26.08.2011***, if the Rules are silent on any aspect, the relevant Government instructions would be applicable and in case, the same prescribed clearance of passing of any type test, the same will be applicable and cannot be ignored. The relevant paragraph 10 and 11 of the said judgment is as under:-

"10. Coming now to the issue of promotion from class IV to class III posts, the provision was first made in the Government Circular letter No.4/17/79- IPP/1973, dated August 24, 1983. Paragraphs (i) and (ii) of the circular letter read as follows:-

"(i) There should be a provision for filling up 10% of Class III posts by promotion from amongst Class IV employees, who possess a minimum educational qualification of matriculation (with Punjabi) and have a minimum of 5 years' experience as such;

(ii) There should be a provision for a qualifying test in Punjabi typewriting which should be equal to the one prescribed by the Subordinate Services Selection Board for such posts and it should be made essential to pass the test before a Class IV employee is considered eligible for promotion. The test may be held by the appointing authority or any such authority to whom the powers for doing so are

delegated by the appointing authority."

The aforesaid Government Order was amended by Circular dated October 27, 1998. The later circular increased the quota for promotion from 10% to 15% but retained the qualification of Punjabi typewriting as prescribed in the earlier order. Paragraph 2 of the circular letter dated October 27, 1998, reads as follows:-

"There should be provision for a qualified test of Punjabi typewriting which should be equal to the one prescribed by the S.S.S. Board for such posts and it should be made essential to pass the test before a Class IV employee is considered eligible for promotion. The test may be held by the appointing authority or any such authority to whom the powers for doing so are delegated by the appointing authority."

11. It is well-settled that in the absence of statutory rules on any subject, the relevant Government Orders would hold the field. [See: Sant Ram Sharma Vs State of Rajasthan & Anr., AIR 1967 SC 1910, Ashok Kumar Shrivastava & Ors. Vs. Ram Lal & Ors., (2008) 3 SCC 148, Shiba Shankar Mohapatra & Ors. Vs. State of Orissa & Ors. (2010) 12 SCC 471.]”

13. Keeping in view the above, the prayer made by the petitioners in the present petition is not only contrary to the facts on record but is also contrary to the settled principle of law and cannot be accepted and no interference is called for by this Court qua the order impugned.

14. Dismissed.

July 27, 2023
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : Yes