

CWP-17318-2018

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(102)

CWP-17318-2018

Date of decision : 04.05.2023

Mohan Singh

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Ravinder Rana, Advocate for
Mr. Vivek Khatri, Advocate for the petitioner.

Mr. Pankaj Middha, Additional Advocate General, Haryana.

Mr. Hitesh Pandit, Advocate for respondents No.2 to 5.

SUVIR SEHGAL, J. (Oral)

1. Instant writ petition has been filed under Article 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing impugned order dated 24.05.2018, Annexure P-6, passed by respondent No.2, whereby, petitioner has been reverted from the post of Clerk to that of Chowkidar.

2. Factual matrix leading to the filing of the petition is that the petitioner joined as a Chowkidar on temporary basis in 1991 and was regularized on 01.07.2003. He was promoted as a Clerk, vide order dated 13.11.2014, Annexure P-2 and acquired a Certificate of Information Technology, Annexure P-3, from the Haryana Knowledge Corporation Limited (HKCL) in October, 2016. By impugned order, Annexure P-6, he has been reverted to the post of Chowkidar, on account of the fact that he has failed to clear the State Eligibility Test in Computer Appreciation and Application (SETC).

3. Upon notice, writ petition has been contested by respondents No. 2 to 5 by filing a response, wherein stand has been taken that it was obligatory for the petitioner to clear the SETC before he could be confirmed on the post of Clerk.

4. While referring to para 9 (iii) of instructions dated 11.10.2013, Annexure P-4, circulated by the Government of Haryana, counsel for the petitioner submits that as the petitioner possesses Certificate in Information Technology from HKCL, he is exempted from taking the SETC. He submits that these instructions have been duly adopted by the Corporation-respondents No.2 to 5. It is his argument that as the petitioner falls within the exemption clause, impugned order reverting him on account of non-clearance of the SETC deserves to be set aside.

5. Per contra, counsel representing the respondents have submitted that the passing of the SETC is a mandatory requirement and has been incorporated in the Haryana State Industrial and Infrastructure Development Corporation Employees Service by laws, Annexures P-1. It has been argued that they form a part of the conditions mentioned in the promotion order, Annexure P-2 and as the petitioner has failed to fulfill the condition within the stipulated period, he has been reverted. Reliance has also been placed upon a Division Bench judgment of this Court in ***LPA No.1308-2019, State of Haryana and another Versus Kanwar Singh and others***, to urge that the petitioner is not entitled to claim the exemption on account of possessing the Certificate of Information Technology, Annexure P-3.

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6. I have considered the submissions made by the counsel for the parties and examined the material placed on the record.

7. During the pendency of the writ petition, the Government of Haryana has issued clarificatory instructions dated 01.05.2019, Annexure R-2/1, relevant extract of which is as under:-

“Therefore, considering the ratio suggested by Hon’ble High Court in the above interim order, the Government has taken the following decisions:

a. That all those persons who have been promoted to the post of Clerk after 07.11.2013 shall have to clear SETC test.

b. 10 (Ten) 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) shall also be allowed to all the persons who have been reverted due to non passing of SETC.”

8. By virtue of above instructions, Government has laid down that the employees, who have been promoted to the post of Clerk after 07.11.2013 will have to clear the SETC test and for this purpose, they have been granted 10 opportunities during the next two years, irrespective of the chances availed earlier to clear the test. Counsel for the parties are not aware as to whether the petitioner has availed of the opportunities and if he

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had cleared the test.

9. Still further, in so far as the claim of the petitioner for exemption is concerned, the controversy has been settled by a Division Bench of this Court in Kanwar Singh's case (supra). Interpreting para 9 of instructions dated 11.10.2013, Annexure P-4, Division Bench has held that the exemption from clearing the SETC has been granted to the employees, who possessed the requisite Certificate on the date when they were promoted. From the facts of the present case, it is evident that the petitioner was promoted to the post of Clerk in the year 2014, whereas, he acquired the requisite Certificate, Annexure P-3, in October, 2016. Therefore, he cannot claim exemption from passing the SETC test.

10. In view of above position, it is directed that in case the petitioner has cleared the SETC test within the period of two years from the issuance of instructions dated 01.05.2019, Annexure R-2/1, impugned order, Annexure P-6, shall be deemed to have been set aside. However, in case, the petitioner, despite having availed the opportunities granted, has failed to clear the SETC test within aforesaid period, writ petition shall be deemed to have been dismissed.

11. Disposed of accordingly.

(SUVIR SEHGAL)
JUDGE

04.05.2023
Pardeep

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No