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2023:PHHC:147448

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

CWP-19861-2017

DECIDED ON: 26th JULY, 2023

SURENDER KUMAR

.....PETITIONER

VERSUS

UTTAR HARYANA BIJLI VITRAN NIGAM LTD. AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Karan Singh, Advocate for
Mr. K.L. Dhingra, Advocate
for the petitioner.

Mr. Hitesh Pandit, Advocate and
Ms. Suman Rani, Advocate
for the respondents.

SANDEEP MOUDGIL, J

1. The jurisdiction of this Court under Articles 226 and 227 of the Constitution of India has been invoked seeking a writ in the nature of *Mandamus* directing the respondents to withdraw from the promotion order dated 28.07.2010 (Annexure P-1) of the petitioner condition No.6 of passing the type-test with consequential benefits, in view of the Revised Recruitment and Promotion Policy in respect of LDCs/MRs and clarification thereof, dated 10.05.1989 (Annexure P-2) and judgment dated 09.10.2014 (Annexure P-5) and order dated 01.07.2013 (Annexure P-6) in compliance to which the Managing Director has passed the orders dated

09.01.2014 and 11.11.2014 (Annexures P-7 and P-8 respectively) and the judgment dated 31.01.2006 (Annexure P-9) passed by the Apex Court.

2. While issuing notice of motion on 04.09.2017, this Court has passed the following order:-

“Mr.Dhingra, learned counsel for the petitioner, submits that no statutory Rules were existent at the time when the petitioner was promoted from a Class IV post to the post of a Lower Divisional Clerk (LDC), even in the year 2010, and that the promotion was actually made in terms of the policy (Annexure P-2), wherein there is no condition prescribed for passing a type test.

He further draws attention to the order of the Managing Director of the respondent-Uttar Haryana Bijli Vitran Nigam Limited (UBHVNL), Annexure P-7, whereby juniors to the petitioner have been granted the benefit of exemption from passing a type test and all consequential benefits are stated to have been released to them.

Notice of motion, returnable on 12.12.2017.”

3. In pursuance to the notice of motion, respondents have put in appearance and filed reply to the effect that vide order dated 28.07.2010 the petitioner was promoted to the post of LDC with a specific condition that he will qualify the type test in English/Hindi at the prescribed speed limit 30/25 w.p.m. respectively and will also qualify the Computer Test within two years in four chances from the date of joining as LDC, failing which the annual increment will not be released and in case he fails to

qualify the same within the extended period, he will be reverted to the post from which he was promoted as LDC.

4. The condition of passing of type/computer test has been prescribed in the promotion order in accordance with the amended Recruitment and Promotion Policy dated 23.02.1989 (Annexure R-2). It has further been averred in the reply that the petitioner has not approached this Court with clean hands and deliberately concealed the fact that he has applied for appearing in the type test vide Endst. No. 3390, dated 15.03.2011 and appeared for the same but failed. He has also concealed the fact that on 18.12.2013 he was given another chance to appear but could not qualify the test and now after a lapse of four years the present petition is filed.

5. Learned counsel for the respondents has also argued that the petitioner was promoted to the post of LDC vide order dated 28.07.2010 wherein, a specific condition of passing of type/computer test was imposed and on accepting the same, he cannot file the present writ petition now after a lapse of more than 7 years. The condition of type/computer test is strictly in accordance with the amended Recruitment and Promotion Policy of the respondents and the petitioner is bound by the same.

6. No other points have been argued by either of the parties.

7. Heard learned counsel for the respective parties.

8. The petitioner was appointed on the post of Chowkidar on 13.07.1994 on regular basis. Later on, he was promoted to the post of LDC vide order dated 28.07.2010 (Annexure P-1). Though, as per amendment dated 23.02.1989 in Recruitment and Promotion Policy

(Annexure R-2), it is a condition precedent to pass the type test within one year of promotion to the post of LDC but this Rule is not being implemented across the respondent Board as the authorities are granting exemptions to employees applying pick and choose method. Examining the issue in detail, vide judgment dated 23.04.2019 in CWP No. 92 of 2016 titled as **“Shashi Kanta vs. Uttar Haryana Bijli Vitran Nigam Ltd. And others”**, this Court has allowed four petitions by passing a detailed judgment holding that all persons similarly situated should be treated similarly and only because one person has approached the Court that would not mean that persons similarly situated should be treated differently. Taking into consideration the fact that similarly situated LDCs have been granted the benefit of increment without passing of type test by them within the prescribed period, this Court has directed these very respondents to grant the benefit of increment without insisting upon the condition of passing of type test.

9. The present case is also squarely covered by the settled proposition of law in **Shashi Kant's** case (supra), which has been followed by the respondents themselves in a number of other cases to grant the benefit to similarly situated employees.

10. In view of the above, the present petition deserves to be allowed and the condition No. 6 imposed upon the petitioner while passing promotion order dated 28.07.2010 (Annexure P-1) is liable to be set aside.

11. This Court directs the respondents are directed to grant annual increments to the petitioner along-with all consequential benefits, without insisting on passing of type test in English/Hindi at the speed of 30/25

w.p.m. Necessary calculations should be made within two months and benefits be released to the petitioner within one month thereafter, from the date of receipt of certified copy of this order.

12. The petition is allowed in the afore-said terms.

13. Ordered accordingly.

(SANDEEP MOUDGIL)
JUDGE

26th JULY, 2023
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- 1. Whether speaking/ reasoned : Yes / No
- 2. Whether reportable : Yes / No