226

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-24630-2021
DECIDED ON: 14.07.2023

BHUVESH KUMAR

.....PETITIONER

VERSUS

UTTAR HARYANA BIJLI VITRAN NIGAM LTD AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Praveen Gupta, Advocate
for the petitioner.

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SANDEEP MOUDGIL, J (ORAL)

Mr. Hitesh Pandit, Advocate has appeared and filed power of attorney on behalf of respondent No.1 today in the Court and the same is taken on record.

Petitioner is seeking direction to the respondents to grant him annual increments w.e.f. the due date with arrears and interest thereon particularly in view of the judgment dated 06.07.2018 (Annexure P-11).

Heard, counsel for the parties.

The respondent-department is insisting that as per appointment letter dated 16.06.2004 (Annexure P-1), the petitioner, who was appointed as Lower Division Clerk (LDC), should have qualified type test and computer test within two years, in four chances. The petitioner had passed the type test in the year 2011 and was granted increment thereafter. In 2006, his increment has been stopped.

The question for consideration in this petition is, 'whether as per instructions dated 30.08.2000 (Annexure P-4), in all the appointments under Ex-gratia Scheme, the candidates have to qualify type test in English and Hindi at the prescribed speed of 30/25 w.p.m. respectively.'

However, these instructions do not reflect passing of the computer test. Since this condition was not reflected in the instructions dated 30.08.2000 (Annexure P-4), the respondents have wrongly imposed this condition in the appointment letter of the petitioner.

Keeping in view that in the instructions dated 30.08.2000 (Annexure P-4), there was no requirement to pass the computer test, increment of the petitioner could not have been stopped on account of non passing of the computer test.

Learned counsel for the respondents has argued that once the petitioner has accepted his appointment with the condition of passing of computer test, he cannot take a plea that he is not bound to clear the said test.

This argument is liable to be rejected as the petitioner has referred to the policy dated 21.06.1990 (Annexure P-3), where the dependents of the deceased employees, who were duly appointed under Exgratia Scheme were not required to pass the type test. However, vide instructions 30.08.2000 (Annexure P-4), the Government has imposed the condition that all appointments as LDC under Ex-gratia Scheme will be made on Ad-hoc basis with the condition that such applicants will have to qualify the type test in English/Hindi at the prescribed speed of 30/25 w.p.m. respectively within two years in four chances from the date of joining the post.

From the date of issuance of earlier instructions dated 21.06.1990 (Annexure P-3) till the date of new instructions dated 30.08.2000 (Annexure P-4), there was no condition of passing of computer test for a person appointed as LDC under Ex-gratia Scheme. The petitioner was appointed as LDC under Ex-gratia Scheme vide order dated 16.06.2004 (Annexures P-1). While appointing the petitioner, condition of passing of computer test, was imposed. This condition has been wrongly imposed because the earlier instructions 21.06.1990 (Annexure P-3) have not been modified by the Government. Therefore, the same are against the provisions of law.

In view of the above, the present petition is allowed and the respondents are directed to restore/grant annual increment to the petitioner with effect from the due date with consequential relief, as he has already passed the typing test way back in the year 2011. Any recovery made, be refunded back to the petitioner along with interest at the rate of 6% per annum.

Ordered accordingly.

(SANDEEP MOUDGIL)
JUDGE

14.07.2023
Kusum

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