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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-1974-2020
Date of decision: 14.02.2024

DINESH KUMAR

...Petitioner

VERSUS

UTTAR HARYANA BIJLI VITRAN NIGAM LIMITED AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. R. S. Rana, Advocate
for the petitioner.

Mr. Vishal Singh Chauhan, Advocate
for the respondents.

JASGURPREET SINGH PURI, J. (Oral)

1. The present writ petition has been filed under Articles 226/227 of the Constitution of India seeking issuance of a writ in the nature of *certiorari* for setting aside the impugned order dated 14.05.2019 (Annexure P-13) passed by respondent No.3 and order dated 03.12.2018 (Annexure P-11) passed by respondent No.5 being wrong and illegal and further to issue a writ in the nature of *mandamus* directing the respondents to consider 20 years of service of the petitioner and to grant him exemption from passing the type test, being a disabled person and also to grant him all the service benefits alongwith ACPs.
2. The grievance of the petitioner as so stated by the learned counsel for the petitioner is that the petitioner was appointed as Lower Divisional Clerk (LDC) vide Annexure P-1 on ad hoc basis and there was a specific condition stipulated in the aforesaid appointment letter dated 08.11.2000 that the

petitioner will have to qualify the type test in English/Hindi at the prescribed 30/25 W.P.M. respectively, within a period of two years in four chances from the D.O.O., failing which his annual increments will not be released and his services will be regularized from the date of passing of the required type test. He further submitted that however, unfortunately in the year 2003, the petitioner met with an accident and his right index finger was amputated and in this regard, the disability certificate has also been attached as Annexure P-2, which is dated 29.10.2003, in which it has been so stated that B index finger is amputated and the petitioner is physically handicapped upto 14%. He also submitted that because of the aforesaid physical disability, the petitioner could not take the typing test so as to fulfill the requisite speed of the test because he was physically handicapped. He further submitted that in this way, neither the petitioner has been given any increment in view of the aforesaid condition of appointment nor his services have been regularized, although he is discharging the functions on the same post for the last 20 years and he is doing the same work but he could not pass the type test in the requisite speed because of the aforesaid reason, which was beyond his control. He further submitted that even various representations were also given to the concerned authorities but no action was taken and rather one representation of the petitioner has been rejected vide impugned order Annexure P-13, wherein it has been so stated that since his case is not covered under the Government of Haryana instructions dated 20.01.1998 issued by the Chief Secretary to Government of Haryana, therefore, he cannot be granted the relief of exemption from passing the typing test. He further submitted that the aforesaid instructions of 20.01.1998 (Annexure P-12) were otherwise also not applicable to the petitioner because

they were pertaining to those employees who were already employed at the time of issuance of instructions, which is clear from the language used in the aforesaid instructions.

3. On the other hand, Mr. Vishal Singh Chauhan, learned counsel for the respondents submitted that the petitioner was required to pass the type test as per condition stipulated in the appointment letter (Annexure P-1) but he failed to do so and therefore, he cannot be granted any exemption in this regard.

4. I have heard the learned counsel for the parties.

5. It is a case where the petitioner joined as a Lower Divisional Clerk (LDC) on compassionate basis on 08.11.2000 and he met with an accident in the year 2003 regarding which a disability/medical certificate has been attached as Annexure P-2 dated 29.10.2003, wherein it has been so stated that B index finger of the petitioner has been amputated and he has suffered 14% disability. So far as the disability of the petitioner is concerned, the same is not in dispute nor the same has been disputed by the respondents in their reply. The petitioner has been working on ad hoc basis for the last 20 years and the reason as to why he has not been regularized and he has not been given increments was the condition which was imposed in the appointment letter, whereby he was to pass a typing test at a particular speed. At the time of his appointment on compassionate basis in the year 2000, the petitioner was not physically disabled but it was only in the year 2003 that he met with an accident and suffered disability.

6. So far as the aforesaid instructions (Annexure P-12) issued by the Chief Secretary to Government of Haryana are concerned, it appears that the same would not apply to the petitioner because they apply only to those

employees who were in service at the time when the instructions were issued. However, this Court is of the view that the petitioner would be entitled to be considered for exemption on the basis of the Rights of Persons with Disabilities Act, 2016, wherein the '*person with disability*' has been so defined in Section 2(s) and the rights and entitlements of the person with disability have also been crystallized in the aforesaid Act. As per Section 3 of the aforesaid Act, the equality and non-discrimination has been ensured and non-discrimination in employment has also been discouraged under Section 20 of the aforesaid Act.

7. In view of the aforesaid facts and circumstances of the present case, this Court deems it fit and proper to dispose of the present writ petition with a direction to respondent No.1-Managing Director, UHBVNL, Vidyut Sadan, Sector-6, Panchkula to look into this issue with regard to the rights of the petitioner, if any, which emanate from the Rights of Persons with Disabilities Act, 2016 and pass an order after hearing the petitioner or his counsel in the light of the aforesaid Act of 2016, within a period of three months from today.

14.02.2024
Chetan Thakur

(JASGURPREET SINGH PURI)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No