

107

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-3445-2024 (O&M)

Date of Decision: 16.02.2024

Rattan Kumar

....Petitioner(s)

Versus

State of Haryana and others

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Ravinder Malik, Advocate, for the petitioner

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 quashing the order dated 02.01.2024 (Annexure P-9).
2. Learned counsel appearing on behalf of the petitioner submitted that the petitioner was appointed on *ad hoc* basis as a peon in the year 1985 and his services were regularized w.e.f. 27.07.1993 on the post of Peon. Thereafter, vide Annexure P-1, the petitioner was promoted to the post of Clerk on 31.03.2017. However, a condition was imposed in the order of promotion that the increment on the post of Clerk will be allowed after qualifying/passing type test of Hindi/English @ 25/30 WPM respectively. He submitted that thereafter the petitioner could not pass the typing test and various representations were also made to the respondents for granting

exemption but till date no exemption has been granted. He submitted that however vide Annexure P-2 dated 20.12.2018, an order was passed by the Managing Director, Hafed by directing that typing test was mandatory and the petitioner and some of the other employees who were promoted were placed on probation for a period of one year and as per provision laid down in the instructions dated 07.11.2013, the SETC test which is mandatory for all of them within the period of probation of one year extendable by one year failing which they will be reverted back. Even after lapsing the probation period, they did not qualify the required SETC test and therefore, their probation is extended upto 31.03.2019.

3. Learned counsel further submitted that the petitioner and the other Peons who were promoted by the aforesaid order and regarding which the aforesaid order Annexure P-2 was passed assailed the aforesaid order Annexure P-2 dated 20.12.2018 by filing a writ petition before this Court in CWP No.7978 of 2019 in which notice of motion was issued and it was also directed that meantime, the petitioners shall not be reverted and the aforesaid writ petition is still pending before this Court. The aforesaid order dated 26.03.2019 passed by a Co-ordinate Bench of this Court in the aforesaid writ petition is reproduced as under:-

“Learned counsel for the petitioners refers to the instructions dated 17.11.2018 (Annexure P-2) issued by State of Haryana whereby it has been held that if a typing test shall not be passed by any Clerk after promotion, he will not be entitled for further increment or promotion. The guidelines do not lay down that a Clerk can be reverted if he does not pass typing test. Even the promotion order dated 31.03.2017 (Annexure P-3), only speaks that increment will be granted after qualifying typing test of Hindi/English @ 25/30 wpm respectively. Vide

order dated 20.12.2018 (Annexure P-4), respondents are now seeking to revert the petitioners if they do not qualify the typing test till 31.03.2019. He further contends that for the last two years, the Department has not held any typing test.

Notice of motion for 05.09.2019.

In the meantime, petitioners shall not be reverted.”

4. Learned counsel submitted that in this way the petitioner although stands on the promotion post of Clerk because of the aforesaid order but he had been discharging the duties of a Peon and has not been granted the benefit of Clerk. He also referred to Annexures P-6 to P-8 to submit that he was granted ACPs on the presumptive post of Peon. He submitted that the petitioner is due to now reach the age of 58 years on 30.04.2024. He further submitted that the age of retirement of a Peon who falls in the category of Class-IV is 60 years, whereas the age of retirement of a Clerk is 58 years and the respondents are now contemplating to retire the petitioner at the age of 58 years by treating the petitioner as a Clerk, whereas he has a right to retire at the age of 60 years by treating him as a Peon and submitted that by way of impugned order Annexure P-9, the process for retirement of the petitioner has been started for seeking no due certificate from the concerned offices.

5. I have heard the learned counsel for the petitioner.

6. The prayer of the petitioner in the present case is that he should be treated as a Peon being in Class IV category and consequently, his date of retirement should be at the age of 60 years i.e 30.04.2026 and he should not be treated as a Clerk and he should not be retired on 30.04.2024. A perusal of the order Annexure P-1 by which the petitioner stands promoted

substantively on 20.12.2018 would show that one of the condition imposed in the aforesaid order was that the increment on the post of Clerk will be allowed only after qualifying the typing test. Thereafter, the petitioner did not qualify the aforesaid test at all and thereafter, the petitioner had an apprehension that he will be reverted back in view of the language used in Annexure P-2 whereby it was so noted by the Managing Director that in case the test is not cleared, then the petitioner and the other such like persons will be reverted back. Thereafter, the petitioner filed a writ petition before this Court alongwith the other Peons in which as reproduced above categorical stand was taken on the basis of which notice of motion was issued that the petitioners could not be reverted back because at the most increment could be stopped and therefore, on the basis of the submission of the counsel for the petitioners in that case not only notice of motion was issued but also it was directed that in the meantime, the petitioners shall not be reverted. As per learned counsel for the petitioner, the aforesaid petition is still pending before this Court and the aforesaid order is still in operation. In other words, by virtue of the aforesaid order passed by a Co-ordinate Bench of this Court on 26.03.2019 in the aforesaid writ petition, the petitioner is still on the post of Clerk in the light of the promotion order Annexure P-1. The argument which has been raised by the learned counsel for the petitioner is that since the petitioner has not been granted any benefit of a Clerk and is granted benefit of Peon only and he is also doing the duties of Peon, he is now entitled for extension of his time upto 60 years. This Court is of the considered view that such kind of argument raised by the learned counsel for the petitioner is absolutely unsustainable. In case the

petitioner is aggrieved by any action of the respondents for not granting him benefit on the promotional post including discharging of duties or payment of any salary etc., then for that purpose he may have remedy for enforcement of his rights in accordance with law. However, the petitioner has now taken a clever move to file the present petition seeking extension of his service tenure on the ground that he should be treated as a Peon. The petitioner himself had filed a writ petition No. 7978 of 2019 and had sought judicial intervention in which interim order was passed that the petitioner will not be reverted and now when he is at the verge of retirement attaining the age of 58 years, he has taken a new move by praying that he should be now treated as a Clerk. The petitioner cannot blow hot and cold in the same breath as it amounts to approbation and reprobation. On the one hand, he had sought judicial intervention and an interim order was passed that he should not be reverted and the aforesaid petition is still pending before this Court and on the other hand, he is asking for extension of his tenure upto 60 years which cannot be permitted and rather it amounts to an abuse of the process of law.

7. In view of the aforesaid factual position, this Court is of the view that the present petition is not only devoid of merit but it is also an abuse of the process of the law and the present petition is also frivolous and a vexatious petition.

8. Consequently, the present petition is dismissed with costs of Rs, 20,000/-. The costs shall be paid by the petitioner within a period of three months from today and be deposited in the High Court Legal Services Committee. In case the aforesaid costs are not deposited within the

aforesaid period of three months, then the aforesaid costs shall be recovered from the salary of the petitioner.

9. The Registry is directed to send a copy of this order to respondents No.2 to 4 for information.
10. List this case for compliance after three months.

16.02.2024
rakesh

(JASGURPREET SINGH PURI)
JUDGE

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