



CWP-21818-2020

-1-

248

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-21818-2020
Date of Decision: 17.07.2024

Shiv Shanker

..... Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Arun Sharma, Advocate,
for the petitioner.

Mr. Kapil Bansal, DAG, Haryana.

Mr. Arvind Seth, Advocate,
for respondent Nos.2 & 3.

JASGURPREET SINGH PURI, J. (ORAL)

1. The present writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of *certiorari* for quashing the impugned order dated 23.07.2019 (Annexure P-7), order dated 14.11.2019 (Annexure P-8) and the office order dated 14.01.2019/16.01.2019 (Annexure P-4) issued by the office of respondent No.2 to the extent that the impugned condition of passing of State Eligibility Test in Computer Appreciation and Application Part-II (SETC Typing Test) has been imposed upon the petitioner for getting the benefit of annual increment or promotion which is illegal, unjustifiable and against the law as the petitioner has already passed the Departmental Type Test held on 14.09.2018 as well as from the HKCL prior to the promotion for Class-IV to Clerk with a further prayer for issuance of a writ in the nature of *mandamus*

**CWP-21818-2020****-2-**

directing the respondents to exempt the petitioner from the condition of passing of typing test as he has already passed the Departmental Type Test held on 14.09.2019 as well as from the HKCL prior to the promotion for Class-IV to Clerk.

2. Learned counsel for the petitioner submitted that the petitioner was appointed as Peon/Chowkidar in the year 1990 and thereafter, his services were regularized in the year 1996. He further submitted that thereafter, the process for promotion to the post of Clerk has been initiated in the year 2018 and vide Annexure P-2, when a letter was issued to all the field offices and head of branches of HSVP by the Chief Adminsitrator, HSVP, Panchkula with regard to the filling up the vacant posts of Clerks amongst Class-IV employees under promotional quota, it was so provided that the candidates shall have to pass the State Eligibility Test in Computer Appreciation and application (SETC) or Departmental Type Test with the typing speed of 30/25 words per minute in English/Hindi, respectively, as a part of service required for Clerks. He submitted that thereafter when the petitioner was promoted along with other employees vide Annexure P-4 on 14.01.2019. He submitted that however in the aforesaid order of promotion, it has been stated that although the persons, who have been promoted, have cleared the departmental exam but the promotion order was subject to condition that the officials promoted to the post of Clerk with the condition that they shall pass the SETC, as per Government Instructions dated 17.11.2018 and no further annual increment or promotion (where applicable) will be allowed to them without passing SETC. He further submitted that in the present petition, the aforesaid condition has been challenged and the



petitioner has not cleared the aforesaid SETC and he has been declined the benefit of increment and promotion. He also submitted that once vide Annexure P-2, it has been so stated that the candidates must have cleared SETC or Departmental Type Test and he has already passed the Departmental Type Test, then such a condition was not a proper condition and could not have been imposed by the respondents and therefore, a direction may be issued to the respondents to grant the benefits which have been withheld pertaining his increments etc.

3. On the other hand, Mr. Arvind Seth, learned counsel appearing on behalf of respondents No.2 & 3 submitted that so far as Annexure P-2 on which the learned counsel for the petitioner has placed reliance is concerned, it was only a requisition letter written by the office of Chief Administrator, HSVP to all the field offices, HSVP in which it has been so stated that the candidates must have passed the SETC or Departmental Type Test and it was only for the purpose of further considering the candidates for being promoted to the post of Clerk as a preliminary issue because only those candidates, who were considered for being promoted to have passed either the SETC or Departmental Type Test and since the petitioner had already passed the Departmental Type Test, he was considered for promotion. He submitted that when the promotion order was issued vide Annexure P-4, then a specific condition was imposed that although the employees, who have been promoted as Clerk, have passed the Departmental Type Test and they have been promoted but with a condition that they have to now pass the post promotion SETC as per the Government Instructions dated 17.11.2018.

He referred to the reply which has been filed on behalf of respondents No.2

**CWP-21818-2020****-4-**

& 3 and also the provision of law whereby there is a specific provision that SETC has to be cleared even post promotion. He referred to Para No.3 of the reply in this regard in which the Haryana Urban Development Authority (Amendment) Rules-2013 have been reproduced and also referred to Rule 3 of the aforesaid Rules and submitted that the passing of the SETC is compulsory for the Clerks and it was in view of the aforesaid provisions that the Instructions were issued which have been referred in the order of promotion. He also submitted that the aforesaid condition was imposed in accordance with law and under the aforesaid Statutory Rules and therefore, the petitioner cannot come out and say that the aforesaid condition was unreasonable to the absence of challenge to the Statutory Rules or the Instructions dated 17.11.2018 issued in this regard. He further submitted that in the absence of challenge to the Government Instructions dated 17.11.2018 or the Statutory Rules, a challenge to the condition itself which has been imposed in pursuance of the above, is not sustainable. He submitted that in view of the above, the present petition is liable to be dismissed.

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

5. The only issue involved in the present case is that as to whether the respondents while promoting the petitioner and other such like candidates were within their rights to have imposed any condition with regard to passing of the SETC post promotion which has been challenged in the present petition. The aforesaid condition has been imposed in view of Government Instructions date 17.11.2018 and the same are stated to have been issued under the Haryana Urban Development Authority (Amendment) Rules, 2013 which have been reproduced in Para No.3 of the reply filed by



CWP-21818-2020

-5-

the respondents No.2 & 3 and there is no challenge to the aforesaid Instructions or the Rules.

6. The only emphasis which has been laid by the learned counsel for the petitioner is on Annexure P-2 wherein it has been so stated that even passing of the Departmental Type Test is sufficient and no further condition could have been imposed by promoting the petitioner. However, the aforesaid arugment raised by the learned counsel for the petitioner is misconceived, in view of the fact that a perusal of the aforesaid document (Annexure P-2) would suggest that it was only a requisition which was made by the Chief Administrator to all the field offices and the head of the branches for filling up the post of Clerks amongst Class-IV employees under promotion quota and it was only for the purpose of considering the promotion wherein a candidate has either cleared SETC or Departmental Type Test. The petitioner had already cleared the Departmental Type Test and therefore, he stood promoted but there was a subsequent condition which was a post promotion condition which was imposed under the Instructions of Government dated 17.11.2018 under the Haryana Urband Development Authority (Amendment) Rules-2013 and therefore, the reliance which has been made by the learned counsel for the petitioner on Annexure P-2 is misconceived.

7. In view of the aforesaid facts and circumstances, finding no merit in the present petition, the same is hereby dismissed.

17.07.2024

Bhumika

(JASGURPREET SINGH PURI)

JUDGE

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| 1. Whether speaking/reasoned: | Yes/No |
| 2. Whether reportable: | Yes/No |