

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

114

LPA-1565-2023 (O&M)

Decided on: 10.01.2024

Kamlesh

... Appellant

Versus

State of Haryana and others

... Respondents

**CORAM: HON'BLE MS.JUSTICE RITU BAHRI, ACTING CHIEF JUSTICE
HON'BLE MR.JUSTICE AMAN CHAUDHARY**

Present: Mr. Kartar Singh Malik, Advocate for the appellant

Mr. Deepak Balyan, Addl. AG, Haryana

AMAN CHAUDHARY, J.

1. The challenge in the present Letters Patent Appeal filed is to the judgment dated 27.07.2023 passed by the learned Single Judge, vide which the writ petition filed by the appellant was dismissed.
2. Learned counsel submits that the appellant was appointed as Peon on compassionate basis but still there was a condition imposed while promoting him as a Clerk on 04.11.2014 to pass the type test, which he having not been able to, was wrongly reverted on 22.08.2017. Learned Single Judge has, without properly appreciating the aforesaid, dismissed the petition, despite the fact that Rules did not require passing of such test.
3. Learned counsel appearing on behalf of the State opposes the submission by making a reference to the order whereby the appellant was promoted, as there was a condition incorporated therein for him to pass SETC Test within one year, else he would be reverted. He was also granted extension for the said purpose till February, March and upto 30th April, 2017, despite which, he failed to clear the same.

4. The submissions made on behalf of the appellant lack substance.
5. The learned Single Judge has rightly relied upon the fact that, the Rules may not have envisaged passing of type test, however, a condition for the same had been duly incorporated in the order of promotion and as per law laid down in **State of Punjab and others vs. Jagdish Kaur**, Civil Appeal No.2897 of 2006, decided on 26.08.2011, Government instructions can be pressed into service in absence of the Rules regarding a particular aspect.
6. There is no parity of the appellant, as sought to be drawn with exemption having been granted to employees from qualifying the type test, inasmuch as the same *firstly* relates to the year 2011, whereas the appellant was promoted in 2014. Moreover, much water has flowed over the years, as in this day and age of computerization, the knowledge of typing is more than essential and in fact the appellant ought to have been more than willing to hone this skill to better serve the public at large. Even otherwise, the concept of equality enshrined in Article 14 of the Constitution of India does not envisage negative equalities as were the observations of Hon'ble the Supreme Court in **Kulwinder Pal Singh vs. State of Punjab**, (2016) 6 SCC 532.
7. The submission that appellant was appointed on compassionate basis under the ex-gratia scheme and thus, should have been exempted from the type test, cuts no ice. Rather, having not come through the regular process of selection, it was incumbent upon him to have been more vigilant and forthcoming to comply with all requisites, which the Department mandated.
8. As a fall out, the present appeal is dismissed, being meritless, as we find no illegality or perversity in the impugned judgment passed by the learned Single Judge, warranting any intervention.

8. Since the main appeal itself has been decided, no orders are required to be passed in CM-4009-LPA-2023.

(RITU BAHRI)
ACTING CHIEF JUSTICE

(AMAN CHAUDHARY)
JUDGE

10.01.2024
gsv/ashok

Whether speaking / reasoned: YES / NO
Whether Reportable: YES / NO