

LPA-2245-2024 (O&M)

- 1 -

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

117

LPA-2245-2024 (O&M)

Date of Decision: 17.09.2024.

State of Punjab and another

...Appellants.

Versus

Nand Ram through LRs and others

....Respondents.

**CORAM: HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MRS. JUSTICE SUKHVINDER KAUR**

Present: Mr. Jastej Singh, DAG, Punjab
for the appellants.

LISA GILL, J. (Oral)

1. Prayer in this appeal is for setting aside order dated 04.03.2020 passed by learned Single Bench whereby CWP-9004-2006 filed by respondent/ writ petitioner was allowed.

2. The facts necessary for adjudication are that respondent/ writ petitioner filed the above said writ petition for setting aside letter dated 20.02.2006, whereby he was denied promotion to the post of Clerk. Writ petitioner had joined the office as Peon in the office of Examiner, Local Funds Accounts on 22.05.1978 and thereafter he was promoted to the post of Restorer on 14.10.1996. Grievance raised by writ petitioner was that he was not considered to be promoted to the post of Clerk on the premise that he has not cleared the Punjabi type test. Learned Single Bench while considering the matter and relying upon judgment of Hon'ble the Supreme

LPA-2245-2024 (O&M)

- 2-

Court in **State of Punjab and others Vs. Jagdish Kaur, 2011(4) S.C.T. 109**, allowed the writ petition, impugned order dated 20.02.2006 was quashed and respondents directed to consider claim of the petitioner for promotion in accordance with decision of Division Bench of this Court in CWP No.5401 of 2003—**Ramesh Chand and others vs. The Director, Department of Rural Development and Panchayat, Punjab and another**, decided on 04.08.2003, from the date his juniors were promoted to the post of Clerk. As per affidavit dated 16.07.2019 filed before the writ Court respondents had admitted that petitioner is senior to private respondents No.3 to 8 who already stood promoted to the post of Clerk.

3. Thereafter, review application RA-CW-246-2020 was filed by appellant/ State with the averments that judgment of Hon'ble the Supreme Court in Jagdish Kaur's case (supra) has not been interpreted in a correct manner inasmuch as requirement of qualifying the type test in Punjabi typewriting has been held to be a valid criteria. Reference has been made to Para 12 of the said judgment, which reads as under:-

“In light of the above, the requirement of qualifying the test in Punjabi Typewriting at the speed of 30 w.p.m. is manifestly a criterion for promotion from class IV to class III post. We are, therefore, clearly of the view that the orders passed by the High Court are untenable and we are constrained to set aside those orders.”

4. Notice was issued in the review application, which was however received back with the report that writ petitioner had passed away. Review application was disposed of as infructuous vide order dated 26.08.2022, which reads as under:-

“As per the report of Registry, notice issued to the petitioner has been received back with the report that he has passed away.

In the light of the above, the present Review Application would not survive.

Learned counsel has submitted that a question of law as has been framed in the Review Application, may be kept open so that the same can be agitated in appropriate proceedings, if required.

The contention of the counsel for the review applicant/respondents/State is accepted.

The present Review Application is disposed of by keeping the issue of law open for consideration in appropriate case/proceedings.

In the light of the disposal of the Review Application, pending applications stand disposed of as infructuous.”

5. CM-17320-CWP-2023 was filed by the State seeking recalling/ modification of order dated 04.03.2020 as well as order dated 26.08.2022. The said application was dismissed by learned Single Bench of this Court on 15.11.2023 and said order reads as under:-

“This application is filed by the State seeking review of the orders dated 04.03.2020 and 26.08.2022 passed by this Court in RA-CW-246-2020.

Learned State counsel has not been able to satisfy this Court regarding maintainability of this application after the Review Petition i.e. RA-CW-246-2020 was disposed of by this Court holding that the Review Petition would not survive after the petitioner in the Writ Petition had expired. It was also observed by the Court while deciding the Review Petition that the question of law as raised in Review Petition shall be kept open so that the same can be adjudicated in the appropriate

proceedings, if required.

Learned State counsel submits that the petitioner in the Writ Petition, who has expired, had not cleared the typing test. This Court finds that as this application is not maintainable, contentions raised by the petitioner do not survive. This application seeking review of the order passed in the Review Petition is nothing but gross abuse of process of Court, and the same is accordingly dismissed.”

6. Present appeal has now been filed challenging order dated 04.03.2020.

7. Learned counsel for the appellants argues that once the Hon'ble Supreme Court in case of Jagdish Kaur's case (supra) has specifically upheld the validity of criteria of passing Punjabi Type Test for promotion to the post of Clerk, learned Single Bench was not justified in passing the impugned order with the observations that ground taken by present appellants for rejecting the claim of writ petitioner was contrary to Division Bench judgment of Ramesh Chand's case (supra) with a specific reference to judgment of Hon'ble Supreme Court in Jagdish Kaur's case (supra). It is submitted that the Division Bench of this Court in Jagdish Kaur's case (supra) had passed the order on the basis of decision dated 04.08.2003 in Ramesh Chand's case (supra). The matter in Jagdish Kaur's case (supra) was appealed against before Hon'ble Supreme Court impugning passing of the order in Jagdish Kaur's case (supra).

8. We have heard learned counsel for appellants and have perused the file with his able assistance.

9. Undoubtedly, Hon'ble the Supreme Court in case of Jagdish

Kaur's case (supra) has upheld the criteria of requirement of qualifying the Punjabi Typewriting Test for promotion for the post of Clerk. Order passed by the High Court to the contrary was set aside, however Hon'ble the Supreme Court in para 13 of the said judgment directed as under:-

“ Coming now to the specific cases of the two respondents, it is noted above that following the order passed by the High Court, Harjinder Singh was promoted to a class III post on which he is working since then. Jagdish Kaur, though, not promoted on account of the stay order passed by this Court, had the order of the High Court (though now set aside) in her favour for the past seven years. We, accordingly, direct that she too should be promoted to a class III post. However, the promotions given to Harjinder Singh and Jagdish Kaur would be subject to their qualifying in the typewriting test in Punjabi at the speed of 30 w.p.m. within one year from today in the case of Harjinder Singh and within one year from her promotion in the case of Jagdish Kaur, failing which they may be reverted back to their substantive posts in class IV.”

10. In the given facts and circumstances, where the writ petitioner has admittedly died, we do not find it justified to cause interference for setting aside order dated 04.03.2020 at this stage. Trite it is that, in case writ petitioner had been alive, similar benefit may have been given to him.

11. Therefore, in the peculiar facts and circumstances, we do not find sufficient cause to interfere in this matter at this stage. However, it is clarified that order dated 04.03.2020 shall not be treated to be a precedent.

12. There is a delay of 898 days in filing the appeal with various grounds being raised, including those of pendency of applications for review/ modification etc. and administrative exigencies. As the appeal itself

LPA-2245-2024 (O&M) - 6-

has been adjudicated upon on merits, decision on the application (CM-5351-LPA-2024) for condonation of delay is rendered academic.

13. Appeal is dismissed and application seeking condonation of delay is disposed of accordingly.

14. Pending applications, if any, stand disposed of accordingly.

(LISA GILL)
JUDGE

(SUKHVINDER KAUR)
JUDGE

17.09.2024.
komal

Whether speaking/ reasoned	:	Yes/ No
Whether Reportable	:	Yes/ No