

2025:PHHC:024599



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

213-1

CWP-24498-2018

MANOHAR LAL AND OTHERS

... Petitioners

VERSUS

STATE OF HARYANA AND OTHERS

... Respondents

A N D

213-2

CWP-7117-2021

Date of Decision: 19.02.2025

SHARWAN KUMAR AND OTHERS

... Petitioners

VERSUS

STATE OF HARYANA AND OTHERS

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. Sunil Kumar Bhardwaj, Advocate
for the petitioners in both cases.

Mr. Tapan Kumar, DAG, Haryana.

VINOD S. BHARDWAJ, J. (ORAL)

Involving identical issues, both these writ petitions are being decided by a common judgment with the consent of learned counsel for the respective parties.

Challenging the imposition of condition of passing of State Eligibility Test in Computer Appreciation and Application (SETC) substituted

in the promotion order of the petitioners dated 11.04.2012 vide order dated 20.06.2018, the instant writ petitions have been filed. The petitioners have further prayed that they should be exempted from qualifying the SETC test since they had qualified the type test as per instructions of 07.11.2013 and that the condition of qualifying SETC cannot be imposed upon them taking into consideration that the petitioners were initially promoted as regular Clerks on 11.04.2012 i.e. prior to the introduction of the instructions dated 07.11.2013. It has also been prayed that all consequential benefits be also granted to the petitioners.

Briefly summarized, the facts of the present case are that the petitioners were initially appointed as Peon/Chowkidar and they joined as such with the respondent-Department from the dates tabulated hereinafter below: -

Sr. No.	Name	Post	Date of Joining	Place of Joining.
1.	Manohar Lal	Chowkidar	31/01/1996	Sub-Divn., Siwani, District Bhiwani
2.	Vishnu Dutt	Peon	09/11/1999	Ex. En. Provincial Divn. PWD B&R Branch, Bhiwani.
3.	Amit Kumar	Ferro Khalasi	18/09/2000	S.E. PWD B&R Circle Office, Jind.
4.	Naresh Kumar	Peon		Ex. En. Provincial Divn. PWD B&R Branch, Bhiwani.
5.	Somber	Chowkidar	15/10/1981	Ex. En. Provincial Divn. PWD B&R Branch, Bhiwani.
6.	Vijay Kumar	Peon	15/04/1997	Provincial Divn. Jind.
7.	Deepak	Chowkidar	19/07/2001	Ex. En. Provincial Divn. PWD B&R Branch, Bhiwani.

Vide order dated 11.04.2012, the respondents promoted all the petitioners, except for petitioner No.7, to the post of Clerk on *ad-hoc* basis, in accordance with the letter dated 16.10.2008, against the quota of direct recruitment. The petitioners were however later reverted to their original post

vide endorsement No.E./1880-1900 dated 31.07.2012. Undisputedly, the said order of reversion had not been challenged by the petitioners and that the same has attained finality.

Eventually, the petitioners were promoted again to the post of Clerk vide order dated 29.08.2014. Condition No.3 incorporated in the order of promotion reads thus:

“The above said officials will have to qualify test in Typewriting in Hindi/English at the speed of 30/25 words per Minutes respectively within one year of promotion failing which annual increment will not be granted.”

Some of the petitioners were promoted later vide office order No.45 dated 19.03.2015 and a similar condition was also incorporated in the order of their promotion as well. Undisputedly, the petitioners cleared the Typewriting test as per the condition No.3 prescribed in the office order of their promotion. The grievance, however, emanates from issuance of the letter dated 20.06.2018, whereby the condition No.3 regarding qualifying the SETC for promotion/posting in the promotion order of the petitioners was inserted in substitution of the original to read thus:

“Conditions: -

3. As per instructions contained in Haryana Govt. Gazette Notification dated 08/11/2013, the above named officials shall qualify the State Eligibility Test in Computer Appreciation and Applications (SETC) within the period of probation of one year, extendable by one year, failing which he/she will be reverted back.”

Learned Counsel for the petitioners also makes a reference to the Govt. Gazette Notification dated 08.11.2013 that has been relied upon by the

respondents while directing modification/rectification in the order of promotion, vide impugned office order No.103 dated 20.06.2018, which reads thus:

“Type test is substituted with State Eligibility Test in Computer Appreciation and Applications (SETC) as a part of service requirements for Clerks, Steno-typists, Junior Scale Stenographers & Sr. Scale Stenographers State Eligibility Test in Computer Appreciation and Applications (SETC) which shall be post requisite condition/qualification and all the newly recruited/appointed Clerks Steno-typists, Junior Scale Stenographers & Sr. Scale Stenographers shall have to qualify the State Eligibility Test in Computer Appreciation and Applications (SETC) in Government Departments/Organizations. The existing Clerks who have been promoted from Group-D and Restorer etc. and have not passed the type-test till date as required under the Service Rules shall have an option either to pass the type test or State Eligibility Test in Computer Appreciation and Applications (SETC). Besides, Steno-typists, Junior Scale Stenographers & Sr. Scale Stenographers shall have also to qualify Stenography Test as prescribed in the Service Rules of the department concerned.”

Referring to the above, learned counsel for the petitioners has raised the following arguments:

- (i) That the petitioners were originally promoted on *ad hoc* basis as Clerks on 11.04.2012. Even if the case of the respondents is accepted that the Gazette Notification had been issued on 08.11.2013, however, the same cannot be made applicable to the petitioners since they already stood promoted prior to the issuance of the said notification;

- (ii) It is further argued that at the time when the petitioners were promoted, condition No.3, prescribed in the promotion order, required the petitioners to clear only the Typewriting test and having fulfilled the said condition, they cannot be put to any additional condition of clearing the SETC; and
- (iii) He further contends that the petitioners have thereafter been also promoted to the next higher post, prior to passing of the impugned order and that there was no such condition for having to clear the SETC for being further promoted to the post of Sub-Divisional Clerk. Hence, they should now be exempted from the condition of having to pass the SETC.

No judgment has, however, been cited by the counsel for the petitioners in support of his arguments.

Responding to the above, learned State Counsel submits that so far as the contention of counsel for the petitioners that Govt. Gazette Notification dated 08.11.2013 had been issued after the initial order of promotion of the petitioners on 11.04.2012 is concerned, the said arguments does not hold any merit since the said order dated 11.04.2012 as of *ad hoc* promotion and the same was withdrawn by the Govt. whereupon the petitioners were reverted to their own original posts vide order dated 31.07.2012. No challenge was ever raised to the said order of reversion and the same having attained finality, the petitioners cannot now contend that even though the order of their initial promotion does not subsist in the eyes of law, yet for determining the applicability of the Gazette Notification, they should be deemed to have been promoted w.e.f. 11.04.2012 i.e. the date when *ad hoc* promotion against direct

recruitment was extended to the petitioners. He submits that the regular promotion of the petitioners has been made w.e.f. the order of 29.08.2014 and 19.03.2015 and at that point of time, the abovesaid Gazette Notification of 08.11.2013 had already been notified. Hence, the argument raised by the counsel for the petitioners in this regard deserves to be rejected.

He further submits that as per Condition No.5 incorporated in the order of promotion, the petitioners were governed by the Haryana State PWD Building & Roads Branch (State Service Group-C) Ministerial Establishment of Subordinate Offices Rules, 1980 and the abovesaid condition of passing the SETC stood incorporated in the Service Rules vide notification dated 08.11.2013 (Annexure R-2), hence, the said requirement got embodied as an integral part of the Service Rules that are applicable to the petitioners and they cannot seek any exemption from compliance thereto.

While responding to the second argument as regards the condition of having to clear the SETC having not been incorporated in the order of promotion of the petitioners, learned State Counsel contends that undisputedly, the Gazette Notification had already been issued on 08.11.2013 and the Service Rule had been amended to incorporate the condition of SETC on 08.11.2013. Since the petitioners were required to be compliant of the Rules, hence, a mere omission, whether inadvertent or deliberate, would not create any right in favour of the petitioners to claim that they would be exempted from the applicability or enforceability of the Rule. An omission to mention a condition in the promotion order cannot be read in supersession of the statutory provisions and in the event of any conflict/error, the applicable Service Rules prevail upon the office order. Thus, the condition being mandatory, it was

required to be fulfilled by the petitioners and its omission in promotion order does not vest any right in the petitioners.

Responding to the third argument of counsel for the petitioners that the petitioners have since been promoted to the post of Sub Divisional Clerk where there is no such condition of clearing SETC and hence they should be exempted from passing of SETC, learned State Counsel contends that the said aspect need not be gone into any further, since the condition prescribed is the condition precedent for being promoted to the post of Clerk and merely because certain irregularities remained unnoticed by the respondent-Department, it would not create any indefatigable right in favour of the petitioners to seek exemption from application of the statutory requirement.

At this juncture, the learned counsel for the petitioners raises an additional argument that the petitioner had been discriminated inasmuch as various other persons, who are similarly placed as the petitioners, have been granted exemption from clearing the SETC. A reference is made to the promotion orders (Annexures P-10 and P-11) appended alongwith the replication filed by him.

I have heard the learned counsel for the respective parties and have gone through the documents and record available on case file with their able assistance.

So far as the arguments of counsel for the petitioners that they should be deemed to have been promoted w.e.f. 11.04.2012 i.e. from the date when the *ad hoc* promotions were extended to them; and that the petitioners having been discriminated are concerned, the same are being dealt with together.

From a perusal of the order of promotion dated 11.04.2012, it is evident that petitioners were promoted as Clerks on *ad hoc* basis against the posts meant for direct recruitment. Eventually, on 31.07.2012, the petitioners were reverted to their own posts with immediate effect. The said order of reversion has attained finality and is not a subject matter of challenge herein or in any other proceedings ever. It would thus give legitimacy and existence to an order of promotion that does not exist, in case the argument of counsel for the petitioners is to be accepted.

Hence, even though the petitioners do not dispute that they were actually regularly promoted in the Cadre of Clerks only on 29.08.2014 and on 19.03.2015, however, for claiming non-applicability of the statutory Rules, they should be deemed to have been promoted as Clerk in April 2012. Such an argument cannot be accepted by any stretch of interpretation of legislation or judicial pronouncement. The applicable Rules as on the date when a person/employee is promoted to a post have to be considered and enforced. The promotion order being prospective, the conditions and Rules as were in force on the date of promotion are to be held applicable. Thus, the applicability of the Gazette Notification dated 08.11.2013 amending the Rules cannot be ignored by assuming an antedated promotion of the petitioners.

Further, insofar as the argument pertaining to discrimination is concerned, a perusal of the orders Annexure P-10 and P-11 shows that the said orders of promotion and posting of Class-IV employees have been passed on 02.02.2012 and 21.02.2012 respectively. Hence, the said orders had already been passed before the issuance of the Haryana Govt. Gazette Notification of

08.11.2013, hence, the case of the petitioners does not stand on parity with those persons.

Dealing with the argument of counsel for the petitioners that the condition of clearing of SETC was not incorporated as a part of the conditions in the office order of promotion of the petitioners, hence, they cannot be fastened with the obligation of passing the same, I am of the view that the Haryana Govt. Gazette Notification amending the Rules would have precedence over any office order(s) to the contrary. The conditions incorporated in an office order or promotion have to be read in conformity with the requirements as prescribed in the Rules. As condition No.5 of the office order prescribed that the services are governed by the Haryana State PWD Building & Roads Branch (State Service Group-C) Ministerial Establishment of Subordinate Offices Rules, 1980 that were amended on 08.11.2013, hence, as on the date when order of promotion of the petitioners was passed, the new Rules were already in force for a period of more than one year. Any inadvertent, negligent, conscious or deliberate omission on the part of the Authority in ensuring that all the eligibility conditions, as incorporated in the applicable Service Rules, get incorporated in the order of promotion also, would not confer any right in the petitioners/employees to claim that they would now be exempted from application of the Service Rules. The said argument can also be tested from a completely converse proposition. Assuming for the sake of arguments, that the condition of passing SETC would have been deleted from the applicable Service Rules, the petitioners would have approached this Court to contend that any condition in an office order of promotion, which is not provided under the Rules, cannot be enforced against them. The fundamental principle of law for

judicial interpretation cannot be altered for the sake of convenience and merely because the petitioners feel that certain provisions were more beneficial for them. Hence, considering it from either of the perspectives, the petitioners cannot claim that the requirement of clearing the SETC is not applicable to them for the same having not been prescribed in the office order notwithstanding the Service Rules already stood amended prior to the passing of the office order of promotion. The contention is thus rejected.

The further contention of learned counsel for the petitioners that the petitioners have since been promoted to further higher post, hence, they should be exempted, I feel that the same is not the core issue required to be gone into by this Court at this juncture. In the absence of any lawfully prescribed cogent and valid ground sufficient for such relaxation from the Rules, the said argument cannot be accepted. Moreover, this is an issue on which the respondent-State is yet to take a decision to exercise its discretion or not. In the absence of any final decision having been taken by the respondent-State, any comment/adjudication on the said aspect might have a prejudicial impact on the career of the petitioners.

For the foregoing reasons, I do not find that there exists any merit entitling the petitioners for being exempted from the modified/amended Condition No.3, as conveyed to them vide letter dated 20.06.2018. The action of the respondent-State in amending Condition No.3 in the promotion order to bring it in conformity with statutory Rules is valid and lawful.

The present writ petitions are accordingly dismissed to the extent of the said claim. The dismissal would, however, not operate as a bar against the State Government in considering the request of the petitioners, if any, for

grant of relaxation/exemption from the SETC, if the Rules so provide, and in a manner known to law.

FEBRUARY 19, 2025.

Rajender

**(VINOD S. BHARDWAJ)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No