

230

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-9766-2021

SIDHARTH AND ANR.

...PETITIONERS

VERSUS

STATE OF HARYANA AND ORS.

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. R.K. Malik, Sr. Advocate
Mr. Sandeep Dhull, Advocate
for the petitioner(s)

Mr. Rahul Dev Singh, Addl. AG. Haryana

1.	The date when the judgment is reserved	22.04.2026
2.	The date when the judgment is pronounced	19.05.2026
3.	The date when the judgment is uploaded	19.05.2026
4.	Whether only operative part of the judgment is pronounced or whether the full judgment is pronounced	Full
5.	The delay, if any of the pronouncement of full judgment and reason thereof.	Not applicable

SANDEEP MOUDGIL, J

Prayer

1. The jurisdiction of this Court has been invoked under Article 226/227 of the Constitution of India seeking quashing of the order dated 19/30.08.2019 (Annexure P-7) by which the private respondents were granted deemed date of promotion as clerks w.e.f. 07.10.2013 and order dated 13/14.01.2020 & 30.03.2021/07.04.2021 (Annexure P-8 & P-9) by which they

have been further promoted as sub-divisional clerks w.e.f 31.10.2018, with a further prayer to restrain the official respondents to promote the private respondents any further as Accounts Clerks during pendency of the present petition.

The Conspectus Of Facts

2. The petitioners are employees of the Irrigation & Water Resources Department, Haryana who were appointed as Clerks on regular basis on 19.03.2018 through direct recruitment and subsequently qualified the State Eligibility Test in Computer Appreciation and Applications (SETC). Thereafter, they were promoted as Sub Divisional Clerks during the year 2020.

3. The service conditions governing the posts of Clerk, Sub Divisional Clerk and Accounts Clerk in the department are regulated by the Haryana Irrigation Department, Circle Clerical (Group-C) Service Rules, 1982, which were amended vide notification dated 11.11.2013. Pursuant to Government instructions dated 07.11.2013, the requirement of qualifying the SETC examination was introduced for ministerial employees holding clerical posts.

4. The private respondents, who were initially working on Class-IV posts, were promoted as Clerks vide orders issued during the years 2014 and 2015. Subsequently, vide order dated 19/30.08.2019, deemed dates of promotion as Clerks w.e.f. 07.10.2013 were granted to the private respondents. Thereafter, the private respondents were promoted as Sub Divisional Clerks vide orders dated 13/14.01.2020 and 30.03.2021/07.04.2021.

5. A communication dated 27.09.2019 was issued by the Engineer-in-

Chief calling for information regarding Clerks who had not qualified the SETC examination within the prescribed period. Thereafter, applications were invited for consideration of eligible Sub Divisional Clerks for promotion to the post of Accounts Clerk vide communication dated 07.05.2021.

6. Hence, the present petition.

Contentions
On behalf of Petitioners

7. Learned counsel for the petitioners contends that under the Haryana Irrigation Department, Circle Clerical (Group-C) Service Rules, 1982, as amended vide notification dated 11.11.2013, a promotee Clerk was required to qualify the prescribed type test as well as the SETC examination within the stipulated period, failing which he was liable to be reverted to the substantive post. It is argued that the private respondents, despite having not qualified the requisite examinations within time, were not reverted and were instead granted deemed date promotions as Clerks and thereafter promoted as Sub Divisional Clerks vide the impugned orders.

8. Counsel further submits that once the private respondents were not eligible to continue on the post of Clerk, which constituted the feeder cadre for promotion to the post of Sub Divisional Clerk, their subsequent promotions are contrary to the statutory Rules and liable to be set aside. Reliance has also been placed upon the communication dated 27.09.2019 issued by the Engineer-in-Chief seeking particulars of such employees who had failed to clear the SETC examination within the prescribed period for the purpose of reversion.

9. It is further argued that the validity of the amended Rules dated

11.11.2013 already stands upheld in earlier proceedings, including CWP No.7628 of 2016 decided on 24.02.2020 and the judgment rendered by the Division bench in CWP-18143-2018 titled as "*Nissar Ahmed vs State of Haryana*" decide on 08.05.2019. On the strength of the said judgments, it is submitted that the requirement of passing the SETC examination is mandatory and the private respondents could not have been granted the benefit of continuation and further promotion in violation thereof.

10. Lastly, it is submitted that the action of the respondents in considering the private respondents for further promotion to the post of Accounts Clerk, despite the alleged ineligibility attached to their earlier promotions, is arbitrary and prejudicial to the rights of the petitioners and other eligible employees.

On behalf of Respondents

11. Learned counsel for the respondents submits that the process for promotion of eligible Class-IV employees to the post of Clerk had commenced much prior to the issuance of the Government instructions dated 07.11.2013 and the amendment notification dated 11.11.2013. It is argued that during the pendency of the promotion process, the minimum qualification for promotion was upgraded from matriculation to 10+2, which led to administrative complications and delay in finalization of promotions. Subsequently, the Government clarified vide instructions dated 21.05.2014 that the revised qualification would apply prospectively, thereby necessitating restructuring of the seniority list and reconsideration of eligible employees.

12. Counsel further submits that in order to remove anomalies arising on account of the administrative delay and to protect the promotional rights of

eligible matriculate Class-IV employees whose cases were under consideration prior to 07.11.2013, the competent authority granted deemed date promotions to such employees as Clerks w.e.f. 07.10.2013. It is contended that by virtue of the deemed date promotion, the private respondents stood at par with employees promoted prior to 07.11.2013, who were exempted from passing the type test in terms of earlier Government instructions and judicial orders.

13. It is further argued that some of the private respondents had already qualified the SETC examination prior to the grant of deemed date promotion and that the impugned orders were issued after considering the available vacancies and applicable service conditions. Counsel submits that the subsequent grant of deemed date promotion as Sub Divisional Clerks was also made to remove disparity vis-à-vis similarly situated employees junior to the private respondents who had already been promoted.

14. Learned counsel also contends that the petitioners, having been appointed as Clerks only in the year 2018 and being junior in the cadre, have no vested right to challenge the promotions granted to the private respondents. It is submitted that the petitioners were themselves on probation during the relevant period and were not eligible for consideration for further promotion at the relevant time. Accordingly, it is argued that no legal right of the petitioners has been infringed and the writ petition is liable to be dismissed.

14. Arguments were heard and the judgement was kept reserved on 22.04.2026.

Analysis

15. Having heard learned counsel for the parties at length and upon perusal of the pleadings, record and the affidavit filed pursuant to the order of this Court, this Court is of the considered view that no case for interference under Article 226 of the Constitution of India is made out.

16. The principal challenge raised in the present writ petition is directed against the order dated 19/30.08.2019 whereby the private respondents were granted deemed date promotion to the post of Clerk w.e.f. 07.10.2013 and the consequential orders dated 13/14.01.2020 and 30.03.2021/07.04.2021 granting them promotion/deemed date promotion to the post of Sub Divisional Clerk. The grievance of the petitioners is founded upon the contention that the private respondents had not qualified the SETC examination and, therefore, were not entitled either to continue as Clerks or to be considered for further promotion.

17. The said contention, though attractive at first blush, does not withstand judicial scrutiny when examined in the backdrop of the factual and administrative circumstances placed on record by the respondent-department

18. It is not in dispute that the process for promotion of eligible Class-IV employees to the post of Clerk had commenced prior to the issuance of the Government instructions dated 07.11.2013 and the amendment notification dated 11.11.2013. It further emerges from the record that during pendency of the promotion process, the State Government issued instructions dated 07.11.2013 upgrading the qualification for promotion to the post of Clerk from matriculation to 10+2 and simultaneously introduced the requirement of qualifying the SETC examination. Consequently, the department was

compelled to re-work the entire exercise, prepare fresh seniority lists and reconsider eligibility of employees in light of the changed qualifications. Subsequently, the Government itself clarified vide instructions dated 21.05.2014 that the revised qualification would operate prospectively. The competent authority thereafter undertook an exercise to remove anomalies arising due to such delay and granted deemed date promotions to eligible employees w.e.f. 07.10.2013.

19. Thus, this court is constrained to observe that the grant of deemed date promotion to the private respondents was thus not an isolated exercise but part of an administrative decision taken to protect the promotional rights of employees whose cases were already under consideration prior to the amendment of Rules.

20. The affidavit filed by the respondents pursuant to the directions of this Court further reveals that as many as 64 posts of Clerks in the promotional quota were lying vacant prior to 07.10.2013 and the exercise for filling up the said posts had already been initiated. Ultimately, 62 eligible Class-IV employees were granted deemed date promotion as Clerks w.e.f. 07.10.2013 against the vacancies available in the promotional quota.

21. In the considered opinion of this Court, the grant of deemed date promotion in such circumstances cannot be termed arbitrary or dehors the Rules. The competent authority was justified in taking corrective administrative measures to neutralize the prejudice caused to eligible employees on account of prolonged administrative delays and repeated restructuring of the eligibility criteria during pendency of the promotional process. Once such deemed date promotions were granted from a date prior to

07.11.2013, the private respondents were treated at par with similarly situated promotee Clerks who had been promoted before the amended provisions came into force.

22. The principal grievance raised by the petitioners is that the private respondents had not qualified the SETC examination and type test within the stipulated period and, therefore, were liable to be reverted instead of being granted further promotion. However, the issue cannot be examined in isolation divorced from the background in which the deemed date promotions came to be granted. Once deemed date promotions were granted to the private respondents w.e.f. 07.10.2013, i.e. prior to the issuance of instructions dated 07.11.2013 and amendment notification dated 11.11.2013, the private respondents stood at par with similarly situated promotee Clerks who had been promoted prior to the amendment and were not governed by the newly introduced requirement. The said decision appears to have been taken uniformly and in exercise of administrative discretion.

23. Significantly, the respondents have consistently maintained that the instructions dated 07.11.2013 introducing SETC qualification were intended to operate prospectively. The department has also explained that employees promoted prior to the said date stood exempted from the requirement of passing the type test/SETC examination in view of earlier governmental instructions and judicial directions. The benefit extended to the private respondents, therefore, was neither selective nor discriminatory but flowed from the legal fiction created by the deemed date promotion.

24. Otherwise also, the respondents have averred in Para 6 of the Written Statement that in view of the State regularization policies of the year

2014, some contractual official were regularized on the post of Clerk and they became senior to the officials who were waiting since the year 1995. Thus, due to mitigating factors and change of qualification, it would cause irreparable loss to the eligible matriculate Class-IV employees in their future aspects.

25. Even otherwise, the Rules relied upon by the petitioners primarily prescribe passing of SETC examination as a condition linked to earning of annual increments. The petitioners have failed to point out any specific statutory provision creating an absolute embargo against consideration for promotion in the peculiar circumstances arising from retrospective/deemed date promotions granted to remove administrative anomalies.

26. This Court also cannot lose sight of the fact that the petitioners themselves entered service as Clerks only in the year 2018 and were promoted as Sub Divisional Clerks in the year 2020. The petitioners have not been able to demonstrate infringement of any vested or accrued right. Mere apprehension that the private respondents may steal a march in future promotional avenues would not furnish a valid ground for interference, particularly when the impugned action pertains to seniority adjustments and deemed date promotions granted by the competent authority after considering the peculiar facts and circumstances prevailing in the department.

Conclusion

27. In view of the discussion made hereinabove, no mala fides, patent arbitrariness or violation of any statutory provision has been established so as to warrant interference by this Court in exercise of extraordinary writ

jurisdiction. The impugned orders appear to have been passed by the competent authority after taking into consideration the administrative exigencies, availability of vacancies and the need to remove anomalies arising out of delayed promotions.

28. Consequently, finding no merit in the present petition, the same is dismissed.

29. Pending application(s), if any shall be disposed off, accordingly.

19.05.2026
anuradha

(SANDEEP MOUDGIL)
JUDGE

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