

SUPREME COURT OF INDIA

State of Punjab & Ors.

Vs.

Jagdish Kaur

C.A.No.2897 of 2006

(Aftab Alam and R.M.Lodha,JJ.,)

26.08.2011

JUDGMENT

Aftab Alam,J.,

1. These two appeals, at the instance of the State of Punjab and its officials, are directed against orders passed by the Punjab and Haryana High Court by which it knocked down the requirement of passing typing test in Punjabi at the speed of 30 words per minute (w.p.m.) as an eligibility criterion for promotion from class IV to class III posts in the State Government service.

2. Jagdish Kaur, the respondent in Civil Appeal No.2897 of 2006 was appointed as a Peon in the Government High School Vairwal, Tehsil Tarn Taran, District Amritsar, on February 21, 1978. Her appointment was made on compassionate grounds following her husband's death in harness on January 14, 1977. At the time of her appointment, she had passed matriculation examination in 3rd division. After joining the service, she passed the Senior Secondary School Examination from the Punjab School Education Board in 2nd division in the year 1992. According to her case, after passing the plus two examination, she became eligible for promotion to a class III post and she, accordingly, moved the concerned authorities for her promotion. However, getting no favourable response from them, she approached the Punjab and Haryana High Court in CWP No.11758 of 2003 seeking appropriate reliefs.

3. Harjinder Singh, respondent No.1, in Civil Appeal No.4134 of 2006, similarly joined as a Peon in the department of technical education on April 7, 1992. He was a matriculate at that time. According to his case, another person, namely, Baldev Singh, who was junior to him in class IV, was given promotion to a class III post in supersession of his claim. He too, therefore, moved the Punjab and Haryana High Court in CWP No.729 of 2004 seeking a direction to the concerned authorities to promote him to a class III post.

4. The writ petition filed by Jagdish Kaur was allowed by order passed by a Division Bench of the High Court on February 20, 2004. Later on the writ petition of Harjinder Singh came

up before another Division Bench of the court and following the order passed in the case of Jagdish Kaur that too was allowed by order dated July, 1, 2005.

5. Following the order passed by the High Court, Harjinder Singh was given promotion and is working on a class III post since then. In the case of Jagdish Kaur, however, this Court stayed the operation of the impugned order of the High Court while issuing notice on April 18, 2005. As a result she continues to work on the class IV post.

6. Before the High Court, the case of the State was that the two writ petitioners (respondents in the two appeals before this Court) could only be considered for promotion in their turn on the basis of seniority. Moreover, they were not eligible for promotion from class IV to class III posts since they had not passed the typewriting test in Punjabi with the minimum speed of 30 w.p.m. The High Court did not take any objection to denial of promotion on the basis of seniority but went on to examine the requirement of passing the typing test in Punjabi as a condition for promotion to a class III post. It came to find that the condition of qualifying in typing test in Punjabi was illegal, arbitrary and unenforceable and, consequently, held and directed as follows:-

"Accordingly, the instant petition is allowed. The action of the authorities in requiring members of Class IV service to possess Punjabi typewriting test as a pre-condition for promotion to the post of Clerk is held to be illegal. The claim of the petitioner for promotion to the post of Clerk shall now be considered by re-determining her eligibility without insisting upon the earlier pre-condition having to pass the typewriting test in Punjabi. In case the petitioner is otherwise qualified, her claim shall be considered for promotion to the post of Clerk, without any further delay. If she is found suitable, she shall be promoted to the post of Clerk, with effect from the date, persons junior to her were promoted as such. The aforesaid exercise be carried out and completed within three months from today."

The finding of the High Court is primarily based on the provisions of the Punjab Civil Services (General and Common Conditions of Service) Rules, 1994 (in short "1994 Rules"). The High Court observed that in the statutory rules, the requirement of qualifying the typewriting test in Punjabi with a minimum speed of 30 w.p.m. was for direct recruitment to a class III post but there was no such requirement for promotion from Class IV to class III posts. In this regard the High Court made the following observations:-

"In the present case also, in the absence of any statutory provision to the contrary, the Punjab Civil Services (General & Common Conditions) Rules, 1994 (hereinafter referred to as the 1994 Rules), would be relevant to determine the controversy in hand. Under the 1994 Rules, the rule making authority laid down the requirement of qualifying the typewriting test in Punjabi with a minimum speed of 30 words per minute within one year of the date of the direct recruitment. The 1994 Rules did not lay down such a pre-condition/stipulation for appointment by promotion to the post of Clerk. The inference, that is liable to be drawn from the conditions delineated under

the 1994 Rules, is that while qualifying the typewriting test in Punjabi is a condition for direct recruitment, it is not a pre-condition for promotion."

(emphasis added)

The High Court, then, proceeded to observe that in the absence of any provision in the statutory rules, no such requirement could be introduced through any Government Order. Hence, it held the stand of the State Government untenable and made the directions, as noted above.

7. To us it appears that the High Court was in error in making the 1994 Rules, the basis of its judgment. We have gone through the 1994 Rules. The rules framed under the proviso to Article 309 of the Constitution of India are exclusively in respect of the appointments, by direct recruitment, to class I, class II and class III services in the State Government. Rule 15 which is in two parts lays down the eligibility for appointment to the post of Clerk; sub-rule (a) prescribes matriculation in second division or passing senior secondary part II examination from a recognized University as the minimum educational qualification and sub-rule (b), as originally framed, made qualifying a test in Punjabi typewriting at the speed of 30 w.p.m. as the essential pre-requisite for appointment to a post of clerk in the Punjab Government. It may be noted that Rule 15 was amended by Notification dated June 23, 1999 and the amended rule reads as under.

"15. Minimum educational qualification and other qualifications:-

(1) No person shall be appointed by direct appointment to the post of a clerk under the Punjab Government unless he is matriculate in Second Division or has passed Senior Secondary Part III Examination from recognized university or institution.

(2) The person so appointed as Clerk in terms of sub-rule (1) shall have to qualify a test in Punjabi typewriting to be conducted by the Board or by the appointing authority at the speed of thirty words per minute within a period of one year from the date of his appointment.

(3) In case the persons fails to qualify the said test within the period specified in sub-rule (2) he shall be allowed annual increment only with effect from the date he qualifies such test, but he shall not be paid any arrear for the period, for which he could not qualify the said test."

8. As a result of the amendment the qualification of typing that earlier used to be an essential requirement for appointment ceases to be a precondition and can now be acquired within a period of one year from the date of appointment failing which no annual increments would be allowed. It is, thus, clear that in case of direct recruitment to a class III post the qualification of typing in Punjabi as a requirement for appointment has been considerably relaxed.

9. The significant thing to note, however, is that the 1994 Rules do not deal with appointments to class IV posts and do not provide for promotion from class IV as a mode of recruitment to class III posts. Hence, there is no question of finding in the 1994 Rules any provision dealing with the eligibility criteria for promotion from class IV to class III posts. The High Court was, therefore, quite wrong in drawing the inference that while qualifying the typewriting test in Punjabi is a condition for direct recruitment, it was not a pre-condition for promotion.

10. Coming now to the issue of promotion from class IV to class III posts, the provision was first made in the Government Circular letter No.4/17/79- IPP/1973, dated August 24, 1983. Paragraphs (i) and (ii) of the circular letter read as follows:-

"(i) There should be a provision for filling up 10% of Class III posts by promotion from amongst Class IV employees, who possess a minimum educational qualification of matriculation (with Punjabi) and have a minimum of 5 years' experience as such;
(ii) There should be a provision for a qualifying test in Punjabi typewriting which should be equal to the one prescribed by the Subordinate Services Selection Board for such posts and it should be made essential to pass the test before a Class IV employee is considered eligible for promotion. The test may be held by the appointing authority or any such authority to whom the powers for doing so are delegated by the appointing authority."

The aforesaid Government Order was amended by Circular dated October 27, 1998. The later circular increased the quota for promotion from 10% to 15% but retained the qualification of Punjabi typewriting as prescribed in the earlier order. Paragraph 2 of the circular letter dated October 27, 1998, reads as follows:-

"There should be provision for a qualified test of Punjabi typewriting which should be equal to the one prescribed by the S.S.S. Board for such posts and it should be made essential to pass the test before a Class IV employee is considered eligible for promotion. The test may be held by the appointing authority or any such authority to whom the powers for doing so are delegated by the appointing authority."

11. It is well-settled that in the absence of statutory rules on any subject, the relevant Government Orders would hold the field. [See: *Sant Ram Sharma Vs State of Rajasthan & Anr¹*, *Ashok Kumar Shrivastava & Ors. Vs. Ram Lal & Ors.²*, *Shiba Shankar Mohapatra & Ors. Vs. State of Orissa & Ors.³*.

12. 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.

13. 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.

14. Before parting with the records of the case, however, we must put in a caveat. It is seen above that in case of direct recruitment to a class III post the qualification of typing in Punjabi as a requirement has been greatly relaxed. It may be legally permissible for the State to have different standards for direct recruitment and for recruitment by promotion but in fairness the State would be well advised to review the criteria for promotion from class IV to class III posts and to bring them at par with the requirements for direct recruitment to class III posts.

15. In the result, the appeals are allowed subject to the observations and directions made above.

Judgment Referred.

¹*AIR 1967 SC 1910*

²*(2008) 3 SCC 0148*

³*(2010) 12 SCC 0471*