
(2012) 11 P&H CK 0139
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 23900 of 2011

Deepika Gupta

APPELLANT

Vs

Distt. and Sessions Judge and Others

RESPONDENT

Date of Decision : 20-11-2012

Acts Referred:

Citation : (2013) 2 SCT 384

Hon'ble Judges : Tejinder Singh Dhindsa, J

Bench : Single Bench

Advocate : K.S. Kang, for the Appellant; N.K. Joshi, Advocate for the Respondent No. 1 and Mr. Inder Pal Goyat, Addl. A.G., Punjab, for the Respondent

Final Decision : Dismissed

Judgement

Tejinder Singh Dhindsa, J.—The petitioner has filed the instant writ petition impugning the order dated 14.11.2011 (Annexure P-4) as also the consequential order dated 17.11.2011 (Annexure P-5), whereby the respondent authorities have deleted the name of the petitioner from the waiting list insofar as the recruitment to the post of Clerks is concerned, on the basis that she had failed to qualify the type test. Brief facts, of the case, are that an advertisement dated 7.6.2011 (Annexure P-1) was issued by respondent No. 1 inviting applications for recruitment to various posts i.e. Clerks, Stenographers Grade-II and Peons. It has been asserted that the petitioner who belongs to the General Category applied for the post of Clerk and subjected herself to the process of selection which included the written test followed by a typing test. It has further been asserted that the petitioner having qualified the written test was called upon to appear in the typing test as also the computer proficiency test held on 3.9.2011. A final selection list Annexure P-2 was notified by the respondents wherein the name of the petitioner appeared at serial No. 2 in the waiting list for the post of Clerks amongst General Category. It has been pleaded on behalf of the petitioner that letters of appointment had been issued to the selected candidates and thereafter one selected candidate namely, Kamaljit Singh had resigned from the

post and yet another vacancy was falling due on account of promotion of one Smt. Sudesh Kumari. Accordingly, the petitioner had submitted a request to be permitted to joint on the post of Clerk on the basis that her name figure at serial no. 2 in the waiting list. The present writ petition has been filed on account of passing of the impugned order (Annexure P-4) dated 14.11.2011 and duly communicated to her vide communicated dated 17.11.2011 (Annexure P-5), whereby she has been informed that her name stands deleted from the waiting list of the candidates for the post of clerk. A perusal of the impugned order would reveal that the basis of her name having been deleted is that she has been held to have failed to qualify the type test. Learned counsel appearing for the petitioner would vehemently contend that the final select list of candidates for the post of clerks pertaining to General category, having once been displayed, there was no occasion for the same to be reviewed that there was no fraud or misrepresentation attributed to the petitioner and as such a right for appointment had accrued in favour of the petitioner in the light of the final selection list having been issued. In furtherance of such submission, counsel would place reliance upon a judgement of the Hon''ble Allahabad Court in M.J.P. Rohilkhand University Bareilly Vs. Harjendar Singh and another, as also a Division Bench judgement of this Court in Pranay Kawduji Barapatre v. Punjab University and others, 2007 (6) SLR 529.

2. Per contra Mr. N.K. Joshi, learned counsel appearing for respondent No. 1 has raised a two-fold submission. In terms of referring to para 1 of the preliminary objections in the written statement filed on behalf of respondent No. 1, it has been submitted that against the seven selected candidates for the post of Clerks in the General Category, appointment letters were issued to all such seven candidates who have since joined and are presently working. Learned counsel accordingly contends that the waiting list was never even operated upon and in any case there was yet another candidate who had secured higher merit than the petitioner and was at serial No. 1 in the waiting list. Still further, a stand has been taken that in fact, the petitioner had not qualified the type test and it was by sheer oversight that her name crept in the initial select list. Towards such an assertion, counsel would submit that at the time of conducting a type test a computer printed text containing 300 words had been handed over to each of the candidates and the candidates had been given 10 minutes to type the said text on computer. A margin of mistakes/omissions of 10% was allowed and any candidate who committed mistakes or omissions in excess of 30 words was liable to be disqualified. Counsel for respondent No. 1 has even produced before the Court today the original record pertaining to the type test in respect of the candidates of the General Category. A perusal of the same would reveal that insofar as the petitioner is concerned, she committed 41 mistakes and accordingly did not qualify the test of 300 words. 6 words were missing. On the basis thereof, counsel would assert that the petitioner at the very outset failed to qualify the type test and in terms of narration of the impugned order dated 14.11.2011 (Annexure P-4) it was only an error that was sought to be corrected

in terms of passing of impugned order dated 14.11.2011 (Annexure P-4) and conveyed vide communication dated 17.11.2011 (Annexure P-5). It could not be construed as if there has been re-checking of the papers relating to the type test and there has been no re-evaluation of the test as such.

3. Having heard the counsel for the parties and having perused the record, I find that the present writ petition deserves dismissal. Rule 7 Sub Rule (vii)(a)(b)&(c) of Chapter 18 Part-A of the High Court Rules and Orders, Volume-I prescribes eligibility and other conditions of selection of Clerks. The relevant provision reads as following:

7 (vii) Clerks: Appointment to the post of clerk shall be made in the ratio of 90% in case of direct recruitment and 10% by way of promotion. Appointment to the post of clerk shall be regulated as under:-

(a) No candidate for direct recruitment shall be eligible to apply for the post of clerk unless he holds a degree of Bachelor of Arts or Bachelor of Science or equivalent thereto from a recognized University and has passed matriculation examination with Punjabi as one of the subject.

(b) Candidates shall have to take a written examination in the following subjects:-

(c) No candidate shall be considered for appointment unless he obtain 40% marks in aggregate in the written examination and qualifies the type test with minimum speed of 30 W.P.M. having proficiency in operation of computer.

4. It is strictly in terms of such stipulation contained in the statutory provision that every candidate having applied for the post of clerk had to qualify the type test. Undisputedly the typing test was given to every candidate consisting of 300 words. The total time allowed for typing such test was 10 minutes and the mistakes permissible were up to 10%. The original record produced before this Court would fairly reveal that the petitioner had committed as many as 41 mistakes and accordingly had failed the type test. Undoubtedly, the name of the petitioner had figured in the initial selection list issued by respondent No. 1 at Annexure P-2. However, merely on account of the name of the petitioner finding a mention in the waiting list in the final select list would not vest any indefeasible right in the petitioner for the appointment to the post in question. It would always be open for the authorities concerned to correct the bonafide error.

5. Judicial precedents upon which reliance has been placed by the learned counsel for the petitioner would have no applicability in the light of the facts of the present case. In the Division Bench judgment of this Court in Pranay Kawduji Barapatre's case (supra), the facts were clearly distinguishable as the candidate had been declared pass by the authorities concerned and on the basis there of the petitioner therein had even secured the employment. It is only thereafter and without affording any opportunity of hearing, the result was revised by the respondents and it was then that the action of respondents was held totally illegal and arbitrary. Likewise was the position on facts in M.J.P. Rohilkhand

University Bareilly's case (supra) whereby in pursuance to the result declared relating to the L.L.B., Part-II examination, the students had already commenced and pursued the course of study in relation to L.L.B. third year and after a considerable length of time, the University had proceeded to revise the result pertaining to L.L.B. part-II examination. It was under such circumstances that the Court had chosen to intervene. In the facts of the present case, the petitioner has clearly not altered her position after the declaration of the initial result at Annexure P-2 to her detriment. There is yet another aspect on account of which no interference is called upon in the present writ petition. In the list of seven candidates for the post of Clerk in the General Category all the seven candidates have been issued appointment letters and it has been specifically pleaded in the written statement that all such candidates are presently working. As such there is no occasion for any candidate from the waiting list to have been considered for appointment to the post in question. Such factual position has gone unrebutted at the hands of the petitioner. Even if the plea of the petitioner was to be accepted in terms of her name figuring at Sr. No. 2 in the waiting list still no directions can be issued as regards her claim to the post of Clerk in the General Category.

No merit.

Dismissed.