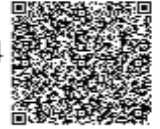




CWP-18691-2016 (O&M)

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2024:PHHC:160494



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CWP-18691-2016 (O&M)

Date of decision: 02.12.2024

SATINDER PAL SINGH

...Petitioner

VERSUS

STATE OF PUNJAB AND ANR

...Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. A.D.S. Jattana, Advocate
for the petitioner.

Mr. Amarpreet Singh Bains, AAG, Punjab.

HARSIMRAN SINGH SETHI, J.(ORAL)

1. In the present petition, the grievance of the petitioner is that the petitioner competed for the post of Clerk, as advertised by respondent No.2 vide advertisement No.04 of 2015, copy of which has been appended as Annexure P-7. The petitioner, competed in the reserved category of Ex-Servicemen (general). As per the petitioner, while in service, the petitioner was part of the Kargil battle and unfortunately, lost his two fingers of each hand.

2. The petitioner competed in the reserved category of Ex-Servicemen and was meritorious enough to be selected within the number of posts advertised but, the petitioner was made to appear in the type test which he could not clear due to the injuries suffered in the Kargil Battle wherein, two fingers of his each hand were amputated.

3. The prayer of the petitioner is that the candidates who were similarly situated but were competing in the physically handicapped

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category, have been granted the exemption from clearing the type test whereas, the petitioner has not been granted the said benefit only on the ground that the benefit of exemption of passing type test is available to the physically handicapped employees and not the one who is competing in the category of the Ex-Servicemen. Learned counsel for the petitioner submits that once the petitioner has a disability of more than 40% and is also eligible under the physically handicapped category, the non-grant of exemption to him will amount to discrimination.

4. Upon notice of motion, the respondent No.2 have filed the reply wherein, the respondent No.2 have stated that once the petitioner never participated in the category of physically handicapped and he only participated in the category of Ex-Servicemen, the grant of exemption from passing of the type test was rightly not extended to him as the said benefit was only admissible to the candidates who were competing in the physically handicapped category.

5. Learned counsel for the petitioner on the other hand submits that as per the reply filed by respondent No.1 and the instructions (Annexure R-1), the grant of exemption from passing of the type test is to be given to a physically handicapped employee, who have such certificate issued by the Civil Surgeon, which requirement was fulfilled by the petitioner which is clear from the certificate issued in the favour of the petitioner wherein, the petitioner has been described as physically handicapped to 40% extent having lost 02 fingers of his each hand.

6. Learned State counsel further submits that the minimum criteria of passing the type test cannot be exempted in the case of Ex-Servicemen



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and the same can only be exempted in the case of the physically handicapped category.

7. I have heard the learned counsel for the parties and have gone through the record with their able assistance.

8. The only assertion which has come before this Court is that as the petitioner is participating in the category of Ex-Servicemen, he has not entitled for exemption for passing of the type test despite suffering disability of more than 40% as the same is only admissible to a candidate who has participated in the reserved category of physically handicap against the seat reserved in the said category.

9. The said argument cannot be accepted for 02 reasons. Firstly, the candidate who is competing in the reserved category of Ex-Servicemen can also be a person suffering disability of 40% which is required to compete for the reserved category of physically handicapped.

10. In the present case, the petitioner is not only the EX-Servicemen but is also a disabled employee suffered casualty/amputation of his fingers while serving the nation.

11. Once, an employee who does not have fingers, competing in the reserved category of physically handicapped is allowed the exemption from passing of the type test, the petitioner, who fulfills the said requirement, cannot be denied the said benefit merely on the ground that he is competing in the reserved category of Ex-Servicemen.

12. Furthermore, the petitioner has the eligibility for both i.e. for competing in the reserved category of Ex-Servicemen as well as the required physical disability to seek exemption, as provided to the other candidates who are competing in the reserved category of physically handicapped,



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making the petitioner undergo a type test so as to deny him the exemption is totally arbitrary and illegal.

13. Not only this, the exemption from passing of the type test has been granted under the instructions copy of which have been appended as Annexure R-1 with the reply filed by respondent No.1. In the said instructions, the only requirement is that the candidate in question should suffer disability which should be certified by the Civil Surgeon and such candidate should be granted exemption. There is no mention that only the candidates competing in the reserved category of handicap will be entitled for the said exemption. Hence, only applying the instructions (Annexure R-1) in the case of the physically handicapped is beyond the intention of the State while issuing the instructions (Annexure R-1).

14. Learned counsel for the respondent submits that as per rules, no exemption can be granted to the essential qualification hence, the petitioner cannot be granted the benefit of exemption from the type test.

15. It may be noticed that the same rule under which the selection is being made, are also applicable to the handicapped employees. Once the handicapped employees are being granted exemption, non-grant of exemption to an Ex-Servicemen, who also suffered the 40% disability while serving the nation, will amount to discrimination. It cannot be said that the rules are only to be applied against the Ex-Servicemen category and not against the handicapped category. If under the same rules, the handicapped category is to be granted exemption, from passing of the type test the said benefit can be given to an Ex-Servicemen who suffered the disability while serving the nation and had more than 40% disability having got 02 fingers of each hand amputated.



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16. Further the exemption is to be granted to a person keeping in view the physical disability and not to the category. Any candidate, who is though physically handicapped but has no disability in his/her hand, cannot be granted exemption from passing of the type test. Similarly, a general category candidate, who does not have fingers cannot be made to appear in the type test so as to deny him the benefit of exemption. The exemption is to be granted keeping in view the disability suffered by a person irrespective of the category in which he/she is appearing and in the present case, the petitioner was entitled for the benefit of exemption as granted to the others, who were having physical disability which prevented them from passing the type test.

17. Keeping in view the facts that one post had already been reserved while issuing notice of motion, the respondents are directed to consider the claim of the petitioner against the said vacant post for appointment to the post of Clerk. In case, the petitioner is fit in all other circumstances, he be granted the exemption from passing of the type test as being granted to the other physically handicapped category employees and he be appointed against the post in question. Keeping in view the merit obtained by the petitioner in the selection process, let the order be complied within a period of 08 weeks.

18. Present petition is allowed in above terms.

19. All pending miscellaneous application(s), if any, also stands disposed of.

December 02, 2024*Nisha Yadav*Whether reasoned/speaking?
Whether reportable?**(HARSIMRAN SINGH SETHI)****JUDGE**Yes/No
Yes/No