

Naresh Dhankar and Another Vs State of Haryana and Others

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Sept. 17, 2009

Citation: (2009) 156 PLR 654

Hon'ble Judges: Ranjit Singh, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Ranjit Singh, J.

This order will dispose of seven Civil Writ Petition Nos. 352 of 2004 (Naresh Dhankar and Anr. v. State of Haryana and Ors.) 15903 of 2003 (Rakesh Kumar v. State of Haryana and Ors.) 18815 of 2003 (Prashant Kumar and Anr. v. State of Haryana and Ors.)

19069 of 2003 (Rajiv Kumar v. State of Haryana and Ors.) 270 of 2004 (Lalit Yadav v. State of Haryana and Ors.) 569 of 2004 (Parveen

Kumar and Anr. v. State of Haryana and Ors.) and 20103 of 2004 (Sunil Dutt v. State of Haryana and Ors.). The facts are being taken from

CWP No. 352 of 2004.

2. The issue involved is the selection and appointment to the posts of Constables advertised on 15.3.2003. 2000 posts of Constables were so

advertised. 100 posts out of these were for Male Wireless Operators and 45 of these were reserved for general category. The qualifications as

prescribed for the post of Wireless Operator in terms of the advertisement were as follows:

a) the candidate should have qualification 10+2 from Senior Secondary School of education recognised by State of Haryana.

b) the physical efficiency test as per provisions in amended Rule 12.15 of Punjab Police Rules, 1934.

c) the candidate should have 30 words p.m. English typing speed and also should possess a good knowledge of handling of computer.

d) that the candidates securing at least qualifying 9 marks in physical test were to be entitled to take type test and interview.

3. Having applied for the post, the petitioners participated in the physical test conducted and qualified. The petitioners were accordingly called for

type test which was one of the condition as noticed above. The candidates were required to pass this test with the speed of 30 words per minute in

English typing, besides possessing good knowledge of handling computer. This typing test was conducted on 28.6.2003. Thereafter the petitioners

were called for interview on 12.7.2003. The selection list was prepared. It is alleged that the Government superimposed its own list and called the

private respondents for medical examination by adopting the policy of pick and choose. The petitioners, therefore, have challenged the selection

through the present writ petitions.

4. The facts regarding the posts having been advertised in the manner as stated in the petitions are not seriously disputed in the reply filed by the

respondents. It is conceded that the candidates, who had cleared the physical efficiency test, were called to appear in the typing and computer test.

This test, however, was stated to be of qualifying nature only. All the candidates, who had cleared the computer test, were called for interview

where the marks were allotted to each candidate on the basis of his performance in the interview. The final list was accordingly prepared.

Reference is then made to marks obtained by all the petitioners to say that the last candidate selected in the general category secured 27 marks,

whereas all the petitioners had secured less than 27 marks and hence were not selected. It is accordingly pleaded that the appointment of Male

Wireless Operators was done strictly in accordance with merits. It is also pointed out that all the selected candidates have joined their duties but

have not been impleaded as respondents in all the petitions.

5. The writ petition was admitted and ordered to be heard within one year and has come up for hearing. The respondents were directed to

produce the record of selection which was accordingly done. The main grievance raised by the counsel for the petitioners appearing in this case

was that type test was one of the condition for eligibility and none of the persons, who were appointed, had qualified in the type test. It was also

pointed out that the type test was indeed got conducted but subsequently the requirement of passing the type test was dispensed with. The issue,

thus, arose if the type test could be dispensed with at the time of selection. This position was noticed in order dated 31.8.2009 which is

reproduced below:

Conceded position is that the condition of passing the type test was prescribed in the advertisement. In fact, this test was got conducted.

Subsequently, however, the requirement of passing the type test was dispensed with. The issue, thus, would be to see if this could be done at the

time of selection or not. In other words, whether the respondents have any legal authority to do so. The counsel representing the respondents seek

time to make submissions in this regard.

6. On the directions issued by the court, the respondents produced the result of the type test. It then transpired that all the petitioners in fact also

could not qualify in the type test. In this background, it needed to be appreciated if the passing in the English type test with the speed as prescribed

was to be taken as an essential condition for appointment.

7. Counsel for the petitioners would insist that passing in the type test would be an eligibility condition and could not have been dispensed with. It

would appear that this was only a qualification which was required to be fulfilled. If this condition was dispensed with uniformly in respect of all,

obviously it would not make any substantial difference so far as merits of the case was concerned. Qualifying in a type test with particular speed,

can never take the form of eligibility condition, but would only be a qualification required to be fulfilled. Once the petitioners have also failed in the

type test, they cannot make a grievance that the persons, who have been appointed, have illegally been considered after dispensing the type test.

Having failed in the type test, the petitioners were also considered but could not be selected on the basis of merits. It would have been a different

matter if the petitioners had qualified in the type test and had then made a grievance that this test has been dispensed with only to favour those who

had not qualified in the said test.

8. The justification given by the respondents to dispense with the type test is that the requirement of type test stood diluted in view of the

introduction of the computers and knowledge in handling the computer was considered more important in comparison to the speed in typing which

were not being put to use any more. This justification is reasonable and once has been applied uniformly would clearly show that there is no

malafide intention seen in the process of selection. Still, the counsel for the petitioners would insist on referring to some of the precedents.

9. He would first refer to the case of Bhupinderpal Singh and Ors. v. State of Punjab 2000(2) S.C.T. 826. It is held in this case that the

candidates, who were not having the eligibility qualifications till that date will not be entitled to be considered and their selection will be illegal. As

already noticed, passing in typing test with particular speed cannot be considered as eligibility condition but is only a qualification which was

required and which was uniformly dispensed with. Passing in the typing test cannot be considered as eligibility condition. If it is to be construed to

be an eligibility, then there would not be any method available on the part of any applicants to satisfy this eligibility condition while making

applications for appointment. This has to be seen and tested and, thus, would be a qualification only and not an eligibility. Similarly, the ratio of law

laid down in Jagdev Singh v. Director Local Bodies, Punjab 1999(3) S.C.T. 548 would not apply to the facts of the present case. It was a case of

age relaxation which was an eligibility condition and not a qualification. Even the case of Kamal Kumar Gupta v. State of Haryana and Ors.

1991(1) S.C.T. 57 was also a case of age relaxation. In this case, the Full Bench of this Court also observed that the Government has power to

relax qualification or the modification thereof which rather would support the relaxation of this qualification done on the basis of approval from the

Government. Other cases referred to by the counsel are also those which have considered the eligibility aspect and not the relaxation of the

qualification as prescribed.

10. In fact, it is submitted on behalf of the respondents that the passing of the typing test is not one of the prescribed qualifications under the rules

and in the subsequent advertisements issued in this regard, such a condition has not been provided for. The respondents would also refer to the

case of Union of India (UOI) and Others Vs. S. Vinodh Kumar and Others, to say that the petitioners would be estopped from questioning the

selection once they had participated and taken part in the selection process knowing fully well the procedure. Accordingly, I am of the view that

the petitioners have not made out any case for invoking the writ jurisdiction of this Court to interfere in the selection made.

I am, thus, not inclined to interfere in exercise of writ jurisdiction and would accordingly dismiss the writ petitions.