

(Rajesh Bindal, J.)

*Before Rajesh Bindal, J.*

**Mrs. KUSUM MALHOTRA—Petitioner**

*versus*

**MANAGEMENT OF THE VICE CHANCELLOR,  
KURUKSHETRA UNIVERSITY—Respondents**

**CWP No.21610 of 2011**

February 07, 2013

*Constitution of India, 1950 - Art. 226/227 - Industrial Disputes Act, 1947 - S. 25F - Writ petition filed by petitioner to quash the order of university authorities whereby the conditions for passing of type test has not been relaxed in the case of petitioner - Held, that Petitioner has been working as Clerk with the respondent university since 1985 on adhoc basis but her services have not been regularized - She became a widow in November, 2002 and is now on verge of retirement- Relaxation from qualifying the type test was granted to 17 other clerks as well - The fact that relaxation was granted to other clerks, shows that the condition was not mandatory - Order set aside - Petitioner ordered to be deemed to have been promoted w.e.f. 16.3.1991 and her regularization in service ordered to be considered from that date.*

*Held, that the petitioner is working as Clerk with the respondent-University since November, 1985 on ad-hoc basis. Her services have not been regularised for the reason that she was not able to clear the type test. She became widow in November, 2002, when her husband expired. Presently, she is on the verge of retirement. The prayer is for setting aside of the order dated 14.2.2006, vide which the case of the petitioner for relaxation of the condition of type test has been rejected and further for a direction to regularise the services of the petitioner. Another undisputed fact on record is that the University vide order dated 16.3.1991 granted exemption to 17 Clerks from qualifying the type test. Subsequent thereto, similar orders were passed on 15.4.2010 and 3.10.2011 in the cases of 18 and 14 employees, respectively. The aforesaid orders are sought to be distinguished by claiming that they were promoted from the post of Peon*

to that of Clerk but the fact remains that some of the Clerks, who were appointed by way of promotion, were granted exemption from appearance in the type test. In addition thereto, the Government of Haryana had issued instructions on 2.4.1991, which provided that widows, who were above the age of 45 years and could not pass the type test, may also be given exemption from passing the type test.

(Para 6)

*Further held*, that as some of the employees, who may have been promoted as Clerks, were granted relaxation in passing the type test on 16.3.1991, the petitioner shall also be deemed to have been granted the relaxation from that date and her case for regularisation in service be considered thereafter and consequential benefits be granted.

(Para 10)

Karan Singla, Advocate, *for the petitioner*.

S. C. Sibal, Senior Advocate with Balpreet Sidhu and Mr. V. S. Rana, Advocates, *for the respondent*.

### **RAJESH BINDAL, J.**

(1) The petitioner has approached this court for quashing of the order dated 14.2.2006, whereby the condition for passing of type test has not been relaxed in the case of the petitioner and further for a direction to the respondent to regularise her services.

(2) Learned counsel for the petitioner submitted that the petitioner was appointed as Junior Clerk on ad-hoc basis on 18.11.1985. Ever since then she was continuing in service. The services of the petitioner were terminated without complying with the provisions of Section 25-F of the Industrial Disputes Act, 1947, for which she raised an industrial dispute. The Labour Court passed award in favour of the petitioner on 15.9.1998 directing reinstatement with continuity of service and back wages. C.W.P. No. 6680 of 1999 filed by the University was dismissed on 24.8.2001. The order was upheld even in LPA No. 322 of 2002.

(3) Learned counsel further submitted that while deciding the appeal, the Division Bench of this court directed the Vice-Chancellor of the University to consider the case of the petitioner regarding passing of type test in the

*(Rajesh Bindal, J.)*

background of the fact that 17 other Clerks had been given relaxation. Despite this fact, the petitioner was denied relaxation, though other similarly situated employees were given relaxation vide orders 16.3.1991 (Annexure P-1), 15.4.2010 (Annexure P-5) and 3.10.2011 (Annexure P-8). He further submitted that Government of Haryana issued instructions on 2.4.1991, in terms of which widows above the age of 45 years were to be granted exemption from passing of type test. As the husband of the petitioner died in the year 2002 and she was more than 45 years of age at that time, she was required to be given exemption, even in terms of the instructions issued by the Government of Haryana, which are duly applicable in the University as well. Learned counsel further submitted that many persons, who were appointed later in time than the petitioner, were made regular, hence, the petitioner is entitled to be regularised from the same date with all consequential benefits.

(4) On the other hand, learned counsel for the respondent submitted that the direction of Division Bench of this Court was that till such time the petitioner clears the type test or the Vice-Chancellor is pleased to waive off the said condition, the services of the petitioner shall remain temporary. The petitioner was granted 24 chances to clear but she could not clear the type test. The plea of discrimination is not available to the petitioner for the reason that relaxation in type test was granted to class- IV employees, who were promoted as Clerks against their 20% quota. No employee, who was directly recruited, was granted such a relaxation. He further submitted that the case of the petitioner is not covered by the instructions dated 2.4.1991 issued by the Government of Haryana. The writ petition is stated to be belated as the representation of the petitioner was rejected in the year 2006, whereas the writ petition was filed in the year 2011.

(5) Heard learned counsel for the parties and perused the paper book.

(6) The undisputed fact is that the petitioner is working as Clerk with the respondent-University since November, 1985 on ad-hoc basis. Her services have not been regularised for the reason that she was not able to clear the type test. She became widow in November, 2002, when her husband expired. Presently, she is on the verge of retirement. The prayer

is for setting aside of the order dated 14.2.2006, vide which the case of the petitioner for relaxation of the condition of type test has been rejected and further for a direction to regularise the services of the petitioner. Another undisputed fact on record is that the University vide order dated 16.3.1991 granted exemption to 17 Clerks from qualifying the type test. Subsequent thereto, similar orders were passed on 15.4.2010 and 3.10.2011 in the cases of 18 and 14 employees, respectively. The aforesaid orders are sought to be distinguished by claiming that they were promoted from the post of Peon to that of Clerk but the fact remains that some of the Clerks, who were appointed by way of promotion, were granted exemption from appearance in the type test. In addition thereto, the Government of Haryana had issued instructions on 2.4.1991, which provided that widows, who were above the age of 45 years and could not pass the type test, may also be given exemption from passing the type test.

(7) The prayer of the petitioner for exemption from passing the type test has been rejected vide communication dated 14.2.2006. Though no reason as such has been provided therein, but it is mentioned that it is otherwise necessary in the interest of office efficiency. The fact that the petitioner had been working in the office as Clerk ever since she was appointed in the year 1985 shows that she must have been found efficient, that is why she was allowed to continue, otherwise an inefficient temporary employee could have been shunted out by the management at any time. The fact that relaxation was granted to other Clerks, who may have been promoted, shows that the condition was not such which was mandatory and without which no person could be appointed or promoted to the post of Clerk.

(8) A perusal of the order dated 16.3.1991 shows that while granting exemption from passing the type test, it was mentioned that they will be allowed annual increment and their confirmation cases will be processed as per rules. In the order dated 3.10.2011, it is mentioned that relaxation was granted with an undertaking that promoted class-IV employees on the post of Clerk will continue to learn computer operations and will not refuse any typing work. The case of the respondent is not that the petitioner ever refused to perform any job assigned to her.

(9) Considering the aforesaid factual matrix, in my opinion, the order (Annexure P-4) passed by the respondent while rejecting the prayer of the petitioner for relaxation from passing the type test deserves to be set aside. Ordered accordingly.

(10) As some of the employees, who may have been promoted as Clerks, were granted relaxation in passing the type test on 16.3.1991, the petitioner shall also be deemed to have been granted the relaxation from that date and her case for regularisation in service be considered thereafter and consequential benefits be granted. In case of any payment, the arrears shall be restricted to 38 months from the date of filing of the petition.

(11) The writ petition stands disposed of.

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A. Aggarwal