

In re: **Haryana State Electronics Development Corporation Limited versus Mamni (6)**, it has been observed that “in view of the settled legal position, as noticed hereinbefore, we modify the impugned order by directing that the respondent shall be compensated by payment of a sum of Rs. 25,000 instead of the order of reinstatement with backwages.”

(12) Adverting to the facts of the instant case, by now, the petitioner would have crossed 58 years of age. In the factual scenario, I am of the opinion that instead and in place of issuing a direction for reinstatement of service, interest of justice shall be sub-served if compensation of rupees two lacs is directed to be paid. Accordingly, the respondent No. 2 is directed to pay compensation to the stated extent to the petitioner within three months from today.

(13) Disposed of accordingly.

R.N.R.

Before Permod Kohli, J.

PREM SINGH & OTHERS,—Petitioners

versus

STATE OF PUNJAB & OTHERS,—Respondents

C.W.P. No. 10925 of 1988

23rd September, 2008

Constitution of India, 1950—Arts.14, 16 and 226—Punjab Education Department (Subordinate Offices) Clerical Service Rules, 1941—RI.6—Punjab State Assistants Grade Examination Rules, 1984—Rls. 4, 7 and 12—Promotion from post of Clerk to Senior Assistant—State prescribing condition of passing examination for promotion—Whether arbitrary and violates Articles 14 and 16—Held, no—No prejudice to petitioners by virtue of introduction of rule introducing a test for promotion—No right of consideration taken away—But to energize service and bring efficiency in work—No violation of any of fundamental rights of petitioners—Neither

rules suffer from any vice of ultra vires nor same illegal in any manner—High Court cannot issue any direction to grant exemption from appearing in examination/test—Petition dismissed.

Held, that it is not in dispute that rules are statutory in nature and have been framed in exercise of powers under Article 309 of the Constitution of India. Under the Punjab Education Department (Subordinate Officers) Clerical Service rules, 1941, there was no condition for passing an examination for promotion. The condition of passing examination was introduced in the year 1984 by virtue of notification dated 11th April, 1984. The Rules of introduction of a test for promotion to the post of Assistant is only regulatory in nature and does not take away any right of the petitioners for promotion. It is settled law that no government servant is allowed to claim promotion as a matter of right. The only right is to be considered for promotion. By virtue of the introduction of the rule introducing a test for promotion, right of consideration is not taken away, but is to energize the service and bring efficiency in the work. It does not in any manner cause prejudice to the petitioners.

(Para 6)

Further held, that the Court cannot issue any direction to the respondents to grant exemption except where it is violative of any of the fundamental rights guaranteed under the Constitution. No such violation has been projected. Hence, no direction can be issued to the State to grant exemption from appearing in the examination/test. So far as the quashing of the Rules in concerned, Rules do not suffer from any vice of ultra vires nor can the Rules be said to be illegal in any manner. These rules have been framed under Article 309 of the Constitution of India and the Governor of the State has the competence to frame such transitory rules by introduction of the test for promotion. By introduction of the examination/test for the post of Assistant, the service conditions of the petitioners have not been changed in any manner.

(Para 6)

A. K. Chopra, Senior Advocate, with N. D. Kalra, Advocate,
for the petitioners.

S. S. Sahu, AAG, Punjab, for the respondents.

PERMOD KOHLI, (ORAL) :

(1) The petitioners were working as Clerks on being recruited/ appointed in the Punjab Education Department. It is not in dispute that at the time of their appointment, their service conditions were governed by regulations of Punjab Education Department (Subordinate Offices) Clerical Service Rules, 1941 (hereinafter referred to as “the Rules”). At the time of the filing of the writ petition, they have completed 15 or 20 years of service. The next promotion from the post of Clerk is to the post of Senior Clerk/Assistant. Rule 6 of the Rules aforesaid deals with the method of appointment to various cadres of service. In the Rule aforesaid, following three modes are prescribed for appointment to the post of Senior Clerk/Assistant :—

“6(1) Posts in the service shall be filled-Method of appointment.

(a) XX XX XX

(b) in the case of senior clerk in the grade of Rs. 80-5-110/5-150 ;

(i) by promotion from the post of Junior Clerk ;

(ii) by transfer of an official already in Government service ; or

(iii) by direct appointment.”

(2) The petitioners are seeking appointment by promotion from the post of Junior Clerk/Clerk. It is not stated in the petition as to when the petitioners became due for promotions. In the year 1984, the State notified Punjab State Assistants Grade Examination Rules, 1984 (hereinafter referred to as the “1984 Rules”),—*vide* notification dated 11th April, 1984. Some of the relevant 1984 Rules are noticed hereunder :—

“2. **Definitions.**—In these rules, unless the context otherwise requires :—

(a) XX XX

(b) XX XX

(c) "Government" means the Government of the State of Punjab in the Department of Personnel and Administrative Reforms.

(d) XX XX

(e) "Post of Assistant" means a civil post or a post in civil service under the State of Punjab designated as Assistant and includes all such posts, higher in rank to that of the post of Clerk, as are in the same or in a identical pay scale and carry responsibilities similar to or identical with those of the post of Assistant, by whatever designation they be called ;

(f) XX XX

(g) "Provisional appointment" means an appointment by promotion of a person to the post of Assistant before qualifying the test prescribed in the relevant service rules or in these rules, as the case may be, with or without a condition of qualifying the test imposed in the order of appointment ; and

(h) "test" means a written qualifying examination conducted by the Board, under these rules.

(i) XX XX

4. Eligibility for promotion to the post of Assistant :

(1) No person shall be eligible for appointment by promotion to the post of Assistant unless in addition to fulfilling the qualifications and experience prescribed for appointment by promotion to the post of Assistant, he qualifies the Test ;

Provided that a person who has already qualified the Assistant Grade Examination *inter alia* in terms of Punjab Government circular No. 4868 (II-57)/21176, dated the 23rd October, 1957, or who was holding on

regular basis the post of Assistant on the 23rd October, 1957, shall not be required to qualify the test :

Provided further that if a person holding the post of Assistant or a higher post, on provisional basis, on the commencement of these rules is of the age of fifty years or more; she shall also not be required to qualify the test ;

Provided further that a person who has been appointed by promotion to the post of Assistant or to any higher post on provisional basis before the commencement of these rules, shall be required to qualify the test within a period of three years from such commencement and failure to qualify the test within the specified period shall result in reversion of such person to the post of clerk or to the post, by whatever designation called, from which he was appointed by promotion to the post of Assistant on provisional basis.

(2) Notwithstanding anything contained in sub-rule (1) where no person, who has qualified the test, is available for promotion, to the post of Assistant in a service, the appointing authority may appoint a person by promotion to the post of Assistant on provisional basis till a person who has so qualified the test becomes available in that service.

5. XX XX

6. XX XX

7. **persons eligible to sit in test.**—All persons holding the posts of clerks or other posts, by whatever designation called from which they could appointed by promotion to the posts of Assistants, shall be eligible to sit in the test.

8. XX XX

9. XX XX

10. **Saving of seniority.**—Where a person who was promoted as Assistant before the commencement of these rules on provisional basis subject to his qualifying the test shall be liable to reversion to the post from which he was promoted if he fails to qualify the test within a period of three years as specified in the third proviso to rule 4 and in case such a person qualifies the test within the period his seniority shall be determined with reference to his date of promotion to the post of a Assistant on provisional basis.
11. **Over-riding effect.**—The provisions of these rules shall have effect notwithstanding anything inconsistent there with contained in any other rules governing the appointment and other conditions of service for the time being in force.
12. **Power to grant exemption.**—Where the Government is of the opinion that it is necessary or expedient to do so, it may, by order, for reasons to be recorded in writing, exempt any class or category of persons from the operation of these rules and such exemption shall operate prospectively.”

(3) Rule 4 of 1984 Rules referred to above prescribes qualifying test for promotion to the post of Assistant, whereas Rule 7 prescribed the eligibility for sitting in the test and Rule 12 deals with the power of the State to grant exemption from examination/test. It has been stated in paragraph 7 of the petition that at the time of commencement of the Rules, there was a quota of 25% for appointment to the post of Assistant by direct appointment and 75% quota was reserved for appointment to the post of Assistant by promotion from the Clerks, but by the subsequent amendment for the appointment to the post of Assistant, it is 100% by promotion and every person has to clear the test before being appointed to the post of Assistant.

(4) The grievance of the petitioners is that while in service they have been subjected to condition of passing of test/examination in the

year 1984 by virtue of Rule 4 of 1984 Rules. It is argued that this condition is arbitrary and violative of Articles 14 and 16 of the Constitution of India. It is further contended that it amounts to taking away the right of promotion from the petitioners. The petitioners have, accordingly, challenged Rule 4 of 1984 Rules and in the alternative they have prayed for grant of exemption under rule 12 of the Rules, to the petitioners from passing the examination/test.

(5) No reply has been filed on behalf of the State.

(6) It is not in dispute that Rules are statutory in nature and have been framed in exercise of powers under Article 309 of the Constitution of India. Under the Punjab Education Department (Subordinate Officers) Clerical Services Rules, 1941, there was no condition for passing an examination for promotion. The condition of passing examination was introduced in the year 1984 by virtue of notification dated 11th April, 1984. The Rule of introduction of a test for promotion to the post of Assistant is only regulatory in nature and does not take away any right of the petitioners for promotion. It is settled law that no government servant is allowed to claim promotion as a matter of right. The only right is to be considered for promotion. By virtue of the introduction of the rule introducing a test for promotion, right of consideration is not taken away, but is to energize the service and bring efficiency in the work. It does not in any manner cause prejudice to the petitioners. The petitioners have challenged only Rules 4 and 10 of 1984 Rules. Rule 10 of 1984 Rules deals with the reversion if a person fails to qualify the test on being promoted prior to the commencement of the rules. By virtue of Rule 11 of 1984, Rules have been given over-riding effect upon all other rules inconsistent with these rules. Rule 11 has not been assailed or challenged in any manner. It gives over riding effect to these rules. The petitioners have prayed for a writ in the nature of certiorari quashing rule 4 and 10 of 1984 Rules and in the nature of mandamus to grant exemption to the petitioners or they may be declared exempted from the examination envisaged in 1941 Rules. It is a settled law that the Court cannot issue any direction to the respondents to grant exemption

except where it is violative of any of the fundamental rights guaranteed under the Constitution. No such violation has been projected. Hence, no direction can be issued to the State to grant exemption from appearing in the examination/test. So far as the quashing of the Rules is concerned, Rules do not suffer from any voice of *ultra vires* nor can the Rules be said to be illegal in any manner. These rules have been framed under Article 309 of the Constitution of India and the Governor of the State has the competence to frame such transitory rules by introduction of the test for promotion. By introduction of the examination/test for the post of Assistant, the service conditions of the petitioners have not been changed in any manner.

(7) In view of the above, I find no merit in the present petition and the same is hereby dismissed with no order as to costs.

R.N.R.

Before Kanwaljit Singh Ahluwalia, J.

**THE SHIVANI ADARSH COOPERATIVE TRANSPORT
SOCIETY LTD., SHIVANI, DISTRICT BHIWANI,—Petitioner**

versus

STATE OF HARYANA & OTHERS,—Respondents

C.W.P. No. 17112 of 2002

2nd December, 2008

Constitution of India, 1950—Arts. 226—Government notifying scheme for allotment of route permits on basis of bid—Whether violates Arts. 14 and 19(1) (g)—Granting of permits by bid not only create monopoly but detrimental to public interest—Allotment of route permits on basis of bid alone held to be bad and not sustainable—However, those who participated in bidding process cannot escape from paying bid amount—State directed to formulate a new policy.

Held, that in case the system of granting permits by bid is allowed, it would not only create monopoly but will be detrimental to