

Copy of circular letter No. 5901-4GSII-73/23071, dated the 11th September, 1973, from the Chief Secretary to Government, Haryana to all Heads of Department etc., etc.

Subject :—Selection of clerks for promotion to the posts of Assistants through a test.

As you are aware that in composite Punjab executive instructions were issued by the Government on the 21st June, 1958 that all promotions of Clerks, to the posts of Assistants in the Civil Secretariat will be made on the basis of a prescribed test. All the Heads of Departments were asked to issue similar instructions vide composite Punjab Government circular letter No. 4119-GII-58/71202, dated the 5th September, 1958, subject to suitable modifications by the departments.

2. As a result of the above instructions the Clerks who were unable to qualify the test were not promoted as Assistants and those promoted provisionally were reverted on the ground of their failure to qualify the test. A few out of the above had, however, filled civil suits in courts and challenged the calidity of the instructions. Their suits were decreed against the Government. Some cases went upto the Supreme Court and in two cases the appeals were decided on merits by the Supreme Court vide judgement dated 19-4-72. It was held by the Supreme Court that the Government was not competent to alter the service rules framed under article 309 of the Constitution of India by issuance of administrative instructions regarding taking of test. Further it was held that even any rule affecting the right of promotion of a person related to his conditions of service and, therefore, unless the same was framed with the prior approval of the Central Government in terms of proviso to sub-section (7) of section 115 of the State Reorganisation Act, 1956, it was invalid as it violated sub-section (7) of section 115 of the aforesaid Act.

3. The matter has been under the consideration of the State Government as how best to implement the judgements of the Supreme Court. It has now been decided that the benefit should be given only to those officials who went to the courts and get decess in their favour. Accordingly they should be given due seniority as if there was no requirement of passing the test in their cases, in pursuance of the instructions issued by the Government in the year 1958 or the service rules which were framed without getting the prior approval of the Government of India as required under section 115 of the states Reorganisation Act, 1956.

4. As regards the arrears of pay and allowances in respect of these officials who are to be given due seniority they should be paid the arrears for a period not exceeding three years and two months from the date of issuance of these instructions.

5. Services in respect of which no rules were in existance at the time of holding the test, any action taken in pursuance of Punjab Government instructions issued in 1958 shall not be disturbed as in the absence of service. rules, the executive instructions carry the sanctity of rules.

6. Where the service rules of any department framed before 1956, contain a specific provision for the holding of a qualifying tests for promotion to the post of an Assistant, tests should continue to be hald and promotion and seniority should be regulated accordingly. If the service rules of a department do not contain any such provision for the holding of a qualifying test for promotion to the posts of Assistants, the depatments should continue to make provisional promotions as hithertofore, till instructions are issued in this behalf.

7. These instructions may please be brought to the notice of all concerned for meticulous compliance and the receipt of this communication may be acknowledged.