

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.25058 of 2015

Date of Decision: 07.09.2018

Sunil Kumar

... Petitioner

Versus

State of Haryana and another

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Ajay Shekhawat, Advocate,
for the petitioner.

Mr. Harish Rathee, Senior DAG, Haryana.

RAJIV NARAIN RAINA, J.

1. The 1st ACP scale was sanctioned to the petitioner w.e.f. December 01, 2009 vide letter dated March 11, 2010. This was a mistake committed by the officials of the department and corrected by the order dated June 18, 2010 whereby the previous order was cancelled as the petitioner did not fulfill the conditions for grant of ACP benefit. ACP scale is given to a Clerk on completion of ten years service after passing of departmental type test as per Chief Secretary to Government, Haryana instructions dated October 22, 1997 (Annex R-1). These instructions brought to the notice of the Government that Clerks who were promoted as Assistant or on some other higher post without passing the departmental type test, an essential qualification for the post of Clerk, in terms of service Rules applicable to them or Government instructions dated March 27, 1974, as the case may be, create inefficiency in the office work. Government observed that over the years there has been utter laxity in the observance of

rules regarding promotion to higher post from the post of Clerk. The essential pre-requisite of passing a test in typewriting has been given a go by. This has, as the instructions proceed to guide, resulted in creeping inefficiency and delay in disposal of work. The Government carefully considered the matter and decided that in future no Clerk who has not passed type test be promoted to higher post. However, there was a saving clause for such officials who were promoted without passing type test in the past should be given an opportunity of passing the test within a period of three months from the date of issue of those instructions failing which they will be reverted to the post of Clerks. However, in the case of those Assistants or other officials who were holding their higher positions substantively without passing the prescribed type test, they will be reverted to post of Clerks after observing the deconfirmation process. The authorities in Government were requested to take necessary follow up action to implement the orders dated October 27, 1997 immediately.

2. The petitioner did not pass the type test till February 14, 2017 and as per the stand of the State he would be entitled to grant of 1st ACP pay scale immediately thereafter but not for any period before that. In similar situation, and in identical facts case titled *State of Haryana and others v. Om Parkash*, RSA No.3743 of 2005 decided on January 16, 2007 this Court held that for the period annual increments were not granted for failure to pass the type test the right to increments would begin only after qualifying the test and, therefore, the question of grant of ACP prior thereto did not arise. If person is not entitled to increment he would not be entitled to ACP scale and would become entitled only when the obstructions stand removed

by virtue of passing the type test. The petitioner has not only challenged the order dated June 18, 2010 (P-5) but also the response dated November 09, 2015 to his legal notice denying benefit of grant of 1st ACP pay scale. The earlier sanction has been withdrawn. The petitioner claims restitution of the 1st ACP pay scale with 12% per annum. The rules governing service of the petitioner are known as the Haryana Employment Department (Group-C) Service Rules, 1985 ("1985 Rules") notified on August 09, 1985. Appendix-'B' with reference to Rule 7 deals with qualifications in case of direct recruitment and appointment other than direct recruitment requires three years experience as Clerk or Stenotypist to be eligible for promotion. There is no mention of passing type test in Appendix 'B'. The petitioner strongly relies on a clarification issued by the Financial Commissioner and Principal Secretary to Government Haryana, Revenue and Disaster Management dated June 27, 2011 in response to letter dated February 11, 2011 by the Commissioner, Hisar Division Hisar asking guidance in the matter. It would be necessary to reproduce the contents of the clarification for further discussion on what is the true legal position on the prayers in the petition. The clarification reads as follows:-

"You are informed in the matter under reference that in the service rules 1988 and amended service rules 2000 of the Administrative Department, three years experience as a clerk/steno typist in the office of Deputy Commissioner is essential for promotion to the post of Assistant. Therefore, in absence of provision of type test in the departmental service rules of Administrative Department, promotion of an official can not be stayed, because the instructions can not over-ride the Departmental Rules.

So far as Providing benefit of ACP to the official without passing of type test is concerned, it is informed about this that as per advice rendered by the Finance Department, for grant of ACP scale a Govt. official has to fulfill the condition required for promotion. Because for promotion to the post of Assistant passing of type test is not essential, therefore, the condition of type test is not applicable for grant of ACP scale provided the official is otherwise eligible and on grant of ACP he will get annual increment when he will pass the type test.”

3. This letter of clarification appears not to qualify as executive instructions under Article 162 of the Constitution issued by the competent authority in State Government and run counter to the Chief Secretary instructions dated October 22, 1997 mandating that in future no Clerk who has not passed the type test be promoted to higher post. The clarification does not notice the instructions dated October 22, 1997. It proceeds on the assumption that in absence of provisions of type test in the departmental service rules of the Administrative Department, promotion of an official cannot be held up because the instructions cannot override the departmental rules. When the rules and the instructions dated October 22, 1997 are read together with the terms and conditions of appointment of the petitioner as Clerk and the ACP rules, 1998 then it can be said rather comfortably that qualifying the type test is an essential ingredient permeating all things for grant of ACP scales.

4. The petitioner was appointed as Clerk under the ex-gratia appointment policy of Haryana Government on regular basis and joined the department on November 26, 1999 vide appointment letter dated November 17, 1999. Conditions (viii) to (xi) in the appointment letter are reproduced

below for ready reference:-

“(viii) You will be required to pass a departmental examination in Employment Exchange procedure during the period of your probation. You will not be allowed to draw the incremental till you pass the said departmental examination.

(ix) You will be required to pass a test in typewriting in Hindi or English at the speed of 25/30 words per minute within a year from the date of joining your duties otherwise you shall not be allowed your annual increment until you will pass such test.

(x) On passing the departmental examination and type tests, you will be allowed increment from the date following the day of the examination/tests in which you pass without payments of arrears of increments.

(xi) You will not be allowed the 1st grade increment until you passes the said departmental examinations as provided in para (viii) to (ix).”

5. One of the essential requirements of appointment as a Clerk prescribed in Appendix 'B' to the rules requires the mandate for direct recruitment to be proficient in Hindi or English type at the speed of 25/30 words per minute respectively. Accordingly, for promotion as Assistant the condition precedent for appointment of Clerk will carry forward to promotion as Assistant as implicit to discharge duties and responsibilities of the higher post to prevent inefficiency in the office work and delay in disposal of work, which is the underlying philosophy of the instructions of March 27, 1974.

6. Apart from the rules and instructions the matter has to be viewed predominantly from the standpoint of the scheme in the Haryana Civil Services (Assured Career Progression) Rules, 2008 (“2008 Rules”)

from which the benefit flows.

7. Rule 7 of the 2008 Rules provide for the eligibility of grant of ACP grade pay under the general ACP Scheme. Rule 8 of the 2008 Rules prescribes some other general conditions of eligibilities of ACP pay structure of which Rule 8 (b) is relevant here which provides that:-

*“The following general conditions **shall also** be fulfilled by Government Servants for availing the benefit of ACP.*

xxx xxx xxx

(b) If such promotion involved passing of any departmental tests or other tests etc. such conditions should also be fulfilled by such Government Servant.”

8. It is the stand of the State in the affidavit of B.S. Gill, Joint Director, Employment Department, Haryana, Panchkula submitted in view of interim orders dated April 18, 2018 that the word “shall” is used in a mandatory sense for Government servant to fulfill. As the petitioner had not cleared the type test of the department during the period claimed for the benefit he would not be entitled for ACP concession as a matter of right.

9. It is also averred in the affidavit that the department had not sanctioned any ACP scale to any of its employees, who had not cleared the type test. Therefore, the Memo dated June 27, 2011 (Annex P-6) cannot override the departmental rules and also more importantly the rules provided for grant of ACP scale under the 2008 Rules and the specific instructions issued by the Government of Haryana in this regard. Accordingly, the affidavit urges that the office of the deponent was right in withdrawing and withholding grant of ACP to the petitioner as the petitioner was not found fit for promotion and ultimately not fit for grant of

ACP till such time he did not clear the type test, which he did as late as on February 14, 2017 and, therefore, he would be entitled to grant of 1st ACP pay scale thereafter which benefit has not be denied from the due date.

10. In para.6 of the main written statement filed by the State, it has been maintained that the department vide order dated February 17, 2010 had erroneously granted the 1st ACP to the petitioner on completion of ten years of service, the reason being the concerned Assistant from Bhiwani Employment Office, an Assistant, namely, Satyawar had wrongly forwarded the case of the petitioner for 1st ACP for which the Assistant was charge-sheeted under Rule 8 of the Punishment & Appeal Rules by the department. As soon as the department came to know the petitioner is not eligible for ACP, it had withdrawn the same vide letter dated June 18, 2010. Needless to say, by operation of the ACP Rules, 1998 “Regular satisfactory service” is the *sine qua non* for grant of benefit of ACP.

11. The petitioner knew beforehand that passing type test was a condition in his appointment letter as Clerk. He cannot be heard to complain for his own ineptitude. He knew he would have to qualify the same within a year of the date of joining duties otherwise he would not be allowed annual increment until such test was passed. In my view, if the type test is not passed then the period till person passes the test cannot also be accepted as regular satisfactory service for purposes of availing the benefit if the ACP Rules. The instructions dated October 22, 1997 would by necessary implication have to be meticulously read into the 1985 service Rules by virtue of the essential qualifications for appointment as Clerk by direct recruitment and the conditions stipulated therein which is in the nature of

contract to be abided by the petitioner. The clarification letter relied upon by the petitioner has to be read down in conformity to the law on the subject discussed above, the clarification representing only a personal point of view of the author. In these facts and circumstances I would conclude against the claim of the petitioner for any period before the typing test was qualified.

12. I would, therefore, not interfere in this matter and would dismiss the petition by upholding the stand of the State as to my mind it does not suffer from any error of law.

(RAJIV NARAIN RAINA)
JUDGE

07.09.2018
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<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>Yes</i>