

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

Letters Patent Appeal No. 107 of 2019 (O&M)

Date of Decision: 30.05.2019

Sunil Kumar

.....Appellant

versus

State of Haryana and others

.....Respondents

**CORAM: HON'BLE MR.JUSTICE KRISHNA MURARI, CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI, JUDGE**

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

KRISHNA MURARI, CHIEF JUSTICE

This intra-court appeal under Clause X of the Letters Patent is directed against the judgment and order dated 07.09.2018 dismissing the writ petition filed by the appellant herein challenging the order dated 18.06.2010 whereby the first ACP scale granted to him was withdrawn and another order dated 09.11.2015 whereby the representation made by him against the order dated 18.06.2010 was rejected.

2. Facts as cull out from the pleadings of the parties are that the appellant herein was appointed as Clerk under ex-gratia appointment policy of the Haryana Government on regular basis on 26.11.1999. Admittedly, the services of the appellant are governed by the Haryana Employment Government (Group C) Service Rules, 1985. The first ACP scale was

sanctioned to the appellant-petitioner w.e.f. 01.12.2009 vide order dated 11.03.2010. Subsequently, realizing the ACP scale was granted to him by mistake and he was not eligible, vide order dated 18.06.2010 impugned in the writ petition, the same was withdrawn. One of the essential condition for grant of ACP benefit to a Clerk on completion of 10 years of service was passing of a departmental type test as per the instructions dated 22.10.1997 issued by the Chief Secretary to the Government Haryana. It may also be relevant to extract conditions No. (viii) to (ix) in the appointment letter of the appellant-petitioner which read as under:-

“(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).”

3. Admittedly, the appellant-petitioner did not pass the type test till 14.02.2017 and as per the stand of the respondent-State he would be entitled to grant of first ACP scale immediately thereafter but not for any period before that.

4. At this stage it may also be relevant to refer to the Haryana Civil Services (Assured Career Progression) Rules, 2008, wherefrom the benefit would flow to the appellant-petitioner. Rule 7 of the 2008 Rules provides for the eligibility of grant of ACP grade pay under the general ACP Scheme. Rule 8 of the 2008 Rules provides for some other general conditions of eligibility of ACP pay structure. Rule 8(b) relevant for the dispute at hands reads as under:-

*“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.”

5. In the written statement filed by the State-respondent, a categorical case set up was that vide order dated 17.02.2010 the first ACP was erroneously granted to the appellant-petitioner on completion of 10 years of service and the reason being that the concerned Assistant had wrongly forwarded the case of the appellant-petitioner for the first ACP and as soon as it came to the knowledge of the respondent-State that the appellant-petitioner is not eligible for the same, it was withdrawn.

6. It goes without saying that “Regular Satisfactory Service” is the *sine qua non* for grant of benefit of ACP. One of the essential conditions enumerated in the appointment letter was that he has to pass a type test within a year from the date of joining duties, otherwise he would not be entitled for annual increment until such test is passed and in case the type test is not passed then till the date the employee passes the test, that period

cannot be considered to be a regular satisfactory service for the purpose of availing the benefit of ACP. Thus qualifying the type test was an essential ingredient for the grant of ACP scale and admittedly the respondent-petitioner did not qualify the same before 14.02.2017 and thus he was not entitled for grant of any ACP prior to the said period. Any benefit extended on account of mistake is liable to be withdrawn and has rightly been withdrawn and the respondent-petitioner cannot have any vested right to continue to have the said benefit.

7. In view of the above facts and discussion, we do not find any infirmity in the view taken by the learned Single Judge in dismissing the writ petition which may require any interference in an intra-court appeal. The appeal accordingly fails and stands dismissed.

(KRISHNA MURARI)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

30.05.2019
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Whether speaking/reasoned	√Yes/No
Whether reportable	√Yes/No