

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

205

CWP No.25665 of 2014

Date of Decision : 15.07.2019

Dharampal**....Petitioner**

v/s

State of Haryana and others**....Respondents****Coram : Hon'ble Mr. Justice B.S. Walia**

Present: Mr. Harish Bhardwaj, Advocate for the petitioner.

Mr. Harish Rathee, Senior DAG, Haryana
for respondent Nos.1 to 4 & 6.

Mr. Raj Kumar Rathore, Advocate for respondent No.5.

B.S. Walia, J. (Oral)

[1] Prayer in the writ petition is for the issuance of a writ of Certiorari for quashing, condition of qualifying the typing test as contained in promotion letter (Annexure P-1) dated 24.10.2011, Order (Annexure P-9) dated 01.07.2014 vide which, the petitioner was deprived of the benefit of two annual increments for the year 2012 & 2013 respectively, as also letter (Annexure P-13) dated 11.09.2014 vide which recovery of Rs.23,006/- has been ordered from the retiral benefits of the petitioner.

[2] Brief facts of the case, leading to the filing of the writ petition are that the petitioner joined as Peon on 01.01.1986 on regular basis in ESI Dispensary, Bahadurgarh. Thereafter, vide Order (Annexure P-1) dated 24.10.2011, the petitioner was promoted to the post of Clerk in the pay scale of Rs.5200 – 20,200/- + GP 1900/- , subject to the condition that he would pass

granted increments thereafter only in accordance with instructions contained in Government letter No.6/39/78-HB-II dated 02.03.1987.

[3] Grievance of the petitioner is that he was never asked to qualify the type test after his promotion to the post of Clerk.

[4] *Per contra*, learned Senior Deputy Advocate General, Haryana, states that letter dated 14.12.2012 was addressed to the petitioner, calling upon him to appear in the type test scheduled to be held on 17.12.2012 but the petitioner never participated in the same. Vide order dated 06.04.2018, while handing over photocopy of the aforementioned letter, the petitioner was directed to respond to the same.

[5] Today petitioner has filed a response, stating that he was not notified letter dated 14.12.2012 and had it been notified, there was no occasion for the respondents to grant increments way back in the year 2012-2013 to the petitioner. Learned counsel further contended that while submitting joining report (Annexure P-2) for the post of Clerk, petitioner had sought exemption from undertaking type test on account of being more than 55 years of age at the time of his promotion and such exemption having been given to other similarly situated in terms of Communication dated 05.05.2009 (Annexure P-3) from the Civil Surgeon, Bhiwani to Senior Medical Officer, CHC Boundh, Loharu. Learned counsel contends that the increments granted to the petitioner were withdrawn and recovery of Rs.23,006/- ordered to be made after the retirement of the petitioner, without passing any order of recovery or for that matter conveying any order of recovery. However, the reason for recovery was evident from Communication dated 11.09.2014 i.e. Annexure P-13 from the Senior Medical Officer, ESI Dispensary, Bahadurgarh, in response to legal

[6] Learned Senior Deputy Advocate General, Haryana, states that Communication dated 14.12.2012 was handed over to the petitioner. However, the same is vehemently disputed by learned counsel for the petitioner, who states that had it been so the signatures of the petitioner would have been obtained in acknowledgement of the same having been served, requiring him to appear in the type test. Learned counsel contends that in the circumstances, the withdrawal of two increments, as well as recovery is legally unsustainable. Learned Senior Deputy Advocate General, Haryana, on the other hand vehemently contends that as per the requirement of rules, as well as condition incorporated in the letter of promotion, the petitioner was required to qualify the type test and that even if it be assumed for the sake of argument that the petitioner had not been asked to appear in the type test, it was incumbent upon the petitioner to have represented to the authorities for ensuring compliance with the requirement of the rules and the conditions stipulated in the promotion letter.

[7] Faced with the aforementioned situation, learned counsel for the petitioner contends that no opportunity of hearing was given to the petitioner before passing order, withdrawing the increments, as also ordering recovery and that too after the retirement of the petitioner. Learned counsel contends that had the petitioner been called upon to qualify the type test and had failed to do so, then the petitioner would have been reverted thereby he would have continued in service up to the age of 60 years. Whereas in the instant case, not only was he retired on the post of Clerk at the age of 58 years but his increments were also withdrawn and recovery ordered of the amount paid to him on account of increments without compliance with the principles of

would be in the fitness of things, if the writ petition is disposed of, by granting liberty to the petitioner to move a representation for reconsideration of the matter in the light of the position as noted above and for taking a sympathetic view on the same.

[8] Learned Senior Deputy Advocate General, Haryana, states that in case, any such representation is moved, the same would be considered and decided sympathetically by the competent authority, by taking into account all aspects of the matter including the decision of Hon'ble the Supreme Court in 'State of Punjab and others versus Rafiq Masih etc.' 2015(4) SCC 334.

[9] In the light of the noted above, the writ petition is ***disposed of*** with the aforementioned liberty.

(B.S. Walia)
Judge

July 15, 2019
'Rajneesh'

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No