

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

CWP-25386-2016

Date of decision: - 21.11.2019

Mewa Lal

....Petitioner

Versus

Uttar Haryana Bijli Vitran Nigam Limited and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: - Mr. Ashish Gupta, Advocate,
for the petitioner.

Mr. V.K. Kaushal, Advocate,
for the respondents.

HARSIMRAN SINGH SETHI, J. (ORAL)

The grievance, which is being raised in the present writ petition is that though the petitioner has already retired from service on 30.04.2015 on attaining the age of superannuation, but even after an expiry of more than 4 ½ years, the pensionary benefits, for which he is entitled for in respect of the service rendered by him, has not been released. The prayer of the petitioner is for issuance of a direction to the respondents to release his pensionary benefits alongwith interest.

The facts as mentioned in the writ petition, are that petitioner was appointed as a Peon on 24.08.1981. He kept on working as such till

07.05.1992 when he was promoted to post of Lower Division Clerk. Thereafter, petitioner was again promoted to the post of Upper Division Clerk on 14.06.2010 w.e.f. 08.07.2010. Consequently, petitioner was further promoted as a Commercial Assistant on 12.01.2012 from which post he ultimately retired on attaining the age of superannuation on 30.04.2015. After the retirement of the petitioner, his case was sent for fixing the pensionary benefits including pension. At time of granting the pensionary benefits, the respondents took an objection that when the petitioner was promoted as a Lower Division Clerk in the year 1992, he was under an obligation to pass a type test, which he has never passed and therefore, it is to be seen whether the promotion of the petitioner to the post of Lower Division Clerk and subsequent promotions are in consonance with the rules governing the service or not, and consequently, the pensionary benefits of the petitioner were withheld. Only the 100% provisional pension was paid to the petitioner even up to now. Petitioner has approached this Court for issuance of a direction to the respondents to release the pensionary benefits of the petitioner alongwith interest.

Upon notice of motion, reply has been filed by the respondents.

In the reply, the respondents have taken the stand that in order to be promoted from a Class IV post to Class III post of a Lower Division Clerk, petitioner was required to pass a type test, which he failed to do so and therefore, the matter remained under consideration as to whether the promotion of the petitioner to the post of Lower Division Clerk and subsequent promotions were in accordance with law or not and

after taking appropriate decision, the same will be conveyed to the petitioner. The relevant paragraph 13 of the reply is as under: -

“13. That in reply to para no.13, it is submitted that the legal notice was replied vide this office memo no.CH-180/PF-2896 dated 24.12.2015, and in the said reply, it was stated that the case for relaxation of type test has been sent to Managing Director, UHBVN, Panchkula and again case was sent to WTD for consideration, but after deliberation with Director T-1 and T-2, it was decided that retiree had not passed the type test during his service period, hence, benefit as claimed by petitioner could not be released. However, the provisional @ 100% in favour of the petitioner has been sanctioned vide office order dated 26.08.2015. Copy of the reply is attached herewith as Annexure R-2.”

Learned counsel for the respondents has fairly admitted that even as of now, no decision has been taken by the respondents, though a period of more than 4 ½ years has elapsed since the petitioner retired from service.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

The question, as to whether, a Class IV employee upon promotion is required to pass a type test or not, has already been answered by this Court in the case of respondent-Nigam itself in **CWP No.2252 of 1990** titled as '**Phool Chand Vs. The Haryana State Electricity Board and another**', **decided on 03.05.2011**. In the said case, respondent-Board had reverted the said Sh. Phool Chand from the post of LDC to that of a Peon on the ground that he did not pass the type test. Shri Phool Chand challenged the said reversion order on the ground

that there was no necessity of passing a type test in case of the promotion from a Class IV post. This Court while considering the said controversy held that the type test is only necessary for direct appointment and not for promotion. The relevant portion of the said judgment is as under: -

“5. Learned counsel states that the requirement of typing qualification is necessary only for a direct recruit and there is no such requirement for a promotee. Even in the order of promotion issued on 29.10.1982 it does not state that type test qualification must be passed within four months. It merely provides that the person may appear for test after four months. The attempt of the counsel was therefore to contend that neither by the terms of order of promotion nor by the relevant office orders there is any requirement for a type test to have been passed by a LDC promotee. The impugned order was clearly unjustified and I uphold the contention of the appellant and the impugned orders are untenable and liable to be quashed. Even at the time when the appeal was admitted, I notice that the order of reversion had been stayed by the Court. The petitioner would therefore be entitled to all the benefits which he is entitled to in the promotional post, as though the impugned orders were not imposed at all.

6. The writ petition is allowed.”

Against the said order, respondent-Board preferred an LPA No.1711 of 2011, which was decided on 27.08.2013. The Division Bench upheld the order passed by the learned Single Judge and by noticing the relevant provisions, it has been held that there is no requirement of passing a type test for promotion to the post of LDC and it is only in case of direct recruitment the type test is necessary. The relevant paragraph of the said judgment is as under: -

“[4]. The question which arose for the consideration of

learned Single Judge was whether the condition of passing type test could be imposed on the respondent while promoting him as LDC?

[5]. The recruitment to the post of LDC was admittedly governed by the Recruitment and Promotion policy notified by the appellant Board on 7.10.1978 [Annexure P-1] and in respect of the post of LDC at Sr. No. 34, it provides as follows:-

“[a] All the appointments may be made direct out of the 1st class matriculates or higher secondary or second class intermediate or High qualification. 3rd and 2nd class matriculates/Hr. Secondary with 30 WPM Typing Speed may also be taken as LDC.

[b]. Matriculate Peons/Bill Distributors/Ferro Khalasis with at least 3 years service may be promoted as LDC”.

[6]. While it is urged on behalf of the appellant Board that the academic qualification and the condition of type test contained in clause [a] would apply even while making promotion under clause [b], learned counsel for the respondent urges otherwise.

[7]. We have heard learned counsel for the parties and are of the view that clause [a] deals with direct recruitment, whereas clause [b] deals with appointment by promotion. Under Clause [b] a matriculate *Peon/Bill Distributor/Ferro Khalasi* with three years' academic qualification is specifically prescribed, no occasion arises to apply the academic qualification or other conditions of clause [a] while making promotion under clause [b]. No fault thus can be found with the impugned order passed by the learned Single Judge.

[8]. Dismissed.

[9]. Since the appeal has been dismissed on merits, no occasion arises to go into the question of limitation.”

Learned counsel for the respondents is unable to differentiate **Phool Chand's case (supra)** with that of present petitioner. The reason for withholding the pensionary benefits of the petitioner is whether petitioner was liable to pass the type test before being promoted to the

post of LDC or not.

Once, this Court has already pronounced that the type test was not necessary for promotion to the post of LDC and the said judgment has already attained finality, withholding of the pensionary benefits of the petitioner was totally arbitrary and illegal. This Court has already passed an order in LPA No.1711 of 2011 on 27.08.2013 and the petitioner had retired from service on 30.04.2015, which is much after the said judgment. Hence, the action of the respondents in withholding the pensionary benefits of the petitioner is not only contrary to the rules, but also against the settled principle of law settled by this Court in **Phool Chand's case (supra)**.

As the act of the respondents in withholding the pensionary benefits is contrary to the law, which was already settled prior to the retirement of the petitioner and respondents have ignored the settled principle of law and withheld the benefits and non-release of the pensionary benefits has caused prejudice to the petitioner, petitioner is entitled to the compensation by the grant of interest.

A Co-ordinate Bench of this Court in **J.S. Cheema Vs. State of Haryana, 2014(13) RCR (Civil) 355**, has held that an employee will be entitled for the interest on an amount, which has been retained and used by the respondents without any valid justification. The relevant paragraph of **J.S. Cheema's case (supra)** is as under: -

“The jurisprudential basis for grant of interest is the fact that one person's money has been used by somebody else. It is in that sense rent for the usage of money. If the user is compounded by any

negligence on the part of the person with whom the money is lying it may result in higher rate because then it can also include the component of damages (in the form of interest). In the circumstances, even if there is no negligence on the part of the State it cannot be denied that money which rightly belonged to the petitioner was in the custody of the State and was being used by it.”

In the present case, the amount of the retiral benefits for which the petitioner became entitled after his retirement was wrongly withheld, retained and used by the department, therefore, on account of the order passed by this Court in **J.S. Cheema's case (supra)**, the petitioner becomes entitled for interest.

In view of the above, the present writ petition is allowed. The respondents are directed to release all the pensionary benefits of the petitioner alongwith interest @ 9% per annum from the date the petitioner retired till the amount will be released to him by the respondents.

Let the calculation of the amount be done by the respondents within a period of two months from the date of receipt of a certified copy of this order and the actual amount, so calculated, shall be released to the petitioner within one month thereafter.

Present writ petition stands disposed of in the above terms.

(**HARSIMRAN SINGH SETHI**)
JUDGE

November 21, 2019
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Whether reasoned/speaking?	Yes
Whether reportable?	Yes