

IN THE HIGH COURT OF PUNJAB AND HARAYANA AT CHANDIGARH

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**RSA-571-2018 &
CM-1405-C-2018**

Date of decision: 28.08.2019

OM PARKASH

...APPELLANT

VS.

STATE OF HARYANA AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. J.P.Sharma, Advocate,
for the appellant.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this appeal is to the judgment passed by the District Judge, Rewari dated 05.09.2017, whereby the appeal preferred by the State of Haryana against the judgment and decree dated 01.02.2016 passed by the Civil Judge (Junior Division), Rewari, was allowed resulting in dismissal of the civil suit preferred by the appellant-plaintiff for declaration and mandatory injunction with consequential relief for the grant of annual increments after his promotion as clerk i.e. 12.09.2004 with all arrears and consequential benefits along with interest.

It is the contention of the learned counsel for the appellant that the judgment and decree passed by the Lower Appellate Court cannot sustain as it has failed to appreciate that the appellant-plaintiff has worked on the post of clerk on promotion having completed a particular length of

service and, therefore, would be entitled to the annual increments. His further contention is that a well-reasoned judgment passed by the Civil Judge (Junior Division) Rewari has been interfered with and set aside merely on the ground that one of the conditions of passing of type test has not been fulfilled. His further contention is that in CWP No. 5509 of 1999 titled as **Prithvi Raj vs. State of Haryana**, the condition of passing of type test on promotion leading to denial of the annual increments was held to be illegal. He, thus, contends that the judgment and decree passed by the Lower Appellate Court dated 05.09.2017 cannot sustain and deserves to be set aside.

I have considered the submissions made by the learned counsel for the appellant and with his assistance, have gone through the impugned judgment as well as the judgment of the trial Court.

It is not in dispute that in the order of promotion of the appellant-plaintiff as clerk from class-IV post, as per the Instructions of the Haryana Government, a condition was imposed for passing of the type test in Hindi and English at the speed prescribed within a period of one year of such promotion. It has further been provided therein that on qualifying the type test, annual increment would be granted. Copy of the Notification dated 28.04.1998 was produced as Ex. DY. This aspect with regard to the question of passing the type test has been dealt with by the Division Bench of this Court in **Tara Chand vs. Haryana Vidhut Parsaran Nigam Ltd.**, 1999 (4) RSJ 755 and **Manjit Kaur vs. State of Punjab and others**, 2016 (2) PLR 566, wherein the condition of passing the type test as a condition for promotion and for grant of annual increment has been upheld. Relevant portion of the said judgment has been reproduced by the learned District

Judge, Rewari in the impugned judgment dated 05.09.2017.

In the light of the above settled preposition of law with regard to promotion on fulfillment of the said condition of passing the type test, which is compulsory and mandatory as per the 1998 Rules, the appellant-plaintiff is not entitled to the increments, as claimed, without passing the type test which, admittedly, he has not.

In view of the above, finding no merit in the present appeal, the same deserves to be set aside and there is no question of law involved as the same stands settled by the Division Bench of this Court, referred to above.

The appeal, therefore, stands dismissed.

August 28, 2019

pj

**(AUGUSTINE GEORGE MASIH)
JUDGE**

Whether speaking/reasoned: Yes/No

Whether Reportable : Yes/No