

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

CWP No.4318 of 2014

Date of Decision: 27.01.2020

Surender Kumar Rathi

.....Petitioner

Vs.

State of Haryana and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Rakesh Nehra, Advocate,
for the petitioner.

Mr. Randhir Singh, Advocate,
for respondent-State.

RITU BAHRI, J. (ORAL)

Petitioner is seeking direction to the respondents to grant him
1st ACP w.e.f. 01.04.2000 after completion of 10 years of service.

Learned counsel for the petitioner has referred to the judgment
dated 22.09.2006 passed in the case of similarly situated employee i.e.
Sada Ram vs. State of Haryana and others, (Annexure P-6), whereby civil
suit filed by plaintiff-Sada Ram for grant of ACP scale has been decreed on
the ground that in the service rules of Rehabilitation Department, there is no
provision that ACP is to be granted after passing of the type test in case of
Clerk. Appeal against the said judgment has been dismissed by the lower
appellate Court vide judgment dated 27.02.2007 (Annexure P-7) by
referring to the judgment passed by this Court in **Baljeet Singh and others**
vs. State of Haryana and others, CWP No.790 of 1998, decided on
13.10.1998. Even RSA against the said judgment has been dismissed by

this Court on 10.03.2008 (Annexure P-8).

In the facts of the present case, petitioner was appointed as Clerk in the Revenue and Rehabilitation Department on 30.03.1990. Even, after completing more than 20 years, he has not been granted the benefit of Ist ACP w.e.f. 01.04.2000.

As per affidavit dated 03.05.2018 filed by Secretary to Government of Haryana, Revenue and Disaster Management Department, the petitioner has passed the type test on 07.07.2015 and his case was considered. Vide order dated 28.02.2018, issued on 05.03.2018 (Annexure R-1), petitioner has been granted Ist ACP Scale of Rs.4000-6000 with effect from 01.04.2000, 2nd ACP w.e.f. 01.04.2010 and 3rd ACP w.e.f. 01.04.2014. However, a condition has been put in this order that he will not be entitled to any increments unless he qualifies the type test. In para No.4 of the order, a chart regarding fixation of pay, has been mentioned. In the remarks column, the benefit has been granted notionally, but actual benefit of ACP has been given after he qualifies the type test.

In the judgments passed in **Sada Ram's** case (supra) (Annexures P-6, P-7 and P-8), it has been held that condition of passing the type test cannot be imposed when the rules are silent about it. These judgments have attained finality.

No judgment, contrary to the above decisions, has been cited by learned State counsel to support his argument that in the Rehabilitation Department, passing of type test is necessary for grant of ACP/Additional Increments.

The specific stand taken by the respondents in their written statement was that the petitioner has not passed the type test and in this backdrop, this benefit cannot be granted to him.

Keeping in view the judgments passed in **Sada Ram's** case (supra) (Annexures P-6, P-7 and P-8) and the order dated 28.02.2018 (Annexure R-1) passed by the respondents, this petition is allowed. A direction is given to the respondents to grant 1st, 2nd and 3rd ACPs to the petitioner w.e.f. 01.04.2000, 01.04.2010 & 01.04.2014 respectively with all consequential benefits i.e. arrears etc. along with interest at the rate of 8% per annum, within a period of three months from the date of receipt of certified copy of this order.

(RITU BAHRI)
JUDGE

27.01.2020
ajp

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