

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

CWP-6750-2017

Date of decision: 27.01.2020

Dharampal

...Petitioner(s)

V/s.

State of Haryana and others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE RITU BAHRI.

Present: Mr. S.P.Chahar, Advocate
for the petitioner.

Mr. Harish Nain, AAG, Haryana.

RITU BAHRI, J. (Oral).

The petitioner is seeking quashing of order dated 11.07.2016 (Annexure P-8) whereby his claim for grant of annual increments from the year 2010 i.e. after the promotion to the post of Clerk w.e.f. 31.08.2009, has been rejected.

The petitioner was appointed on temporary basis on the post of Peon on 19.02.1982. His services were regularized vide order dated 04.09.1984 (Annexure P-1). Thereafter he was promoted to the post of Clerk vide order dated 31.08.2009 (Annexure P-2). The petitioner made representation on 20.02.2015 (Annexure P-3) and also served legal notice dated 11.08.2015 (Annexure P-7) to the respondent-Director General, Sports and Youth Welfare Department, Panchkula for grant of annual increments. The petitioner retired on 31.12.2015 after attaining the age of superannuation. Thereafter impugned order dated 11.07.2016 (Annexure P-

8) was passed rejecting the claim of the petitioner on the ground that he did no pass type test in Hindi or English language as per Govt. instructions.

Learned counsel for the petitioner has placed on record order dated 05.08.2010 (Annexure P-4) in favour of Dilaram whereby all the benefits w.e.f. 01.01.2010 were granted to him after granting relaxation from passing type test after crossing 45 years of age. He has further referred to letter dated 06.04.2012 (Annexure P-5) whereby Director Secondary Education Haryana had issued general instructions that all class IV employees who are promoted to the post of Clerk be granted benefits of annual increments without passing type test. Further letter dated 11.07.2014 (Annexure P-6) has been issued by Additional Chief Secretary, Haryana Government, Information and Public Relation Department whereby relaxation was granted from passing type test to class-IV employees who were promoted to the post of Clerk and for granting annual increments.

Short reply on behalf of the respondents has been filed by the Joint Director Sports, Department of Sports & Youth Affairs. It is stated in the reply that as per the Departmental Service Rules of 1998, 20% posts of Clerks are filled up by way of promotion from Group-D employees. As per instructions dated 26.11.1993, increments to the Clerks will be released after passing type test either in English or Hindi and additional increment will be given to those Clerks who will pass the type test in both languages i.e. English and Hindi. It is further stated that in the Department of Sports & Youth Affairs, Haryana, type test was organized for those clerks who did not pass the type test on 14.12.2010, 20.09.2011 and 20.06.2012 but the petitioner did not appear knowingly. This fact is not being disputed by learned counsel for the petitioner. Finally it is stated that rules granting

exemption to pass type test vide letters dated 06.04.2012 and 11.07.2014 (Annexures P-5 and P-6) are not applicable to the Department of Sports & Youth Affairs since there are rules in this Department to pass type test.

Learned counsel for the State further informed that vide notification dated 15.11.2013 amendment has been made in the Sports & Youth Affairs Department and Rule 9 (A) has been added according to which the State Eligibility Test in Computer Appreciation and Applications (SETC) as a part of service has been made necessary requirement for the post of Clerks and further the persons who were promoted to the post of Clerks shall also qualify the State Eligibility Test in Computer Appreciation and Applications (SETC) within the period of probation of one year extendable by one year.

Learned counsel for the petitioner has referred to Appendix B of the Service Rules, 1998 (Annexure P-9), which reads as under:-

21.	Clerk	i. Matric/Higher Secondary or equivalent, 10+2 (vocational); ii. Knowledge of Hindi upto matric standard	i. Matric/Higher Secondary or equivalent, 10+2 (Vocational); ii. Five years experience as Daftri, Jamadar, Peon, Chowkidar, Mali-cum-Chowkidar, Assistant Cook, Peon-cum-Mali, Sweeper and Groundman; iii. Shall have to qualify a departmental written test both in Hindi and English languages of the matriculation level to be held by the Head of the department in accordance with the instructions of the State Government contained in office circular letter No.5/2/97-GSI dated 4th July, 1997.
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It is not the case of the respondents that there are instructions to pass type test for granting annual increments and the Service Rules having condition to pass type test is for promotion or for direct recruitment to the post of Clerk.

Further Rule 9A has been added vide notification on 19.11.2013 whereas the petitioner was promoted to the post of Clerk on 31.08.2009. Hence, notification dated 15.11.2013 cannot be applied in the case of the petitioner and the notification dated 29.01.1998 passed by Haryana Government Sports and Youth Welfare Department will be applicable in the case of the petitioner. A perusal of promotion order dated 31.08.2009 (Annexure P-2) shows that the condition to pass type test is not mentioned.

Keeping in view above, benefit of annual increments cannot be denied to the petitioner. Hence writ petition is allowed. Since the petitioner has already retired, respondents are directed to pay him arrears of annual increments from 2010 alongwith 8% interest per annum within a period of four months from the date of receipt of certified copy of this order.

(RITU BAHRI)
JUDGE

27.01.2020

Divyanshi

Whether speaking/reasoned

:

Yes/No

Whether reportable

:

Yes/No