

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

**Date of decision: September 20, 2022
CWP-23014-2013 (O&M)**

Rakesh Kumar (since deceased and represented through LR.)
.....Petitioner(s)
versus
State of Haryana and others
.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Neeraj Kumar, Advocate for the petitioner(s).

Mr. Saurabh Mohunta, DAG Haryana.

ARUN MONGA, J. (ORAL)

Petition herein, *inter alia*, is for issuance of a writ in the nature of Certiorari for quashing impugned order dated 04.03.2013 (Annexure P-6) whereby increments granted to the petitioner have been withdrawn and further it has been decided that he is not entitled for grant of ACP on the ground that petitioner has not passed the Type Test.

2. Succinct factual background first. Pleaded case is that petitioner was appointed as Clerk on regular basis on 16.10.2002 vide Annexure P-1. A condition was mentioned in the appointment letter that petitioner shall have to qualify type test in Hindi at the speed of 25 WPM or in English at the speed of 30 WPM within one year from the date of his joining in the Department and only then his first increment will be regulated in accordance with Govt. Instructions. Petitioner moved an application dated 03.05.2005 (Annexure P-2) to Superintendent Central Jail, Hisar, who further requested to the Principal, I.T.I, Hisar vide letter dated 12.05.2005 (Annexure P-3) to

conduct type test of the petitioner. Type test of the petitioner was conducted on 08.06.2005 which he qualified and on the basis thereof, petitioner started getting increments. On 04.03.2013 (Annexure P-6), increments granted to the petitioner were withdrawn without affording any opportunity on the ground that petitioner has not passed the type test conducted by the Department. Petitioner also served a legal notice dated 30.07.2013 (Annexure P-7), but to no avail.

3. Learned counsel for the petitioner submits that petitioner served as a Class-III employee and died during pendency of the writ proceedings. Impugned order withdrawing the increments granted to the petitioner has been passed in a totally illegal and arbitrary manner. There was no such condition mentioned in the appointment letter that the petitioner was required to pass type test conducted by the Department only. Petitioner passed the type test conducted by the I.T.I. Hisar on 08.06.2005, and on the basis thereof only, he had started getting increments from the Department.

4. On the other hand, learned State counsel opposes the prayer of the petitioner. Petitioner without approval of appointing authority had given his application to respondent No.4 at his own volition to appear for typing test and got a certificate from the I.T.I., Hisar certifying his typing speed. Petitioner till death had not passed the type test to be conducted by the Department, despite having been given opportunity for the same.

5. I have heard rival contentions of learned counsel for the parties and gone through the case file.

6. While issuing notice of motion, following interim order was passed on 21.10.2013:

“Contends that the petitioner has qualified the typing test conducted by the designated authority, i.e., the ITI Hissar in 2005. Accordingly, the increments withheld earlier were granted to him and were continued to be paid till the passing of the impugned order which calls upon the petitioner to appear for a type test conducted by the department. The reason for doing so is that in the letter of appointment issued by the Head Office, the petitioner was required to pass a type test conducted by the department. On these premises, the condition has been imposed and the increments already granted have been decided to be withdrawn. Learned counsel for the petitioner points out to Condition No. ii) of the letter of appointment dated 16.10.2002 (P-1) which contains no such condition.

Notice of motion returnable on 16.12.2013.

Meanwhile, recovery shall not be effected from the petitioner in respect of the increments.”

7. I am of the opinion that the recovery sought to be made would be inequitable, harsh and arbitrary and would far outweigh the equitable balance of the employer's right to recover. In view of the law laid down in **State of Punjab and others versus Rafiq Masih**, reported as **AIR 2015 (SC) 696**, no recovery can be effected from the petitioner being a Class-III employee.

Relevant extract from the same is reproduced herein below:

“It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we made, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

- (i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' Service).*
- (ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.*
- (iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.*
- (iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.*
- (v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as*

would far outweigh the equitable balance of the employer's right to recover.”

8. In the aforesaid premise, recovery cannot be effected from petitioner, he being Class-III employee at the relevant time or for that matter from his legal representatives.

9. As a result of above discussion, the petition is disposed of in terms of the interim order dated 21.10.2013 which is made absolute.

10. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

September 20, 2022
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No