

210

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

**CWP-24659-2016**

**Date of Decision: 28.11.2023**

**Om Parkash and another**

**...Petitioners**

**Versus**

**State of Haryana and others**

**...Respondents**

**CORAM:- HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI**

Present: Mr. Kshitij Sharma, Advocate and  
Mr. Shubh Karman Singh Gill, Advocate  
for the petitioners.

Mr. Harish Rathee, Sr. D.A.G., Haryana.

**HARSIMRAN SINGH SETHI, J. (Oral)**

In the present petition, the grievance of the petitioners is that condition No.2 of the order promoting the petitioners to the post of Clerk, which requires passing of the type test, be declared as arbitrary and illegal. The further challenge is to the order dated 26.08.2016/01.09.2016 by which, the prayer of the petitioner for grant of increment after promotion to the post of Clerk, has been rejected.

It may be noticed that the petitioners who were working on Class-IV post were granted promotion to the post of Clerk i.e. Class-III post vide order dated 22.09.2006. In the promotion order itself, it was mentioned that the petitioners are required to pass type test in English/Hindi within a period of one year and annual increment will only be granted after clearing of the said type test. The said condition was accepted by the petitioners and no grievance was raised.

It is a conceded position that till the petitioners retired from service in the year 2013, they had not passed the type test as envisaged under Rule of Promotion in the order dated 22.09.2006, copy of which has been appended as Annexure P-1. After three years of retirement, the condition of passing of the type test is being challenged by the petitioners in the present petition. After the retirement, petitioners filed a writ petition being CWP-26871-2015, claiming a direction to the respondents to decide the legal notice which the petitioners had submitted seeking grant of annual increment despite not passing the type test. Keeping in view the direction given by this Court, the said claim was decided vide order dated 01.09.2016, copy of which has been appended as Annexure P-11, declining their claim. The said order is also under challenge in the present petition.

Learned counsel for the petitioners argues that in the impugned order rejecting the claim of the petitioners, it has been mentioned that the petitioners are governed by the Service Rules which were notified by the Government on 25.01.1990 and as per Rule 7, the promotion to the post are to be made as per the qualification mentioned in Appendix-B and for the post of Clerk, a qualification has been prescribed of passing the type test, whereas no such rule exists in the Department in which the petitioners were working, hence, the impugned order is liable to be set aside.

Upon notice of motion, the respondents have filed the reply. In the reply, the respondents have mentioned that Haryana Ayurvedic Department Subordinate Offices Ministerial (Group C) Service Rules, 1989 has been made vide notification dated 22.05.1989 and for promotion to the post of Clerk, it has been mentioned that qualification

of type test is necessary and till the passing of the type test, no increment can be given. Hence, the claim of the petitioners for the grant of increment after promotion as a Clerk and that too without passing the type test, may kindly be rejected.

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

The claim of the petitioners in the present petition is highly belated. The petitioners were promoted in September, 2006. It is a conceded position that the present promotion order envisaged the condition of passing of the type test in order to become eligible to get the annual increment. Throughout their service career, no grievance was raised by the petitioners qua the said condition. After the petitioners retired in the year 2013, the present petition has been filed which is highly belated. Once during the service career, the petitioners did not raise any grievance qua the condition in the promotion order, after the retirement when there is no master and servant relationship, no grievance can be raised by the petitioners challenging an order which was passed during the service career, to which order, there was no objection while the petitioners were in service.

Learned counsel for the petitioners also conceded that even for filing a civil suit, the limitation period had already expired by the time, the petitioners filed the present petition. That being so, the present petition which has been filed after the retirement, is highly belated and is liable to be rejected on this ground alone.

Even otherwise, the only claim of the petitioners is that the respondents rejected the claim of the petitioners under 1990 Rules, which according to the respondents were notified on 25.01.1990, whereas in the

reply, the respondents are relying upon 1989 Rules. Though, there is a discrepancy but it is a matter of fact that both the Rules envisaged passing of the type test for getting the annual increment. 1990 Rules are General Rules and 1989 Rules are specific Rules for the Department concerned in which the petitioners were working but in the both set of Rules passing of type test is mandatory for the grant of annual increment.

Hence, even if, 1989 or 1990 Rules are made applicable, the claim of the petitioners cannot be sustained for the grant of annual increment as both the Rules envisaged the grant of increment only upon passing of the type test. That being so, no ground is made out for any interference by this Court and the present petition stands dismissed.

**28.11.2023***ps-I***(HARSIMRAN SINGH SETHI)  
JUDGE**

|                           |   |        |
|---------------------------|---|--------|
| Whether speaking/reasoned | : | Yes/No |
| Whether reportable        | : | Yes/No |