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

CWP No.28937 of 2019(O&M)

Date of Decision: 09.02.2023

Rajender Singh

.....Petitioner

Vs

State of Haryana and others

.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present:Mr. S.K. Verma, Advocate
for the petitioner.

Mr. Naveen Singh Panwar, DAG, Haryana.

Mr. I.S. Sidhu, Advocate
for respondent No.4.

RAJ MOHAN SINGH, J. (Oral)

[1]. The petitioner has preferred this writ petition for the issuance of an appropriate writ in the nature of certiorari, quashing the order dated 02.02.2016 passed by the respondent No.2, whereby the claim of the petitioner for releasing increments has been rejected and the entire retiral benefits viz. gratuity, commuted pension and revised pension were withheld and the same were released in the years 2018 and 2019 after

about four years of the retirement of the petitioner from the post of Clerk.

[2]. Brief facts of the case are that the petitioner was appointed as an Orderly on 12.08.1981 as a Class-IV employee. In the year 2002, the petitioner met with an accident and received injuries, thereby making him 30% permanently disabled due to Ankylosis Wrist of right hand and was unable to do writing work. The petitioner was promoted to the post of Clerk w.e.f. 26.10.2004 on the basis of his seniority. After promotion to the post of Clerk, he was granted annual increments since 2004 onwards. After rendering more than qualifying service of 33 years, the petitioner had retired on 30.11.2014. The petitioner had completed more than 10 years of service on the post of Clerk after his promotion on 26.10.2004. The petitioner was entitled to the benefit of 3rd ACP on completion of 30 years and revision of pay and arrears thereof with interest from the date of accrual till the date of making actual payment.

[3]. On the representation filed by the petitioner, the respondent No.3 had responded in the reply dated 26.05.2015 that due to wrong increments on the promoted post, the pay of the petitioner was to be re-fixed and thereafter, pension case and other entitlements were to be calculated.

[4]. Feeling aggrieved against the aforesaid action of the respondents, the petitioner ventured to file CWP No.14162 of 2015. Notice of motion was issued on 17.07.2015 and in the written statement filed in the said writ petition, the respondent No.3 contended that the representation filed by the petitioner had already been considered and rejected by the respondent No.2 by passing a speaking order dated 02.06.2016 and therefore, the writ petition was not maintainable. The effort made by the petitioner to amend the writ petition did not fructify and the writ petition was dismissed as withdrawn on 16.09.2019 with liberty to the petitioner to file fresh petition with better particulars i.e. by assailing the order dated 02.02.2016 in accordance with law.

[5]. Now the petitioner has preferred this writ petition and submits that the petitioner was promoted to the post of Clerk from Class-IV post on the basis of seniority and the respondent-Department had also granted increments to the petitioner after promotion. There was power of relaxation under Rule 17 of the Punjab Jail Department Clerical and Technical (State Service Class-III) Rules, 1962 and after retirement of the petitioner, in the event of noticing any such irregularity by the department committed in the year 2004, the same could have been relaxed as nothing wrong was attributed to the petitioner. The petitioner

has not played any fraud with the Department. Under the aforesaid Rules of 1962, there is no requirement of type test for promotion to the post of Clerk as the requirement of type test is mandatory for direct recruitment.

[6]. In the reply filed by the respondents No.1 to 3, a stand has been taken that the petitioner was promoted to the post of Clerk with the condition that he would have to qualify a type test in Hindi at a speed of 25 words or English at a speed of 30 words per minute within one month from the date of his joining and his first increment will be regulated in accordance with the Government instructions. Due to mistake of the Department, annual increments were granted to the petitioner after his promotion to the post of Clerk on 26.10.2004. Now after the retirement of the petitioner, the accrued benefits are sought to be withdrawn.

[7]. For the reasons recorded hereinabove, I am of the considered opinion that the impugned action in passing the order dated 02.02.2016 by the respondent No.2 is illegal. The accrued benefits cannot be curtailed or withdrawn, particularly when the petitioner was allowed increments after his promotion on 26.10.2004. There was a power of relaxation under Rule 17 of Punjab Jail Department Clerical and Technical (State Service Class-III) Rules 1962. The grant of further increments would

necessarily mean that the respondent-Department has relaxed the condition of passing of type test by the petitioner. After his promotion and at the time of granting increments thereof, revision of legal dues of the petitioner, that too, after retirement of the petitioner in the facts and circumstances of the case is unwarranted. The impugned order is hereby quashed. This writ petition is allowed. Normal consequences to follow.

09.02.2023

Prince

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No