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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

***

CWP-2229-2020
Date of Decision: 27.02.2024

Leelawati

..... Petitioner

Versus

Uttar Haryana Bijli Vitran Nigam and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. N.C. Kinra, Advocate with
Mr. Harsh Kinra, Advocate,
for the petitioner.

Mr. Pardeep Goyal, Advocate,
for the respondent.

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JASGURPREET SINGH PURI, J. (ORAL)

1. The present is a writ petition filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of *mandamus* or any other kind of writ, order or direction to the respondents to release and pay the full pension, other service/retiral/pensionary benefits including gratuity etc.; to release and pay the arrears of pension by fixing the pensions along with the interest accrued on all the pensionary/retiral/pecuniary service benefits of the petitioner from the date of their accrual till actual payment thereof.

2. The brief facts of the present case are that the petitioner was appointed on compassionate basis as Class-IV employee after the death of her husband, who was working with the respondent-Nigam and thereafter, she was promoted to the post of LDC vide order dated 16.10.2002

(Annexure R-7). A condition was imposed in the aforesaid promotion order at Serial No.4 that the petitioner was required to qualify the test in type writing in Hindi/English at the speed of 25/30 WPM respectively within one year from the date of joining as LDC and in case she fails to qualify the prescribed test within the stipulated period, she shall not be allowed any annual increment till the passing of the typing test. However, the petitioner was granted annual increments right from the year 2002 till the time of her retirement i.e. on 30.04.2016 and admittedly, the petitioner did not qualify the typing test as stipulated in the aforesaid condition (Annexure R-7). It was only after her retirement that a charge-sheet was issued to the petitioner in the year 2019 on the aforesaid ground that she did not qualify the typing test within one year of the joining as LDC and she has committed omission and commission of unbecoming of an employee of the Nigam. The aforesaid charge-sheet was issued on 15.11.2019 which was more than three years after her retirement but later on vide order dated 19.01.2021 (Annexure R-1) on the basis of legal advice, the charge-sheet was dropped being unsustainable.

3. The petitioner, who is a widow was not granted her retiral/pensionary benefits except for the provisional pension which was given to the petitioner after her retirement. The reason for withholding of the aforesaid benefits was that she had taken the benefit of increments without passing the typing test and not only that her pensionary benefits were stopped except for the provisional pension but the respondent-Nigam also sought to recover the amount to the extent of Rs.2,96,267/- and as per Annexure R-3, the total amount which has been withheld by the respondent-

Nigam is Rs.5,59,267/- and the recoverable amount is Rs.2,96,267/-. However, no amount has been given to the petitioner at all after her retirement.

4. The learned counsel for the petitioner submitted that it is a case where the action of the respondent-Nigam is absolutely illegal and arbitrary and rather unconstitutional. He further submitted that the petitioner, who was appointed on compassionate basis after the death of her husband was promoted to the post of LDC in the year 2002 vide Annexure R-7 with a condition that she should pass the typing test within one year. However, she did not pass the aforesaid typing test but she was regularly granted annual increments from the year 2002-2016 till her retirement and no action was taken in this regard. However, after three years of her retirement, a charge-sheet was issued to her on the aforesaid ground, but the same was subsequently dropped and after the retirement of the petitioner, no occasion could have arisen for issuance of any charge-sheet against the petitioner which was only an oppressive exercise by the Nigam upon the petitioner, who is a widow. He also submitted that be that as it may, till date the entire pensionary benefits have not been paid to the petitioner except for the grant of provisional pension to which she is entitled along with interest. He further submitted that so far as the action of the respondent-Nigam that the amount of increments which was given to the petitioner for a long period i.e. from 2002-2016 is concerned, although there was a condition as stipulated at Serial No.4 in the promotion letter dated 16.10.2002 (Annexure R-7), but it was not backed by any provision of law. He also referred to Annexure P-12 wherein in a similar situation a Co-ordinate Bench of this Court passed a

judgment in ***CWP-25386-2016*** titled as "***Mewa Lal Vs. Uttar Haryana Bijli Vitran Nigam Limited and others***" decided on 21.11.2019, also observed that when an employee is promoted from Class-IV to the post of LDC, then as per the provisions which are contained in the Recruitment and Promotion Policy for Non-gazetted staff, there is no provision for qualifying the typing test whereas for the purpose of direct recruitment, there is a provision in this regard. The aforesaid judgment was based upon another judgment of a Co-ordinate Bench of this Court in ***CWP-2252-1990*** titled as "***Phool Chand Vs. The Haryana State Electricity Board and another***", decided on 03.05.2011, which was upheld in **LPA-1711-2011** decided on 27.08.2013 and rather it was so specifically observed that in case of promotion to the post of LDC, the provision for passing of the typing test is not provided. The learned counsel submitted that the case of the petitioner is squarely covered by the aforesaid judgments and also that of the LPA judgment and therefore, the necessary directions may be issued in this regard.

5. On the other hand, Mr. Pardeep Goyal, learned counsel for the respondents-Nigam submitted that so far as the prayer of the petitioner with regard to the recovery from the petitioner, who retired as LDC Category-III is concerned, there is no dispute that the recovery cannot be made in view of the judgment of the Hon'ble Supreme Court passed in "***State of Punjab and others Vs. Rafiq Masih (White Washer) and others***", ***2015(4) SCC 334*** and in pursuance of the aforesaid judgment, the State of Haryana has also issued instructions in this regard and therefore, no recovery could be effected from the petitioner with regard to the increments which were paid to her prior to her retirement. He however submitted that so far as the prayer of the

petitioner for her right for grant of the increments is concerned, the same is disputed by him. He submitted that in fact the reference which has been made by the learned counsel for the petitioner on the aforesaid two judgments passed by a Co-ordinate Bench of this Court in ***Mewa Lal's case (supra)*** and also by the LPA Bench in the aforesaid LPA is concerned, in fact at the time when the aforesaid judgments were passed, the amendment of the Clause-10 and Clause-34 of the Recruitment and Promotion Policy in respect of Non-Gazetted staff which had taken effect w.e.f. 20.12.1988 was not considered either by the Co-ordinate Bench or by the LPA Bench and therefore, the case of the petitioner is not covered by the above mentioned judgments because of the aforesaid reasons. In this regard, the learned counsel for the respondents referred to Annexure R-6, which is an amended provision of Clause-10 and Clause-34. He submitted that the Hon'ble Single Judge and the Hon'ble LPA Bench have referred to unamended provisions of Clause-34 whereas in fact at the time of the passing of the aforesaid judgment, the aforesaid provision stood amended vide Annexure R-6 which took effect from 20.12.1988. While referring to the aforesaid amended provision, he submitted that by way of amendment even for the employees who are to be promoted to the post of LDC are also required to pass the typing test in Hindi/English at a speed of 25/30 WPM, within one year of promotion and in case they did not qualify the aforesaid test, then they are liable to be reverted to the post from where they were promoted as LDC and in consonance with the aforesaid amended provision, the petitioner could not have been granted the annual increments and rather the petitioner is required to be reverted which although she was not reverted at all. He submitted that in this way while applying the aforesaid provision, the petitioner is not entitled to fixing of her last pay drawn and the pension after adding the increments.

6. I have heard the learned counsel for the parties.

7. The petitioner is a widow and she was appointed as Class-IV employee on compassionate basis. Thereafter, vide order dated 16.10.2002 (Annexure R-7) she was promoted to the post of LDC and in the promotion order, a specific condition was incorporated with regard to qualifying of the typing test. The aforesaid condition is reproduced as under:-

> *"4. The above official is required to qualify the test in type writing in Hindi/English at the speed of 25/30 WPM respectively within one year from the date of joining as LDC. In case he fails to qualify the prescribed test within the stipulated period he shall not be allowed any annual increment till the passing of the said type test."*

8. There are three issues involved in the present case. Firstly, whether the respondent-Nigam was entitled for recovering the amount of annual increments which were granted to the petitioner during the course of her service, even if assumingly they were granted inadvertently in view of the judgment of Hon'ble Supreme Court passed in ***State of Punjab and others Vs. Rafiq Masih (White Washer) and others case (supra)*** or not. Secondly, whether the petitioner had any right to get her annual increments which were so granted as a part of the pay which was the last pay drawn and on the basis of which the pension was required to be fixed or not and thirdly, whether the petitioner is entitled to release of remaining pensionary/retiral benefits along with interest or not.

9. Taking of the first issue as to whether the respondent-Nigam could have recovered the increments which had been granted to the petitioner during the course of her service and whether the same could be recovered from her pensionary benefits or not, the law with regard to this issue is no longer *res integra.* The Hon'ble Supreme Court in ***State of Punjab and others Vs. Rafiq Masih (White Washer) and others case (supra)*** categorically held that after the retirement no such recovery can be made from a retired employee and especially when the retired employee falls in the Category 'C' and 'D'. Admittedly, the petitioner falls in Category 'C' at the time of her retirement and even otherwise also the aforesaid legal position has not been seriously disputed by the learned counsel for the respondent. Therefore, it is held that so far as the recovery aspect is concerned, the respondents are not entitled to recover any amount of increments which the petitioner was given during the time of her service. In case, any such amount has already been recovered, then the same shall be refunded back to the petitioner along with interest @ 6% per annum.

10. So far as the second issue as to whether the petitioner had any inherent right for getting the increments added up in the form of annual increments from the year 2002 till the year 2016 when she retired in the teeth of the amended provisions of Clause-10 and Clause-34 of the Promotion and Recruitment Policy vide Annexure R-6 is concerned, a Co-ordinate Bench of this Court in ***Phool Chand's case (supra)*** held that in view of the Promotion and Recruitment Policy, there is no provision for passing of any typing test etc. in case of a promotion from the post of Class-IV to the post of LDC. The aforesaid judgment was assailed by the

respondents, who are the same respondents as of in the present case before the LPA Bench. The LPA was dismissed on merits and the aforesaid position as to whether there is a condition for passing of the typing test is so incorporated in the Rule or not was discussed. The relevant portion of the aforesaid judgment of the LPA Bench is reproduced as under:-

> *[4]. The question which arose for the consideration of learned Single Judge was whether the condition of passing type test could be imposed on the respondent while promoting him as LDC?*
>
> *[5]. The recruitment to the post of LDC was admittedly governed by the Recruitment and Promotion policy notified by the appellant Board on 7.10.1978 [Annexure P-1] and in respect of the post of LDC at Sr. No. 34, it provides as follows:-*
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> > *"[a] All the appointments may be made direct out of the Ist class matriculates or higher secondary or second class intermediate or High qualification. 3rd and 2nd class matriculates/Hr. Secondary with 30 WPM Typing Speed may also be taken as LDC.*
> >
> > *[b]. Matriculate Peons/Bill Distributors/Ferro Khalasis with at least 3 years service may be promoted as LDC"*
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> *[6]. While it is urged on behalf of the appellant Board that the academic qualification and the condition of type test contained in clause [a] would apply even while making promotion under clause [b], learned counsel for the respondent urges otherwise.*
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> *[7]. We have heard learned counsel for the parties and are of the view that clause [a] deals with direct recruitment, whereas clause [b] deals with appointment by promotion. Under Clause [b] a matricu-*

late Peon/Bill Distributor/Ferro Khalasi with three years' academic qualification is specifically prescribed, no occasion arises to apply the academic qualification or other conditions of clause [a] while making promotion under clause [b]. No fault thus can be found with the impugned order passed by the learned Single Judge.

[8]. Dismissed.

[9]. Since the appeal has been dismissed on merits, no occasion arises to go into the question of limitation."

11. A perusal of the aforesaid would show that while referring to the Recruitment and Promotion Policy of the year 1978 which is so provided for the LDC at Serial No.34 it was held that for the promotion to the post of LDC, no such condition has been incorporated under the aforesaid Policy and therefore, no occasion arises for the person, who are promoted to the post of LDC should pass the aforesaid test. However, such condition was applicable only to those, who were appointed by way of a direct recruitment.

12. However, the learned counsel for the respondents stated that when the aforesaid judgments passed in ***Phool Chand's case (supra)***, LPA Bench and also by a Co-ordinate Bench of this Court in ***Mewa Lal's case (supra)*** (Annexure P-12), the amended provision of the aforesaid Recruitment and Promotion Policy which came into effect from 1988 vide Annexure R-6 was never brought to the notice of this Court. He submitted that by way of the aforesaid amendment in Clause-10 and Clause-34, it has been specifically provided that even for the promotion to the post of LDC, the official to pass the qualifying test in typing, failing which, an annual increment shall not be granted and in case they fail to pass the qualifying test in typing, failing which, an annual increment shall not be granted and in case

he fails to qualify the typing test within the prescribed extended period, then he is liable to be reverted to the post from which he was appointed/promoted as LDC. The aforesaid amendment is also reproduced as under:-

> "*(ii). The officials should qualify the test in type writing in Hindi/English at a speed of 25/30 WPM, respectively, within one years of promotion, failing which annual increment shall not be granted. In case, he fails to qualify the test in typewriting within the prescribed/extended period, he is liable to be reverted to the post from which he was appointed as LDC.*"

13. No doubt when a Co-ordinate Bench of this Court in earlier judgments of ***Phool Chand's case (supra)***, ***Mewa Lal's case (supra)*** and also in the LPA, the unamended provision was taken into consideration and the aforesaid amended provision (Annexure R-6) was not in the knowledge of the Court. Therefore, this Court now has to see as to what is the effect of the aforesaid amendment upon the present case and as to whether in fact the petitioner is entitled for the aforesaid annual increment or not. A perusal of the aforesaid amended provision would show that it has been so provided that in Clause 1(b)(ii) that the official should qualify a test in type writing in Hindi/English and it further provides that failing which annual increment shall not be granted and in case he fails to qualify the test in type writing within the prescribed period then the employee is liable to be reverted to the post from where he was promoted as LDC. Admittedly, the petitioner had been receiving annual increments from the year 2002-2016 till her retirement but he did not pass the typing test nor she was reverted to the Class-IV post. In another words, the aforesaid provision by which a condition is imposed not only in the promotion order but also in the

amended provision, the same was not given effect to by the respondents themselves and there is nothing on the record to show that ever since from the year 2002 till the year 2016, when she was retired that any kind of notice etc. was given to the petitioner that in case she does not pass the typing test, then she will be reverted to the post from where she was promoted to the post of LDC. The respondents appear to have not made the aforesaid provision applicable to the petitioner in this regard.

14. A further perusal of the aforesaid Clause would show that it so provides that the officials should qualify a test in type-writing in Hindi/English at a speed of 25/30 WPM respectively. A dissection of the aforesaid provision i.e. Clause 1(b)(ii) would show that a duty has been cast upon an employee who is promoted to the post of LDC to pass typing test within a period of one year and the consequence of non-qualifying the test is only reversion which has not been done by the respondents admittedly. However, the learned counsel for the petitioner has referred to Para No.7 of the petition in which it has been specifically averred and pleaded by the petitioner that at no stage, the petitioner was ever asked to take any type test and she was never given notice to take the type test. Sans any notice for type test on the one hand and grant of annual grade increments regularly on the other hand, the petitioner presumed that her request must have been acceded to by the respondent-authorities and the condition of type test had been waived off. The aforesaid relevant portion of the pleading which has been made by the petitioner in Para No.7 is reproduced as under:-

> "*At no stage, the petitioner was ever asked to take any type test. She was never given notice to take the type test. Sans any notice for type test on the one hand and*

grant of annual increments regularly on the other hand, the petitioner presumed that her request must have been acceded to by the authorities and the condition of type test had been waived off."

15. When the respondents have filed the reply to the present petition then Para No.7 has also been answered. The Para No.7 it has been so stated that the petitioner did not come forward to take the type test in her entire service career which was mandatory and it was incumbent upon the petitioner to come forward and represent to the department for taking the typing test. The reply to Para No.7 is also reproduced as under:-

"7. *That the contents of Para no. 7 are wrong hence denied. The petitioner was promoted to the post of LDC subject to the terms and conditions mentioned in promotion letter dated 16.10.2022, as well as the policy dated 23.02.1989. The condition no. 4 in the promotion letter clearly stated the requirement for the petitioner to pass the type writing test within one year from the date of joining as LDC i.e. 22.10.2002. However, she did not come forward to give the type test in her entire service which was mandatory. It was incumbent upon the petitioner to come forward and represent to the department for taking the typing test. However, she never represented to the department for taking the test which in itself amounts to serious misconduct on her part. So, she was charge-sheet and during the pendency of the charge-sheet, the petitioner was paid the provisional pension. Now since the charge-sheet stands withdrawn the petitioner held entitled to the full pension.*"

16. The contents of the petition and the reply would show that it has been so specifically pleaded by the petitioner that she was never asked at any

stage to take any typing test and without any notice for taking a typing test and any endeavour made in this regard, the petitioner has not passed the typing test. The aforesaid averments have not been controverted by the respondents in the reply. In another words, the duty which has been cast upon an employee who has been promoted to the post of LDC vide amended provision as contained in Annexure R/6, a corresponding duty is also cast upon the employer to have arranged the typing test. In an eventuality where the employer although promotes an employee to the post of LDC and there is a stipulated condition not only in the promotion letter but also in the amended Rules that the employee should pass the test is always subject to the condition that the employer should arrange the test and also to give an opportunity to an employee to pass the test. Therefore, it is clear that the duty which has been cast upon an employee is corresponding to the duty which has been cast upon the employer. Since it is not denied by the respondents at no time and at no stage, the petitioner was granted any opportunity by giving any notice or arranging any test has been deemed to be admitted by the respondents in the reply. It becomes evident that the employer who is a respondent, has failed to fulfill its duty to have not arranged any test. When an employee even if wants to take an exam which may be a pre-condition for grant of increment, the same can be done only if an opportunity or a platform is provided and a test is to be conducted and in case the same is not conducted, then it is not practically possible for an employee to fulfill her duty which is cast upon the employer as well. In the present case, the petitioner has not passed the test and may have failed to fulfill the condition but at the same time, the employer who is a Nigam, also failed to fulfill its corresponding condition which is inherent in the aforesaid Clause 1(b)(ii). Therefore, now after the retirement and where after adding up the increments in the fixing of pension, the same cannot be reversed because the failure was on the part of the employer and not on the part of the employee and it is held that the petitioner was entitled for the grant of annual increments as above.

17. So far as the third issue involved in the present case with regard to release of the pensionary benefits is concerned, in view of the answer to the aforesaid two issues, the petitioner is certainly entitled to release of all the pensionary/retiral benefits from the date it accrued till the time it is to be disbursed along with interest.

18. There is another important issue involved in the present case that after the retirement of the present petitioner, the petitioner was served with a charge-sheet after about three years on the ground that because of the fact that she did not represent for passing of the typing test and the allegations were of unbecoming of a public servant. It is very strange that after the retirement of the petitioner after about three years such kind of charge-sheet was issued which was although dropped but the aforesaid action of the respondent-Nigam in issuance of charge-sheet is also not proper and it would amount to an oppressive exercise.

19. In view of the aforesaid facts and circumstances, the present petition is allowed. It is held as follows:-

(i). The respondents are restrained from making any kind of recovery from the petitioner on account of the grant of annual increments to the petitioner.

(ii).The petitioner would be entitled for the benefit of annual increments granted to her at the time of fixation of her pension and all the consequential benefits flowing therefrom.

(iii).The respondents are directed to release all the pensionary and retiral benefits to the petitioner along with interest @ 6% per annum (simple) within a period of four months.

(iv).In case, the aforesaid amount is not paid to the petitioner within a period of four months from today, then the petitioner shall be entitled to future interest @ 9% per annum instead of 6% per annum (simple).

(v).The petitioner shall also be entitled to costs which are assessed as Rs.20,000/- which shall also be paid within a period of four months.

27.02.2024 **(JASGURPREET SINGH PURI)**
Bhumika **JUDGE**

1. Whether speaking/reasoned: Yes/No
2. Whether reportable: Yes/No