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

CWP-10812-2018 (O&M)
Date of Decision : 07-08-2024

RAMAN KUMAR AND ANR.

........Petitioner(s)

VERSUS

STATE OF PUNJAB AND ORS

........Respondent(s)

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Sidhharth Gupta, Advocate
for the petitioners.

Mr. Satnampreet Singh Chauhan, DAG Punjab.

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<u>HARSIMRAN SINGH SETHI, J. (Oral)</u>

In the present petition, the grievance being raised by the petitioners is that the increment which was granted to the petitioners upon being appointed to the post of Clerk, are being withdrawn on the ground that until the petitioners pass the English and Punjabi type test, they cannot be granted the benefit of increment.

Learned counsel for the petitioners submit that the petitioners were recruited by the respondents on the post of Clerk on compassionate grounds. After the appointment the petitioners were given the benefit of the pay scale including the increment every year. Thereafter, by the impugned order dated 04.12.2017, copy of which has been appended as Annexure P-11, the respondents decided that as the petitioners have not passed the

English and Punjabi type test, the grant of annual increment was incorrect and therefore, the same should be withdrawn and the payment of the excess amount to them should also to be withdrawn. As per the respondents, the increment was only to be granted from the date the type test is passed by the petitioners.

Learned counsel for the petitioner argues that though the petitioners were appointed on compassionate ground with the respondents in the year 2012, they were never asked to undergo the type test at any given point of time. Learned counsel for the petitioner submits that there was not even a condition mentioned in the appointment order that passing of the English and Punjabi type test is compulsory so as to get the annual increment and therefore, without giving any opportunity to pass the type test, the benefit of increment was not only withdrawn but even the recovery was the excess amount of ordered.

Learned counsel submits that thereafter, the petitioners asked the respondents to conduct a type test for them and the petitioner No.2 cleared both the English as well as Punjabi type test in the first attempt whereas petition No.1 cleared the English type test but was declared fail in the Punjabi type test. Thereafter, the petitioner again appeared in the Punjabi type test which he cleared and thereafter applied for rechecking of the Punjabi type test paper which the petitioner No.1 had given initially and upon rechecking, he was also declared passed in the said examination, which fact is cleared from Annexure P-15 hence, once the petitioners have cleared Punjabi and English type test in the first attempt offered to them, the withdrawal of the increment or the grant of increment only from the date of the passing of the type test or the recovery to be done from them is arbitrary and illegal.

Learned counsel for the respondents on the other hand submits that for being appointed on regular basis on a Class-III post of a Clerk, an employee has to pass English as well as Punjabi type test. Learned counsel submits as the petitioners have been appointed on compassionate ground, there was no condition put in their appointment order but under the Rules, the petitioners were liable to clear the type test and therefore, only from the date the petitioners cleared the type test, they are to be allowed increment and not for the period when they did not pass the same and therefore, the order (Annexure P-11) by which, the increment was not granted to the petitioner before they had not passed the type test, is perfectly valid and legal and even the recovery of the excess amount is in accordance with law.

I have heard learned counsel for the parties and have gone through the records of the present case with their able assistance.

It is a matter of fact that both the petitioners were appointed on compassionate grounds. It is also a conceded fact that when the petitioners were appointed on the post of Clerk, there was no condition imposed by the petitioners that they are to pass the type test in order to be eligible for the grant of annual increment. Once, there was no condition of passing of the type test and the respondents on their own granted the benefit of increment, it cannot be said that the grant of the said benefit was in any way contrary to the terms and conditions of the appointment.

With regard to the assertion of the learned counsel for the respondents that under the Rules, a Clerk has to pass the type test in English and Punjabi, it may be noticed that on the first opportunity given to the petitioners to pass the same, they have done it. It is not the case of the respondents that the petitioners after joining in the year 2012, failed in the type test. Once, no opportunity was offered to the petitioner No.1 to pass the type test, and on the first opportunity given, the petitioner No.1 cleared the same, the respondents could not have withdrawn the annual increment granted to the petitioners starting from the date of their initial appointment.

Keeping in view the facts and circumstances of the present case, as both the petitioners have already passed the type test on first opportunity offered to them, the petitioners are held entitled for the grant of annual increment from the date of initial appointment with all consequential benefits. The impugned order dated 04.12.2017 (Annexure P-11) is set aside.

In view of the present order, it is directed that no recovery of any amount be done from the petitioners and rather the petitioners be allowed all the increments from the date of their initial appointment along with arrears, if any.

Present petition is allowed.

Pending application, if any, also stands disposed off.

07-08-2024
Sapna Goyal

(HARSIMRAN SINGH SETHI)
JUDGE

NOTE: Whether speaking : YES/NO
Whether reportable: YES/NO