

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CWP-27710-2019 (O&M)
Date of Decision :14.02.2024

Nar Singh

...Petitioner

Versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Rakesh Nagpal, Advocate for the petitioner.

Mr. Harish Rathee, Senior DAG, Haryana.

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Harsimran Singh Sethi, J. (Oral)

1. In the present petition, challenge is to order dated 28.05.2019 (Annexure P/11) passed by the respondents by which, claim of the petitioner for the refund of the recovered amount as well as grant of annual increment has been rejected.

2. As per the averments made in the present petition, the petitioner was promoted to group-C post of Clerk from the group-D post of Mali vide order dated 01.03.2012 (Annexure P/3) and he started working on the post of clerk without there being any blot in his service. After a period of 04 years of service, the respondents decided to recover the amount of increment which the petitioner had been granted after his promotion to the post of clerk on the ground that he had not passed the type test. In the meantime, the petitioner applied for voluntary retirement, which benefit was

allowed in his favour. Though, the petitioner had retired from service on 16.11.2016 w.e.f. 31.12.2016 copy of which has been appended as Annexure P/7 but his pensionary benefits were withheld by the respondents and he was forced to deposit the amount of increment, which he had got after his promotion to the post of clerk starting from year 2012 onwards so that his pensionary benefits could be released. In the petition, it has been mentioned that the petitioner did not have any other option but to deposit the said amount of increment of Rs.66,522/- as directed by the respondents.

3. After the retirement, the petitioner has filed the present petition on the ground that he is entitled for the benefit of increment despite the fact that he had not passed the type test and further that recovery which has been done from the petitioner qua the increment which had been granted to him after his promotion to the post of clerk starting from year 2012 onwards, is bad in the eyes of law.

4. Learned counsel for the petitioner argues that even otherwise without giving any opportunity of hearing, no recovery could have been done from the petitioner but in the present case, pensionary benefits of the petitioner were withheld by the respondents and the petitioner was forced to deposit the said amount, which act on the part of the respondents is totally arbitrary and illegal.

5. Learned counsel for the respondents submits that once, while working on the post of clerk, the petitioner had not passed the type test, he was not entitled for the benefit of increment, which benefit was wrongly extended to him and the same was rightly recovered from him and as the petitioner had not passed the type test, his claim for the grant of increment is not maintainable and the same may kindly be rejected.

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

7. A bare perusal of the order by which, the petitioner was promoted from the post of Mali to that of Clerk shows that no condition of passing the type test was imposed upon the petitioner and during the service tenure of the petitioner, he was never asked by the respondents to appear in the type test so as to clear the same. Once, the petitioner was not given any opportunity to pass the type test after his promotion to the post of Clerk, the increment which has been granted to the petitioner, could not have been withdrawn on the ground that he had not passed the type test.

8. Even otherwise, recovery could not have been done without giving due opportunity of hearing to the petitioner. Further, it has already come on record that no such opportunity was granted to the petitioner before recovering the amount of increment of Rs.66,522/-, which was already paid to petitioner starting from year 2012. It is a settled principle of law settled by the Hon'ble Supreme Court of India in **Civil Appeal No.9417-2019** titled as *M/s Daffodils Pharmaceuticals Ltd. and another vs. State of U.P. and another* decided on 13.12.2019 and *Chamoli District Co-operative Bank Ltd through its Secretary/Mahaprandhak and another vs. Raghunath Singh Rana and others*, 2016(12) SCC 204, decided on 17.05.2016 that no order causing prejudice to an employee can be passed without giving him/her due opportunity of hearing.

9. Keeping in view the facts and circumstances of the present case coupled with the settled principle of law, action of the respondents in withdrawing the increment from the petitioner, which he had granted after his promotion to the post of clerk as well as recovery of the said amount is

held to be bad in the eyes of law and the same cannot be sustained.

10. At this stage, learned counsel for the respondents submits that the petitioner himself had deposited the said amount of increment of Rs.66,522/-which he had got after his promotion to the post of Clerk starting from year 2012 hence, once the petitioner voluntarily deposited the said amount, no fault can be attributed to the respondents.

11. It is very surprising that petitioner was aware as to how much amount he was supposed to deposit. Further, no employee will deposit the amount unless and until directed by the department concerned. In the present case, even after voluntary retirement of the petitioner, his pensionary benefits were not released by the respondent-department and it was only after depositing the said amount of increment, pensionary benefits were released to the petitioner hence, contention of the learned counsel for the respondents that petitioner himself had deposited the said amount cannot be accepted

12. Keeping in view the facts and circumstances recorded hereinbefore, the petitioner is held entitled for the grant of increment during the period he worked to the post of clerk upto the date of his voluntary retirement in the peculiar facts and circumstances of the case as no type test was ever taken by the respondents. Even qua recovery, the same is held to be bad keeping in view the settled principle of law settled by the Hon'ble Supreme Court of India in **State of Punjab and others Vs. Rafiq Masih (White Washer) etc., 2015(1) S.C.T., 195** wherein, it has been held that no recovery can be done from Class-III and Class-IV employees. Hence, respondents are directed to refund the amount, which was got deposited by the petitioner within a period of 08 weeks from the date of receipt of copy

of this order.

13. As this Court has held the present case an exceptional case, the petitioner is entitled for the grant of increment despite non-passing of type test as the said type test was never conducted by the respondents during his service tenure therefore, increment granted by the respondents to the petitioner on his promotion to the post of Clerk is restored. Let the pensionary benefits of the petitioner be recalculated and petitioner will also be entitled for the grant of arrears of pensionary benefits including arrears of pension for which, the petitioner is found entitled for, after adding the said increment to his pay.

14. Let the present order be complied with within a period of 08 weeks from the date of receipt of copy of this order.

15. Present petition stands allowed in above terms.

16. Civil Miscellaneous application pending if any is also disposed of.

February 14, 2024
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(HARSIMRAN SINGH SETHI)
JUDGE

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