



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

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CWP-36781-2019 (O&M)

Date of Decision : 22.08.2024

Manpreet Singh**.. Petitioner****Versus****State of Punjab and another****.. Respondents****CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI**

Present: Mr. Shiv Kumar, Advocate and
Mr. Raman Kaplish, Advocate for
Mr. Lovedev Singh, Advocate
for the petitioner..

Mr. Charanpreet Singh, AAG, Punjab.

HARSIMRAN SINGH SETHI J. (ORAL)

1. In the present petition, the the grievance of the petitioner is that the petitioner was appointed as a Driver with respondent No.2 on 18.12.1998 (Annexure P-1). While performing the duties of the Driver, the petitioner met with an accident due to which, he could not perform the duties of the Driver and keeping in view the provisions of "The Persons with Disabilities (Equal Opportunities, Protection of Rights And Full Participation) Act, 1995, the petitioner was adjusted as a Clerk and was posted at Mohali on 02.06.2008 (Annexure P-2). While adjusting the petitioner as a Clerk, the respondent had put a condition that petitioner has

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to pass the type test and till he passess the type test, he will not be granted increment. The petitioner made a representation to the respondent that the petitioner has only been adjusted as a Clerk keeping in view the disability he suffered and, therefore, he cannot be made to undergo a type test, which is otherwise impossible to clear and as the petitioner was disabled, he was also entitled for exemption from passing of the type test. The said request, remained pending for a period of ten years and exemption was granted to the petitioner from passing the type test on 10.03.2018 vide memo No. A-1/S-3/4622/3592A dated 20.03.2018 ((Annexure P-4). The grievance of the petitioner is that once the exemption was been granted to the petitioner from passing the Typing test, he is entitled for the grant of increment from the date he is discharging the duties of the post of Clerk, which benefit is not being granted to him as the respondent, passed an order dated 15.02.2019 (Annexure P-5) granting the petitioner the benefit of increment but notionally without arrears, which action of the respondents is under challenge in the present petition.

2. Upon notice of motion, the respondents have filed the reply, wherein the respondents have stated that once while adjusting the petitioner as a Clerk, a condition was put that the petitioner will clear the type test and then he will be entitled for the increment, till the petitioner was exempted from the said condition in the year 2018, he was not entitled for any increment though, subsequently the increments have been granted but notionally, which order has been prefectly passed.

3. I have heard learned counsel for the parties and have gone



through the record with their able assistance.

4. Keeping in view the facts and circumstances which have been mentioned hereinabove, it is clear that the petitioner was initially appointed as a Driver and as he had met with an accident while performing the duties of the post of Driver, and became disable, therefore he was adjusted as a Clerk. Once the petitioner was adjusted as a Clerk due to the disability suffered, the respondents should not have put a condition of passing of the type test, which is only mandatory for direct recruitment and promotion.

5. Though, the respondents granted the petitioner the benefit of exemption from passing the type test on 20.03.2018, but the increments for the period the petitioner discharged the duties of the post of Clerk were only given on notional basis which is arbitrary and illegal. Once, a benefit of exemption from passing the type test has been granted to the petitioner, the same has to relate back to the period when the petitioner was adjusted as a Clerk keeping in view the facts and circumstances of the present case, especially when the respondent should have not put the said condition of passing of the type test when the petitioner was adjusted against the post of Clerk being a disabled person. Once, the petitioner has actually worked on the post of Clerk, he is entitled for the grant of increment along with arrears after the respondent themselves realised their mistake and granted exemption to the petitioner from passing of the type test.

6. The impugned order dated 15.02.2019 (Annexure P-5) only giving the notional benefit of increment is set aside and further the petitioner is held entitled for the grant of increment along with arrears, for



the period he discharged the duties of the post of Clerk.

7. As benefit of increment was wrongly denied to the petitioner and the amount of arrears which the petitioner would have got as increments was kept by the respondents in an arbitrary manner, therefore keeping in view the judgment of the Coordinate Bench in **CWP-15861-2001** titled as **“J.S. Cheema Vs. State of Haryana”** decided on 20.11.2013, wherein it has been held that when an amount belonging to employee has been retained and used by the department, the employee has become entitled for interest. The relevant paragraphs of the said judgment is as under :-

“5.The jurisprudential basis for grant of interest is the fact that one person's money has been used by somebody else. It is in that sense rent for the usage of money. If the user is compounded by any negligence on the part of the person with whom the money is laying it may result in higher rate because then it can also include the component of damages (in the form of interest). In the circumstances, even if there is no negligence on the part of the State it cannot be denied that money which rightly belonged to the petitioner was in the custody of the State and was being used by it.”

8. Therefore, the petitioner is held entitled for interest @ 6% per annum on the arrears from the date the said amount became due till the actual realisation of the same.

9. At this stage, learned counsel for the petitioner submits that the petitioner is also entitled for promotion. On being asked, as to whether any junior has been promoted, learned counsel for the petitioner has not been able to substantiate that any junior to the petitioner has been promoted. In

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the absence of any such record before this Court, no direction can be given qua promotion of the petitioner.

10. Learned counsel for the petitioner further submits that as the petitioner was not being given increment, his ACP has also not been granted though, the petitioner was working on the post of Clerk since the year 2008. Once the petitioner is working on the post of Clerk since the year 2008, he is entitled for the grant of ACP in case, he has not been granted promotion. Hence, the respondents are directed to decide the claim of the petitioner with regard to the grant of ACP on completion of 4 years, 9 years and 14 years of service. Let this consideration be also undertaken by the respondent and finally be decided within a period of eight weeks from the date of receipt of the certified copy of this order and whatever the benefit the petitioner is found entitled for on this account also, be also released to him within a period of eight weeks on the finalization of the consideration.

11. Present petition is allowed in the above terms.

12. All pending applications, if any, stand disposed of accordingly.

22.08.2024*Satyawan***(HARSIMRAN SINGH SETHI)****JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No