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

LPA-1254-2023 (O&M)
Date of Decision:23.01.2025

STATE OF HARYANA AND OTHERS

.....Appellant(s)

V/s.**RAJENDER SINGH**

.....Respondent(s)

CORAM: **HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA**
 HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Present: Mr. Sanjeev Kaushik, Addl. A.G., Haryana,
 for the appellant.

Mr. S.K. Verma, Advocate for the respondent.

SANJEEV PRAKASH SHARMA, J. (Oral)

CM-3217-LPA-2023

For the reasons mentioned in the application, the same is allowed and delay of 139 days in filing the appeal is hereby condoned.

LPA-1254-2023 (O&M)

1. This LPA is preferred against the judgment passed by the learned Single Bench dated 09.02.2023, whereby the learned Single Bench has, after taking into consideration the fact that the respondent (Petitioner in the Writ Petition) had attained superannuation on 30.11.2014, the State has proceeded to revise his pay and accordingly revised his pension and retiral benefits, to be bad in law.

2. Learned counsel for the appellant-State submits that the approach adopted by the learned Single Judge was erroneous. It is an admitted position that the respondent, after having been promoted to the post of Clerk 26.10.2004, could not have been granted the annual increments as he had not qualified type test in Hindi within one month



from the of his joining. The respondent was, however, wrongfully granted the increments and his pay fixation was done accordingly which was required to be revised and his pension was also required to be revised accordingly.

3. Learned counsel further submits that the view taken by the learned Single Bench of the exercise of power of relaxation under Rule 17 of the Punjab Jail Department Clerical and Technical (State Service Class-III) Rules, 1962 (hereinafter referred to as “the Rules”) was without any basis as there was no order passed by the Department for relaxing the condition of passing the type test.

4. We have considered the submissions.

5. As per the facts stated by the appellant-Stated, respondent was appointed as a Class IV employee on 12.08.1981. In the year 2002, he met with an accident and received injuries making him 30% permanently disable due to Ankylosis Wrist of right hand and was unable to do writing work. He was promoted to the post of Clerk on 26.10.2004 on the basis of his seniority. He was, thereafter, granted annual increments on the post of Clerk from time to time.

6. The respondent filed a Writ Petition as even after his promotion on 26.10.2004, he was not granted the benefit of 3rd ACP on completion of 30 years of service. In response, the State filed the reply that due to wrong increments on the promoted post, the pay of the respondent was to be re-fixed and thereafter, pension case and other entitlements were to be calculated.

7. The respondent preferred Writ Petition bearing No. CWP-14162-2015, which was dismissed as withdrawn with liberty to the



petitioner to file a representation. The appellant No.2 has passed a speaking order dated 02.02.2016 on the representation of the respondent. The respondent filed a fresh Writ Petition bearing No. CWP-28937-2019 wherein the impugned order dated 09.02.2023 was passed by the learned Single Bench.

8. The facts as noticed above are apparent. A person, who has suffered 30% disability on account of injury to his wrist and is unable to write properly, cannot be expected to pass or even attempt a typing test. The power of relaxation, vested under Rule 17 of the Rules, is available with the State. The action of the Department in granting annual increments from time to time to the respondent reflects that the relaxation was already granted. He attained the superannuation and was claiming retiral benefits including the benefit of 3rd ACP.

9. In the circumstances, to go back to his record and state that he was not even entitled to the annual increments, is an attempt to deprive him of his rightful claims. Once the respondent had already retired from service without giving him a fair opportunity of hearing, his pay fixation could not have been revised. His retiral benefits were also required to be given and if he has completed 30 years of uninterrupted service on the same post, he would also be entitled for the ACP.

10. The appellant-State, however, has re-fixed the salary of the respondent vide order dated 29.07.2015, lowering down his pay and allowances and has released his pension and the retiral benefits accordingly in the year 2018.

11. We find that the approach adopted by the appellant-State is grossly illegal and unjustified. A person who has suffered disability while



in service, was entitled to be treated with more compassion. He was entitled to be given his dues after he had attained superannuation and there was no occasion to revise his pay vide order dated 29.07.2015. We notice that the said order has been passed even without giving him an opportunity of hearing. The order has to be, therefore, *void ab initio* and the same deserves to be declared so.

12. While upholding the order dated 09.02.2023 passed by the learned Single Bench in CWP-28937-2019, we further direct the appellant-State to re-fix the salary of the respondent as he was drawing last pay drawn and re-fix his pension with retiral benefits accordingly ignoring the order passed by them on 29.07.2015 after the respondent had retired. He was also be entitled to interest on the delayed payment of pension and retiral benefits. The exercise shall be conducted by the appellant within three months henceforth.

13. The appeal is accordingly **dismissed** with the aforesaid observations.

14. All pending applications in this case are disposed of accordingly.

[SANJEEV PRAKASH SHARMA]
JUDGE

[MEENAKSHI I. MEHTA]
JUDGE

January 22, 2025

Ess Kay

Whether speaking / reasoned	:	Yes	/	No
Whether Reportable	:	Yes	/	No