

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No.649 of 2020

Decided on: 01st October, 2026

Umesh Kumar

...Petitioner

Versus

State of H.P. and another

...Respondents

Coram

Hon'ble Mr. Justice Jiya Lal Bhardwaj, Judge

*Whether approved for reporting?*¹

For the petitioner: Mr. P.K. Verma, Advocate.

For the respondents: Mr. Anup Rattan, Advocate General
with Mr. Hemant Kumar Verma,
Deputy Advocate General.

Jiya Lal Bhardwaj, Judge *(Oral)*

By way of present petition, the petitioner has
prayed for the following substantive relief:-

"A. That this Writ Petition may kindly be allowed and the impugned order dated 24.1.2020 may kindly be quashed and set aside and the order or pay fixation dated 23.4.2018 may kindly be ordered to be upheld."

2. Shorn of unnecessary details, the key facts of the case are that the petitioner was appointed as Clerk with the respondent-Department on 09.09.1988 and was promoted to the post of Junior Assistant in the year 1996. Thereafter, he was

¹ *Whether reporters of Local Papers may be allowed to see the judgment?*

promoted to the post of Senior Assistant in the year 2009. As per Notification dated 09.08.2012 (Annexure P-1), the Government introduced the new Assured Career Progression Scheme (in short, "ACPS") granting the benefit to its employees on completion of 4, 9 & 14 years of service in a cadre and restoration of old (8-16-24-32) ACPS. The employees who had opted for new ACPS, applicable w.e.f. 27.08.2009 and had completed 9 or 14 years of regular service from the date of entry into Government service on or after 27.08.2009 in the same post and gained only one or two financial upgradations as on 27.08.2009, their cases for grant of benefit under new ACPS were to be considered. It has been averred that the petitioner had laid his claim before respondent No.2 since he was getting less pay to his junior w.e.f. 01.03.2007 and submitted that as per FR 22(I)(a)(1), in case, a junior is getting higher pay, the pay of the senior has to be stepped up and he cannot be given less pay. The claim of the petitioner came to be rejected on the ground that as per paras 4(g) and (h) of the Notification dated 09.08.2012, the petitioner is not entitled to step up his pay.

3. The petitioner feeling aggrieved by the said action, had approached the Himachal Pradesh State Administrative Tribunal (in short "Tribunal") by way of Original Application No. 4361 of 2017, praying therein to allow him to extend the benefit of new ACPS w.e.f. 01.03.2007 and the said OA was disposed of on 11.09.2017 with a direction to respondent No.2 to consider and decide the representation dated 06.03.2014.

4. In sequel to the direction given by the Tribunal, the Assistant Commissioner to respondent No.2, passed an office order on 23.04.2018 (Annexure P-5) in continuation of order dated 06.04.2018, passed by the Divisional Commissioner, Shimla, pay fixation of the petitioner dated 26.02.2014 was rescinded and the pay of the petitioner was re-fixed in supersession to the earlier order dated 06.03.2018.

5. However, later on it was found that the petitioner, who was appointed as Clerk on 09.09.1988 was awarded Senior Scale on 09.09.1993. Further, when he was promoted as Junior Assistant on 14.08.1996, his pay was raised and thereafter a further increase was made in his pay as on 01.03.1998 on

account of removal of pay check against Shri Yashwant Singh. Thereafter, he was granted the ACP benefit under old 8-16-24-32 ACP Scheme on 01.03.2006 (after completion of 8 years of service) raising his pay. He was further promoted as Senior Assistant on 13.08.2009, raising his pay, whereas as per Notification dated 09.08.2012, issued by the Department of Finance to the Government of H.P., new ACPS 4-9-14 was introduced w.e.f. 27.08.2009 and vide further clarifications dated 07.07.2014, 09.09.2014 and 03.11.2016, it was clarified that the benefit under new ACPS shall be allowed in the span of first 14 years of regular service. As per ibid Notifications, it was clarified that the benefit under new ACPS shall be given to only those employees, who have received two or less benefits as on 26.08.2009, whereas the petitioner had already got five enhancements as on 26.08.2009 and, therefore, the petitioner was issued a memo dated 23.09.2019 (Annexure P-6) to submit his reply and why the earlier order dated 23.04.2018 be not withdrawn.

6. The petitioner submitted reply to memo dated

23.09.2019 and after receipt of reply dated 30.09.2019, a fresh order was passed on 24.01.2020 (Annexure P-8), whereby the earlier order dated 23.04.2018 was withdrawn and the benefit of new ACPS granted to the petitioner was withdrawn, observing that the benefit under new ACPS shall be given to only those employees, who have got two or less benefits as on 26.08.2009, whereas the petitioner had got five enhancements as on 26.08.2009. It was further observed that since the case of the petitioner was not decided as per Rules and the fixation order made vide office order dated 23.04.2018 was not in accordance with the Rules, the same is withdrawn with immediate effect.

7. The petitioner feeling aggrieved by the said order dated 24.01.2020 (Annexure P-8) passed by respondent No.2, has approached this Court *inter alia* on the ground that the action on the part of the respondents in not granting new ACPS to the petitioner as on 01.03.2007 is without application of mind and in violation of principles of natural justice.

8. It has further been averred that the action on the part of the respondents is discriminatory in nature, as the

benefit under FR 22(I)(a)(1) has not been extended to the petitioner as his juniors are drawing more pay as compared to him. As per paras 4(g) and (h) of the Notification dated 09.08.2012, relating to grant of benefit of 4, 9 and 14 years under new ACPS, it clearly shows that the benefit has to be allowed in a span of first 14 years of regular service from entry level. The date of entry into Government service is relevant for determining the service career for the purpose of new ACPS. Since the respondents have acted contrary to the Notification and the junior to the petitioner has been allowed the benefit of financial upgradation w.e.f. 01.03.2007 on completion of 9 years of service, the denial of the benefit to the petitioner is patently illegal and cannot be sustained in the eyes of law. Respondent No.2 has wrongly interpreted the provisions of new ACPS and further wrongly applied in the case of the petitioner. The action on the part of the respondents to withdraw the benefits after two years of issuance of the order dated 23.04.2018 cannot be allowed to be withdrawn and as such the impugned order dated 24.01.2020 deserves to be quashed and set aside.

9. The respondents filed reply to the petition and in preliminary submissions averred that the order dated 24.01.2020 (Annexure P-8) has been passed by respondent No.2, whereby the earlier order dated 23.04.2018 (Annexure P-5) granting the benefit of 4 and 9 years under the new ACPS as Senior Assistant has been withdrawn on the ground that this benefit was granted by the Assistant Commissioner to Deputy Commissioner, Sirmaur, who was not competent to grant these benefits and that too without the approval of the appointing authority i.e. respondent No.2. It has further been averred that the petitioner was a Senior Assistant on the date of issuance of new ACPS dated 09.08.2012 and on the date of application of new ACPS on 27.08.2009. The new ACPS dated 09.08.2012 and clarifications dated 26.02.2013, 07.07.2014, 09.09.2014 and 03.11.2016, vide Annexures R-3 to R-7 respectively were issued, which provide that an employee shall be entitled to three placements in the next higher scale in the hierarchy of grade pay, with benefit of one increment each of earlier placement under this scheme, subject to the rider that the benefits of 4-9-

14 years under the new ACPS would be given, in case, the employee not gained any financial upgradations earlier. Since the petitioner had already been granted three upgradations in his service career, he is neither eligible nor entitled for further upgradations beyond the maximum three upgradations admissible under the new ACPS dated 09.08.2012 and clarifications issued thereafter. Accordingly, the order dated 23.04.2018 was given under the new ACPS and clarifications issued thereunder after due notice dated 23.09.2019 (Annexure R-8) to the petitioner, to which a reply was received and thus the benefits given under this scheme were rightly withdrawn on 24.01.2020. It has also been averred that the petitioner was granted ACPS benefits as Senior Assistant on completion of 4-9 years of service as Senior Assistant though debars the new scheme and clarifications issued thereunder by an incompetent officer. His representation was considered and found that the petitioner has wrongly been granted the benefit, which has rightly been withdrawn.

10. On merits, it has been averred that in the service

book of the petitioner and his junior, namely Sh. Yashwant Singh, pay of both the officers was fixed on 01.03.2007 at Rs.12,060/- + Rs.3,000/- instead of Rs.11,620/- + Rs.3,000/-. The claim of the petitioner for removal of anomaly has been rejected in terms of Finance Department letter dated 09.08.2012 [Item 4(g) and (h)], which states that no step up of pay is admissible to a senior with regard to his junior getting more pay on account of pay fixation under this scheme and Finance Department letter dated 26.02.2013 (Annexure R-4). It has further been averred that the benefit under new ACPS shall be given to only those employees, who has got two or less benefits as on 26.08.2009, whereas the petitioner had got five enhancements as on 26.08.2009 and, therefore, he is not entitled for further ACPS benefits and as such prayed for dismissal of the petition.

11. I have heard the learned counsel for the parties and also perused the record carefully.

12. Learned Advocate General has vehemently argued that the petitioner is not entitled to the relief once he has been granted the benefit of five enhancements as on 26.08.2009.

However, the said contention cannot be accepted for the reason that as per the reply filed by the respondents, the petitioner has been granted the benefit of these five enhancements after awarding Senior Scale, raising his pay on 09.09.1993, which cannot be termed as financial upgradation, so as to deny the benefit of financial upgradations under the new ACPS and thereafter promoted as Junior Assistant on 14.08.1996, raising his pay, which was subsequently increased as on 01.03.1998 on account of removal of pay check against Sh. Yashwant Singh. Thereafter, he was granted benefit of ACPS under old 8-16-24-32 Scheme on 01.03.2006, raising his pay, and thereafter promoted as Senior Assistant on 13.08.2009.

13. A similar issue had come up before this Court in CWPOA No.5536 of 2020, titled ***Sanjay Kumar vs. State of H.P. and others*** and connected petitions, decided on 01.11.2023, when the Division Bench of this Court has succinctly dealt with the issue and came to the conclusion that financial upgradation, if any, on account of pay revision or grant of grade pay cannot be a ground to deny benefit under new ACPS. The relevant

paras of the judgment read as under:

"9. Now question which needs to be determined in the instant proceedings as to "whether pay revision or grant of grade pay vide order dated 1.10.2012 can be termed to be a financial upgradation so as to deny the benefit of financial upgradation under ACPS.

10. Careful perusal of communication dated 7th July 2014 whereby old ACP scheme came to be replaced by new ACPS, clearly reveals that annul increment or general pay revision shall not be considered as financial upgradation for the purpose of benefit, if any, under ACPS. If it is so, there appears to be merit in the claim of the petitioners that they are entitled to the benefit of third financial upgradation after their having completed 14 years of service. At this stage, it would be apt to take note of para-5 of the afore letter, which reads as under:-

"Moreover, the overriding objective on an assured career progression scheme is to ensure at least three financial up-gradations/ enhancements/ promotions to a regular employee in his entire service career. Therefore, in partial modification of earlier orders on ACP schemes it is directed that, once an employee has already got three enhancements / financial up-gradations i.e. grant of progression under the new or old ACPS or promotion or any other financial enhancement except the annual increment or the general pay revision based on the pay commission, in fourteen years or more his/her entire service., thereafter, he will not be entitled for placement in next higher grade pay in the ACPS Scheme introduced vide FD's instructions dated 9th August 2012. However, it is clarified that after availing three enhancements /upgradation/ promotion, an employee will be eligible to take the benefit of normal promotions available in his service career."

11. Careful perusal of aforesaid instructions clearly reveals that an employee is granted three enhancements/upgradations/promotion, he/she shall not be

eligible for grant of further benefit, if any, under ACPS, but in the case at hand, petitioners after being appointed as JBT though were given two benefits of financial upgradation under ACPS, first benefit was granted under old ACPS after their having completed eight years service, whereas second benefit was granted in their favour after their having completed nine years service under new ACPS and third benefit in terms of new ACPS, for which petitioners have already opted, is being denied on the ground that vide order dated 26.02.2013 grade pay of the petitioners has been enhanced w.e.f. 1.10.2012. However, as observed hereinabove, financial upgradation, if any, on account of pay revision/revision of grade pay cannot be a ground to deny benefit of financial upgradations under ACPS, which become due after completion of four, nine and fourteen years as per new ACPS. Though, it has been vehemently argued on behalf of the respondents/State that grade pay of the petitioners was enhanced, as a result of which, their pay was enhanced, but as has been taken note above, financial enhancement on account of annual increment or general pay revision, based on pay commission, is not to be considered while considering the case of an employee for grant of benefit of ACPS. Since, in the case at hand pay of the petitioners came to be enhanced on account of grant of grade pay, benefit of financial upgradation in terms of provision contained under ACPS cannot be denied.

12. True, it is that careful perusal of communication 26.02.2023, which has been relied heavily by the respondents, suggests that a government employee after rendering service of 4, 9 and 14 years in a post or posts without any financial enhancement in the same cadre/post, if not promoted to higher level on account of non availability of a vacancy or non-existence of promotional avenue in the cadre, shall be granted the grade pay, which is next higher in the hierarchy of grade pay given in the schedule annexed to Revised Pay Rules, 2009 upto maximum grade pay of Rs.8900/- and on placement in the next higher grade pay in the hierarchy of grade pays after service of 4, 9 and 14 years, but such benefit of re-revision of

pay shall be treated as financial enhancement for the purpose of granting benefit under 4-9-14 and 8-16-24-32 but there is nothing to dispute that vide notification dated 7th July 2014 (Annexure P- 5), it specifically came to be clarified that once an employee has already got three enhancements/ financial up-gradations i.e. grant of progression under the new or old ACPS or promotion or any other financial enhancement, except the annual increment or the general pay revision based on the pay commission, in fourteen years or more during his/her entire service will not be entitled for placement in next higher grade pay in the ACP Scheme introduced vide instructions dated 9th August 2012. It is quite apparent from perusal of aforesaid letter that financial upgradation, if any, on account of pay revision cannot be a ground to deny benefit under ACPS. Since pay of the petitioners came to be enhanced on account of enhancement in grade pay, benefit of financial upgradation in terms of ACPS cannot be denied.

13. *Consequently, in view of the discussions made hereinabove, this Court finds merit in the instant petitions and accordingly same are allowed. Office order dated 3.08.2018 (Annexure A-8) is quashed and set aside and the respondents are directed to consider the case of the petitioners for grant of financial upgradation under ACPS (4-9-14) time scale/enhancement after their having completed 14 years of service at par with their counterparts from the due date. Since petitioners have been fighting for their rightful claim for years together, this Court hopes and trusts that needful shall be done in terms of the directions contained in the instant judgment expeditiously, preferably within a period of six weeks. Pending applications, if any, also stands disposed of."*

14. Learned Advocate General has further vehemently argued that since the petitioner has not laid challenge to the Notification dated 09.08.2012, the relief cannot be extended to him. However, the said contention cannot be accepted in view of

the authoritative judgment passed by the Division Bench of this Court referred to above in ***Sanjay Kumar's*** case (supra), wherein it has been held that the pay revision or grant of grade pay can't be termed to be a financial upgradation, so as to deny the benefit of financial upgradation under ACPS and thus the said contention is rejected.

15. The petitioner has been denied the relief of new ACPS on two grounds, firstly, on the ground that the earlier order was passed by an officer, who was not competent to pass the order and secondly, the petitioner has been granted five enhancements and, therefore, he is not entitled to the benefit of new ACPS.

16. So far as the first contention is concerned, the respondents are right in saying that the order which was earlier passed, was by an incompetent officer. But if the said order is perused, the petitioner has been granted the benefit of new ACPS for the reason that he was entitled to the same as per the Notification dated 09.08.2012 and once this Court has already considered the said Notification and found that the benefit on

account of pay revision or grant of grade pay cannot be a ground to deny benefit under new ACPS, the order subsequently passed, which has been assailed by way of present petition, is de hors the scheme of the Notification and thus the impugned order is bad in law.

17. So far as the second submission is concerned, the said submission can also not be accepted in view of the judgment passed by the Division Bench of this Court in ***Sanjay Kumar's*** case (supra) and, therefore, the impugned order dated 24.01.2020 under challenge, which was passed by taking the view that the petitioner once having been granted five enhancements, is not entitled to the benefit of the new ACPS, is illegal, arbitrary and unconstitutional and as such the same is quashed and set aside.

18. Learned Advocate General has also placed reliance upon the judgment passed by the Division Bench of this Court in LPA No.188 of 2022, titled, ***Ravi Kumar Vaid vs. State of Himachal Pradesh and others***, to contend that once the petitioner has already been granted the five enhancements, he

is not entitled to the benefit under new ACPS. However, if the said judgment is perused, the Court had come to the conclusion that in case the person has been granted three enhancements/financial upgradation/promotions, under the old ACPS, he was rightly held not entitled for fourth financial upgradation. However, in the present case, the petitioner was not granted three financial upgradations, when the new ACPS was introduced and, therefore, the said decision is not applicable to the facts of the present case. The earlier decision rendered in ***Sanjay Kumar's*** case (supra) is applicable in all four since this Court has returned findings that financial upgradation, if any, on account of pay revision or grade pay cannot be a ground to deny benefit under ACPS. In the present case, since the petitioner was not granted three financial upgradations under the old ACPS, the petitioner was entitled to benefit under new ACPS after completion of 14 years' service after 27.08.2009, which was wrongly denied to him.

19. Consequently, the present petition is allowed and the impugned order dated 24.01.2020 (Annexure P-8) is

quashed and set aside and the respondents are directed to
refix the pay of the petitioner as per the earlier order dated
23.04.2018 and grant him all consequential benefits.

20. The petition is accordingly disposed of. No order
as to costs. Pending miscellaneous application(s), if any, also
stand disposed of.

01st October, 2026

(ankit)

**(Jiya Lal Bhardwaj)
Judge**