

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

CWP-12095-2013 (O&M)
Date of decision : 08.05.2015

Neelam Kumari

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. T.S. Chauhan, Advocate,
for the petitioner.

Ms. Harsimrat Rai, DAG, Punjab.

JITENDRA CHAUHAN, J. (Oral)

Prayer in the present petition filed under Articles 226 and 227 of the Constitution of India is, inter alia, for quashing/setting aside order dated 16.08.2010 (Annexure P-2), whereby, the case of the petitioner has been held to be 'not covered' for the grant of benefit of 9 years' service under the Assured Career Progression Scheme (for short, 'the ACP scheme'); order dated 06.12.2010 (Annexure P-5), whereby, the claim of the petitioner for 9 years' service has been declined; and order dated 09.03.2011 (Annexure P-11), whereby, the representation moved by the petitioner against the remarks whereby, the petitioner has

been graded as 'average' was rejected.

It is contended that the petitioner joined the services on 04.04.1977. On the basis of her work and conduct, she was promoted to the post of Junior Assistant on 04.04.1987 and thereafter, was further promoted to the post of Senior Assistant on 03.02.2000. The petitioner was granted 1st ACP on 03.02.2004. As per the assertion, the second ACP became due to the petitioner on 03.02.2009, which has been denied to her without assigning any reason. The learned counsel cites ***Dev Dutt Vs. Union of India, 2008(3) S.C.T. 429.***

On the other hand, the learned State counsel submits that on examination of the service record of the petitioner, it revealed that the petitioner had earned 'average' remarks for the year 1990-91. As the petitioners average record (ACR) was not upgraded, therefore, she was not found eligible for grant of the 2nd ACP after completion of 9 years. However, she admits that the ACR, on the basis of which the ACP was denied, was never conveyed to the petitioner.

Heard.

In Dev Dutt's case (supra), it has been held as under:-

“10. In the present case the bench mark (i.e. the essential requirement) laid down by the authorities for promotion to the post of Superintending Engineer was that the candidate should have 'very good' entry for the last five years. Thus in this situation the 'good' entry in fact is an adverse entry because it eliminates

the candidate from being considered for promotion. Thus, nomenclature is not relevant, it is the effect which the entry is having which determines whether it is an adverse entry or not. It is thus the rigours of the entry which is important, not the phraseology. The grant of a 'good' entry is of no satisfaction to the incumbent if it in fact makes him ineligible for promotion or has an adverse effect on his chances.

11. Hence, in our opinion, the 'good' entry should have been communicated to the appellant so as to enable him to make a representation praying that the said entry for the year 1993-94 should be upgraded from 'good' to 'very good'. Of course, after considering such a representation it was open to the authority concerned to reject the representation and confirm the 'good' entry (though of course in a fair manner), but at least an opportunity of making such a representation should have been given to the appellant, and that would only have been possible had the appellant been communicated the 'good' entry, which was not done in this case. Hence, we are of the opinion that the non-communication of the 'good' entry was arbitrary and hence illegal, and the decisions relied upon by the learned counsel for the respondent are distinguishable.

12. Learned counsel for the respondent submitted that under the Office Memorandum 21011/4/87 [Estt.'A'] issued by the Ministry of Personnel/Public Grievance and Pensions dated 10/11.09.1987, only an adverse entry is to be communicated to the

concerned employee. It is well settled that no rule or government instruction can violate Article 14 or any other provision of the Constitution, as the Constitution is the highest law of the land. The aforesaid Office Memorandum, if it is interpreted to mean that only adverse entries are to be communicated to the concerned employee and not other entries, would in our opinion become arbitrary and hence illegal being violative of Article 14. All similar Rules/Government Orders/Office Memoranda, in respect of all services under the State, whether civil, judicial, police, or other service (except the military), will hence also be illegal and are therefore liable to be ignored.”

It is not in dispute that the adverse/'average' entries on the basis of which the decision in question was taken, were never conveyed to the petitioner. Therefore, this Court feels that the petitioner has been put to loss without affording any opportunity of hearing, which being violative of Article 14 of the Constitution of India, is not permissible.

Furthermore, as per the criteria for grant of ACP placed on record by the State by way of affidavit dated 10.03.2015, the ACP can be denied only in the eventuality if there are any adverse remarks in the ACR's under consideration. Admittedly, there is no adverse entry against the petitioner in the ACR's throughout as 'average' remarks are not categorized as adverse remarks.

Considering the fact that no opportunity of hearing was afforded to the petitioner before denying the relief admissible to her and the law laid down by the Hon'ble Apex Court in Dev Dutt's case (supra), the present petition is allowed. The impugned orders Annexures P-2, P-5, P-11 and P-14 are hereby quashed and the petitioner is held entitled to the grant of 9 years' service benefit under the ACP scheme. The consequential benefits be released to the petitioner within a period of four months from the date of receipt of a certified copy of this judgment.

Allowed.

08.05.2015

atulsethi

(JITENDRA CHAUHAN)
JUDGE