

CWP No. 23074 of 2010 and 15880 of 2013

ARCHANA ARORA
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IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CWP No. 23074 of 2010
Date of decision : July 24, 2015

Ram Pal Patwari and others

..... Petitioners

Versus

State of Haryana and another

..... Respondents
CWP No. 15880 of 2013

Parmanand and others

..... Petitioners

Versus

State of Haryana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Padamkant Dwivedi, Advocate for
Ms. Anita Balyan, Advocate
for the petitioners.

Mr. Hitesh Pandit, Additional Advocate
General, Haryana.

1. Whether reporters of local papers may be allowed to see the judgment ?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

Amit Rawal, J (oral).

This order of mine shall dispose of CWP Nos.
23074 of 2010 and 15880 of 2013.

The short question involved in the aforementioned writ petitions is as to whether the petitioners are entitled to second ACP scale in CWP No 23074 of 2010 and third ACP in CWP No.

15880 of 2013 after rendering statutory period of service.

Learned counsel for the petitioner submits that the petitioner in the year 2006 had completed 20 years of service as Patwari and the Haryana Civil Services (Assured Career Progression) Rules, 1998 came into force w.e.f. 1.1.1996 and as per the aforementioned rules, after rendering a statutory period of service the petitioners are entitled to second and third ACP scale on completion of 20/30 years of service respectively.

It is further submitted that in this regard the petitioners submitted representations Annexure P-3 and P-6 respectively in both the writ petitions but the respondents did not decide the representation which compelled them to approach this Court for claiming the relief.

He further submits that the respondents are basically not granting the relief on the premise by taking aid of provisions of rule 5.3 (b) of 1998 rules applicable to the petitioner in CWP No. 23074 of 2010 and 8(b) of 2008 rules applicable to the petitioner in CWP No. 15880 of 2013. In order to wriggle out of the rigor of the aforementioned purported status of State, he had drawn attention of this Court to instructions dated 17.2.2003, to submit that the Government employees who had already been granted higher standard/scale up to December, 1995 are exempted from operation of rule 8 (1) and 8(2) of 1998 ACP Rules and further who had been granted higher standard/scale on or before 1.1.1996 but before publication of 1998 rules i.e. w.e.f.1.1.1996 to 6.1.1998 shall deemed to have been granted ACP Scale.

In order to prove the aforementioned contention, he has referred to Order dated 29.8.2012 whereby similar persons working on the post of Patwari have been granted the first, second and third ACP Scale despite they have not cleared the Kanungo test.

Learned counsel for the State submits that in view of rule 5.3 (b) of 1998 rules and 8 (b) of 2008 rules, the petitioners cannot be granted ACP scale until and unless have not taken the test. He further submits that these instructions have been issued by Consolidation department and will not be applicable to the Revenue Department.

In rebuttal Mr. Padamkant Dwivedi, learned counsel for the petitioners submits that these instructions have been adopted by the Revenue Department w.e.f. 9.10.2006 which is evident from Annexure P-4 (attached in CWP No. 15880 of 2013).

I have heard learned counsel for the parties and appraised the paper book.

In order to answer the question posed in the writ petition it would be apt to extract rule 5.3 (b) of 1998 rules and 8 (b) of 2008 rules and as well as instruction Annexure P-4:-

5(3) for determining the eligibility of grant of ACP Scales, following conditions must also be fulfilled by the Government servant:-

xx

xx

xx

(b) If such promotion involves test of any departmental post or other test, such condition should also be fulfilled by such Government servant.”

8. Other general conditions of eligibilities of ACP

pay structure:-

The following general conditions shall also be fulfilled by a Government servant for availing benefit of ACP:-

xx

xx

xx

(b) if such promotion involved passing of any departmental test or other test etc. such condition should also be fulfilled by such Government servant.”

Instructions:-

The Government observed that broadly the employees can be grouped in three categories for the purpose of grant of Assured Career Progression Scale:-

(1) Those Government employees who had already been granted higher Standard Scale before and up to 31.12.95, are to be exempted from the operation of rule 8(1) and 8(2) of ACP Rules 1998 and relevant ACP Scales shall be deemed to have been granted from 1.1.1996 or the date of option, as the case may be.

(2) Those Government employees, who had been granted Higher Standard Scales on or after 1.1.1996 but before the publication of ACP Rules 1998 i.e. between 1.1.1996 to 6.1.1998 shall also be deemed to have been granted the ACP scale.

(3) Those Government employees, who have completed their 10 or 20 years of regular satisfactory service from 7.1.1998 onwards will have to undergo procedure laid down in rule 8(1) & 8(2) of ACP Rules and if they have not cleared any departmental test prescribed for next promotion in the hierarchy, then they will not be eligible for ACP Scale, irrespective of their length of service.

Action may be taken accordingly.”

On perusal of the aforementioned instructions, it is clear that the stand of the State in not granting the Second and third ACP Scale, on the ground that the petitioners have not undergone the Kanungo test, falls flat on their face for the reason that similarly situated persons who have completed 10/20 years regular satisfactory service have been granted exemption in sitting for test and therefore, the petitioners are not required to undergo the test. The State has not been able to rebut the order dated 29.8.2012 (Annexure P-7) whereby it has been stated that two Patwaris have also been granted second and third ACP scale despite the fact that they have not cleared the Kanungo test, in essence, the said Patwaris have been granted benefits of the instructions dated 17.2.2003.

The State cannot discriminate amongst the same class of persons by taking aid of the rules *ibid*. There is no dispute to the fact that the petitioners were and are eligible for grant of Second and third ACP Scales as they have rendered statutory period of service of 20/30 years.

In view of the exemption granted, as per instructions dated 17.2.2003 and rules and the fact that similar persons have been granted the similar relief of ACP scales, a direction is issued to the State that Second and third ACP Scale as has been granted to other similarly situated persons vide Annexure P-7, be given to the petitioners within a period of three months from the date of receipt of

certified copy of this order.

In view of aforesaid finding and direction, the writ petition is accordingly allowed.

(AMIT RAWAL)
JUDGE

July 24 , 2015
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