

IN THE HIGH COURT OF PUNJAB AND HARYANA CHANDIGARH

CWP-22205 of 2012 (O&M)

Decided on: 09.09.2015

Suresh Kumar Gupta

Petitioner

vs.

State of Haryana and others

Respondents

Coram: Hon'ble Mr. Justice Mahesh Grover

Present: Mr. R.S. Longia, Advocate for the petitioner.

Mr. Hitesh Pandit, Addl. AG, Haryana.

Mahesh Grover, J

CM-8145-CWP of 2015

CM is allowed, as prayed for.

With the consent of the learned counsel for the parties, the main case is taken on board today.

CWP-22205 of 2012

This is a writ petition preferred by the petitioner with a prayer that Annexure P 18 be quashed which dis-entitles him to the grant of benefit of 1st and 2nd Assured Career Progression (hereinafter referred to 'ACP') by declining to take into consideration and counting the service rendered by the petitioner in Haryana State Minor Irrigation Tubewell Corporation Ltd. (hereinafter to be referred as 'HSMITC'). The decision in fact has been kept in abeyance on account of the pendency of certain writ petitions on the same issue. This petition was ordered to be heard along with CWP-9525 of 2002 which has since been decided

entitling the persons similarly situated as the petitioner to the benefit of ACP

scale by counting the previous service rendered by such incumbents in the HSMITC followed by regular government service. The petitioner had earlier filed a writ petition claiming right of absorption in the government service (Punjab Health Department). This writ petition stands allowed by virtue of the order dated 06.05.2015 passed in CWP-13001-2014. The petitioner's entitlement to the ACP scale has been withheld on account of the impugned order Annexure P 18 only on the ground that the CWP No. 9525 of 2002 preferred by the petitioner is still pending.

In view of the fact that the aforesaid writ petition i.e *CWP-9525 of 2002* stands decided in favour of the petitioner entitling him to regular absorption in government service, the petitioner's entitlement to the ACP scale would thus, be legitimate considering further the fact that this matter is no longer *res-integra* in view of the judgment of the Hon'ble Supreme Court in *State of Haryana and another v. Deepak Sood and others* in *Civil Appeal No. 4446 of 2008 decided on 15.07.2008*, where in similar circumstances, the employees were held entitled to get their services counted for purpose of fixation of pay, pensionary benefits and ACP scale. For the purposes of references, the relevant portion of the judgment is extracted here below:-

"Therefore, in the series of judgments given by this

Court, the view has been taken that in case of a transfer/absorption

from one department to another or from public sector to State though

the benefit of the seniority may be denied to the incumbent but not for other benefits like pay fixation and for the pensionary benefits. Therefore, when the benefit of past service rendered in the parent department was given for fixation of pay and pensionary benefits, there is no reason why the past service should not be counted for grant of ACP Grade. Consequently, we are of the view that the view taken by the Division Bench of the High Court in the impugned judgment and order is correct and there is no ground to interfere in this appeal. Consequently, this appeal is dismissed but with no order as to costs."

Therefore, in view of the above, the present petition is allowed holding the petitioner entitled to the benefit of ACP scale which shall be released to the petitioner as expeditiously as possible preferably within a period of four months from the date of receipt of certified copy of this order.

09.09.2015
mamta/rekha

(MAHESH GROVER)
JUDGE