

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**CWP No.18012 of 2015 (O&M)
Date of Decision: 18.09.2015**

Dr. Sanjiv Bhagat

... Petitioner

Versus

State of Punjab and another

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Parveen K.Kataria, Advocate,
for the petitioner.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.

The petitioner has approached this Court seeking a mandamus to the State to grant the benefit of the ACP Scheme on completion of 14 years of service which fell due to him in the year 2010. The petitioner stood granted the 4th and 9th ACP pay benefits. However, he was denied the further benefit on completion of 14 years of regular satisfactory service on account of downgrading of one of his ACRs from Outstanding to Average.

Aggrieved by the downgrading of his ACR for the year 2006-07 the petitioner approached this Court in CWP No.10160 of 2011. The writ was admitted and an interim stay granted against the downgrading remarks vide order dated 21.05.2012. The writ is pending regular hearing.

Learned counsel for the petitioner submits that the record of his ACRs from the year 1996-97 till the year of consideration i.e. 2008-09 on the fourteenth year are either Good, Outstanding or Very Good. However,

the record for the years 1999-00 to 2001-02 is not available but the averment in the petition is that two of them are Average and one is Good. The consideration required under para.4 (b) of the ACP Scheme is as follows:-

“(b) The procedure for assessing the work and conduct for placement in the higher scale shall be the same as applicable to case of promotion. The placement in higher scale shall be allowed only to those employees whose overall service record during the span of satisfactory service, is adjudged as 'Good' and the employee is otherwise suitable for promotion. 'Good' record shall mean that more than 50% Annual Confidential Reports are good and out of last three years report at least two should be 'Good'. For all the remaining year the benchmark may be 'Average'.”

It is the petitioner's case that there are no impediments in the way of grant of ACP scale to him on completion of 14 years of service except the ACR, the operation of which has been stayed by this Court and thus stands ruled out for the time being.

Mr. Kataria appearing for the petitioner submits that even if the confidential rolls for the year 2006-07 remain 'Average' even then the cumulative effect of the ACRs required to be considered, as in reckonable a case of promotion even then right of grant of benefit of ACP would stand satisfied and he would still be entitled to the monetary benefits keeping in view his ACRs from 2002-03 to 2005-06, three of which were Outstanding and one is Good notwithstanding the bad ACR pending subject matter in the earlier petition.

Learned counsel asserts that out of 13 ACRs, 9 are Good or above which means his client has more than 50% Good. The second

criterion in the scheme is also satisfied since in the last three years, one is Outstanding and one is Very Good. The other is subject matter of writ petition.

Laments that the claim of the petitioner has not been properly considered in the light of the fact that his writ petition is pending with stay while Government is of opinion that the ACR which is subject matter of that petition is connected with rights claimed under the ACP Scheme while it is far from the truth since that petition is, confined to challenging the downgrading of the ACR and has nothing to do with the benefits admissible under the ACP Scheme so long as the test of para.4 (b) of the ACP Scheme stands satisfied in the numerical strength to achieve the benchmark. Therefore, the line of thinking adopted by the Government is wholly erroneous for the reason that even if the writ petition is dismissed even then the petitioner will still be left with one 'Average' ACR in the last three years of which one indisputably is Outstanding and the other is Very Good which two ACRs followed the ACRs of the downgrading year and in these conspectus of admitted facts the result of the writ petition matters little as to the fate of the petitioner for grant of ACP at stage of completion of 14 years.

Notice of motion.

On the asking of the Court, Mr. Inqulab Nagpal, AAG, Punjab accepts notice on behalf of the respondents and waives service on them.

Heard.

Learned counsel for the petitioner has relied on the decision of this Court in CWP No.7328 of 2010 titled *Sanjay Popli vs. State of Punjab and another* decided on September 12, 2012 which holds that the claim for

placement in the higher pay scale on completion of 14 years of service under the ACP Scheme is required to be dealt with under the instructions dated April 17, 2000 and without adverting to the instructions dated September 06, 2001. By the same analogy, the instructions of April 17, 2000 would apply to this case.

Mr. Nagpal is unable to find a way out of the bind or cite a principle of law in support of the reasoning of the Department and in the circumstances that the petitioner is in win-win situation, then in any case a corrective direction by a mandamus should issue to the respondents to keep aside all irrelevant considerations and apply strictly the provisions of para.4 (b) of the ACP Scheme and grant to the petitioner higher pay scales on completion of 14 years of service on January 01, 2010 with all consequential benefits as appear ex facie admissible by applying the provision of the ACP Scheme. It is however made clear that the pendency of CWP No.10160 of 2011 has no material bearing on the right under the ACP Scheme as the fate of the present case does not depend on the outcome of that writ petition where this Court will be free to consider on the merits the issue of downgrading of ACR for one year of 10 required to be considered backward from the due date of completion of 14 years of service.

As a result of the above discussion, a writ of certiorari is issued quashing the line of reasoning adopted by the State Department to deny the petitioner the benefit of the higher pay scale on completion of 14 years of service and in order to grant relief a writ of mandamus is issued to the State to pass a fresh order without being trammelled or overtly obsessed by the pendency of the aforesaid writ petition which is for a different purpose and

has no bearing on the mathematical calculation of eligibility under the scheme worked percentage-wise and even on standards of promotion parameters enshrined in service rules read with the Assured Career Progression Scheme the petitioner is apparently entitled to the relief claimed from the due date when he completed 14 years of service and has nothing against him other than that in the pending writ petition, if he is truthful in his projection of facts.

Therefore, the petition is allowed on the above premises.

Writ of mandamus is issued to the respondents which requires the competent authority to re-examine the matter and complete the exercise by passing a final order within 30 days from the date of receipt of certified copy of this order. If required, the petitioner would be heard. The order would be speaking.

In case the petitioner has any remaining grievance after due reconsideration and final orders if they are adverse to him then he is at liberty to approach this Court again.

(RAJIV NARAIN RAINA)
JUDGE

18.09.2015
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