

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

CWP-25545-2014(O&M)

Date of decision : 14.07.2015

BHOOP SINGH & ORS.

.....PETITIONERS

VS

**HARYANA STATE COOPERATIVE SUPPLY
AND MARKETING FEDERATION LTD.**

.....RESPONDENT

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present : Mr. R.K.Malik, Senior Advocate with
Mr. Kuldeep Sheoran, Advocate
for the petitioners.

Mr. Pritam Saini, Advocate
for the respondent.

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?

AJAY TEWARI, J. (Oral)

By this petition the petitioners claim that the benefit of their service in the Sugar Mills should be counted for the purpose of grant of ACP in their subsequent service in HAFED (as they are now serving there).

The petitioners were appointed on regular basis in various Sugar Mills. After closing of the mills they were appointed on deputation in HAFED. The Government has issued ACP Rules in 2008 as per which it has been decided that employees are entitled to 1st ACP after rendering 10 years of service, 2nd ACP after rendering 20 years of service and 3rd ACP after rendering 30 years of service. This matter was settled up to the Hon'ble Supreme Court vide judgment dated

15.07.2008 (Annexure P-5) wherein it has been held that if previous service has been counted for the purpose of fixation and protection of pay then there is no justification for not counting the previous service for the purpose of grant of ACP benefit. In compliance of the decision of the Supreme Court the State Government has issued general instructions (Annexure P-6) to implement the decision of the Supreme Court. The petitioners also represented for the same and some of them even got issued legal notices in this regard but the respondent has declined their claim.

In the written statement filed by the respondent it has been averred that the petitioners had joined HAFED subject to certain terms and conditions and as per condition No.1 of their appointment order wherein it has been mentioned that they have been considered as fresh appointees and will not be entitled to any benefit of past service. Further more, as per ACP Rules 2008 the employees were entitled to 1st, 2nd and 3rd ACP after completion of regular satisfactory service of 10, 20 and 30 years respectively. However the said period was changed to 8, 16 and 24 years as per instructions dated 04.03.2014.

In support of his case learned counsel has primarily relied upon the judgment of the Hon'ble Supreme Court in **State of Haryana and another Vs. Deepak Sood and others, Civil Appeal No.4446 of 2008** decided on 15.07.2008 (Annexure P-5) and the clarification (Annexure P-7). In the judgment the Hon'ble Supreme Court held as follows :-

“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."

In the clarification it has been mentioned that in the appointment order issued to the petitioners it was clearly mentioned that they would get no benefit of their past service. Learned Senior counsel states that once the pay of the petitioners has been protected it means that with one hand the respondent-HAFED is giving them the benefit of their previous service and by not considering their service for ACP grade is taking away the benefit with the other hand. As per him the above mentioned judgment and the clarification completely cover the case against the respondent. Mr. Saini is not in a position to cite any judgment or any instruction contrary to this judgment.

Consequently this petition is allowed and the respondents are directed to count the service of the petitioners in Sugar Mills for the purpose of considering their claim for ACP grade. Let the necessary exercise of considering the claim and granting of benefits to those petitioners who are found entitled as per this judgment be completed within a period of six months from the date of receipt of a certified copy of this order.

No other argument has been raised.

Petition is allowed in the above terms.

Since the main case has been decided, the Civil Miscellaneous application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

July 14, 2015
sunita