

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

LPA No.75 of 2014

Date of Decision:- 21.07.2015.

Rai Singh

.....Appellant

Versus

State of Haryana and another

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE P.B. BAJANTHRI**

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?

Present: Mr. Suresh Kumar Kaushik, Advocate for the appellant.

Mr. Naveen Kaushik, Additional A.G. Haryana.

SURYA KANT, J. (ORAL)

1.) This Letters Patent Appeal impugns the order dated 18.11.2013 whereby learned Single Judge has dismissed the appellant's writ petition *in limine* in which he claimed the benefit of third ACP under the Haryana Civil Services (Assured Career Progression) Rules, 2008 (for short 'the 2008 Rules').

2.) The facts are broadly admitted. The appellant joined the respondent-Department as a Telephone Attendant (Class-IV) on 25.12.1973. He was promoted firstly as Apprentice Signaller on 13.08.1976 and then as regular Signaller (Class-III) on 17.06.1977.

- 3.) The appellant held the promotional post of Signaller till he retired on attaining the age of superannuation w.e.f. 30.06.2010.
- 4.) The instant appeal was heard at length on March 11, 2015 when the following order was passed:-

“The rule with regard to grant of 3rd ACP categorically provides that the same shall be admissible on the functional pay scale or pay structure of the post of the employee if he has completed 30 years of regular satisfactory service and “has not got any financial upgradation in the last ten years.....”. The appellant has now been granted 3rd ACP (Grade Pay of Rs.3,300/-) with effect from 1.1.2006. The appellant was holding the post of Signaller on the date relevant to determine his eligibility for 3rd ACP and if the functional pay scale/pay structure of that post is to be kept in view, then the appellant would be entitled to the Grade Pay of Rs.3,600/- (instead of Rs. 3,300/-).

The respondents now claim that the appellant has been granted 2nd and 3rd ACP both with effect from the same date, i.e. 1.1.2006. This plea of the respondents, to us, appears factually incorrect. Firstly, the order dated 31.1.2014 (Annexure R-2) clearly says that 2nd ACP was wrongly granted to the appellant and the same has been withdrawn. Recovery is also said to have also been effected. Secondly, we do not find that 2nd ACP was granted vide that order from a later date. Thirdly, both the ACPs cannot be granted from the same date as it would be contrary to the mandatory condition prescribed for the grant of 3rd ACP, namely, that there should not be any financial upgradation in the last ten years.

We, thus, direct the respondents to reconsider the whole matter. They need not to grant the appellant 2nd ACP as he would be satisfied if he is granted only 3rd ACP with effect from 1.1.2006, keeping in view the functional pay scale or pay structure of the post of Signaller as on 31.12.2005.”

5.) In deference to the above order, the Authorities reconsidered the appellant's claim and having realized their mistake have granted third ACP to him.

6.) The appellant is still dissatisfied for the reason that third ACP has been granted to him in the functional pay scale of Telephone Attendant i.e. the Class-IV post which he held before his promotion as Signaller. His contention is that he is entitled to third ACP in the functional pay scale of Class-III post of Signaller from which he retired on attaining the age of superannuation.

7.) The short question that arises for consideration is whether the appellant is entitled to third ACP in the functional pay scale of the post of Telephone Attendant against which he was initially recruited or he is entitled to third ACP against the post which he was holding when such ACP become due?

8.) In compliance to the interlocutory order passed by this Court, Engineer-in-Chief has filed his additional affidavit dated 09.07.2015 along with instructions dated 28.06.2011 issued by Department of Finance (R-1) on the subject of “implementation of Haryana Civil Services (Assured Career Progression) Rules, 2008 –

Clarification regarding.” It is recited in the instructions that various queries were raised by the Administrative Departments after 2008 Rules were notified and that the matter has been considered with reference to those points of doubts and the same have been clarified in the Circular dated 28.06.2011 in a tabulated form.

9.) Item No.2 of the table reproduced in the above stated Circular reads as follows:-

Sr. No.	Point of Doubts	Clarification
2.	<i>Whether a Government employee appointed on the post of peon and promoted to the post of Clerk is entitled for two or three ACP upgradations if he stagnates on the post of Clerk for 30 years.</i>	<i>Since, he has already got one financial upgradation in the form of promotion from Peon to Clerk, therefore, official is entitled for two ACP upgradations with reference to the pay structure of Clerk on his stagnation for 30 years as maximum three financial upgradations are admissible under HCS (ACP) Rules, 2008.</i>

10.) We find from the above reproduced clarification given by the Finance Department that the appellant who remained stagnated for a period of more than 30 years on the post of Signaller is entitled to three financial upgradations, out of which two shall be with reference to the pay structure of the post of Signaller only.

11.) The appellant, thus, rightly contends that the third ACP should be granted to him in the pay scale of the post of Signaller and not of Telephone Attendant.

12.) Otherwise also, it appears illogical that ACP upgradation would be granted due to stagnation in one's service career on the post of original recruitment instead of the post on which he was stagnated.

13.) For the reasons aforestated, the instant appeal is allowed; the order passed by learned Single Judge is set aside and the writ petition filed by the appellant stands allowed as directed above.

14.) Consequently, the pay of the appellant in third ACP shall be refixed in the pay scale of Signaller and if found entitled to consequential arrears of pay as well as refixation of pension etc., the same shall be granted to appellant within a period of three months.

**(SURYA KANT)
JUDGE**

**(P.B. BAJANTHRI)
JUDGE**

July 21, 2015.

sandeep sethi