

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

RSA No. 2012 of 2015 (O&M)

Date of decision : 28.07.2015

State of Haryana through Collector, Kurukshetra & ors. ...Appellants

versus

Amar Singh ...Respondent

CORAM: **HON'BLE MS. JUSTICE RITU BAHRI**

Present: Mr. Mukesh Kaushik, DAG, Haryana

RITU BAHRI , J.

C.M. No. 5272-C of 2015

For the reasons mentioned in the applications, delay of 166 days in filing the present appeal is condoned.

The application stands disposed of accordingly.

R.S.A No. 2012 of 2015

This regular second appeal is directed against the judgment dated 20.08.2014 passed by learned Addl. District Judge, Kurukshetra whereby the appeal filed by the defendants-appellants (for short 'appellants') against the judgment and decree dated 02.07.2014 passed by learned Civil Judge (Jr. Divn.), Kurukshetra whereby the suit of the

plaintiff-respondent was decreed, was partly allowed.

Brief facts of the case are that the respondent was appointed as Steno Typist (Hindi) on 22.11.1990 through S.S. Board Haryana, on regular basis, in the pay scale of Rs.950-1500+100 Special Pay and he was promoted from the post of Steno Typist to the post of Assistant vide office order dated 03.08.2009 but the respondent forgo his promotion on 06.08.2009 and he was granted first ACP w.e.f 01.12.2000, thereafter, he was granted second ACP as well vide office order dated 17.02.2011 despite the fact that he had forgone his promotion of the Assistant. Reference was made to para 14 of the Haryana Government, Finance Department Notification dated 30.12.2008 (Ex D1), which reads as under:-

“ In case the Government servant choses to forego any functional promotion on any ground whatsoever, while drawing his pay in and ACP pay structure with reference to him, he shall cease be entitled to draw his pay in the ACP pay structure last granted to him and shall draw his pay in the pay band and grade pay he was drawing before the grant of the last ACP grade pay from the date of such forgoing promotion.”

The respondent vide letter on 06.08.2009 requested for

the grant of promotion to the post of Junior/Senior Scale Stenographer in the same cadre of Steno typist as against the post of Assistant. However, he was issued a letter/order dated 05.08.2011 vide which ACP-1 And ACP-2 scales have been withdrawn. It was further directed to effect the recovery of amount from the pay/salary of the respondent and his pay scales were reduced.

As per the above notification, in case the respondent foregoes the promotion than the last ACP granted to him shall be withdrawn and thereafter, his pay shall be fixed in the last ACP grade pay from the date of such forgoing promotion. The respondent in the present case had foregone his promotion in the year 2009 and he was granted first ACP vide office order dated 04.02.2002 w.e.f 01.12.2000 as he completed 10 years of service in the year 2000 and subsequently second ACP was granted to him vide letter dated 01.12.2010 after he had foregone promotion on 06.08.2009. Hence, as per above notification, he was not entitled to second ACP as he had foregone promotion on 06.08.2009. However, he was issued a letter/order dated 05.08.2011 vide which ACP-1 And ACP-2 scales have been withdrawn. It was further directed to effect the recovery of amount from the pay/salary of the respondent and his pay scales were reduced.

For all intents and purposes, the first ACP had rightly been granted to the respondent without there being any promotion for the last 10 years of service. The trial Court decreed the suit of the respondent to the effect that impugned orders dated 05.08.2011 and 16.08.2011 passed by the defendants are illegal and were set aside and further respondent was granted the pay scale of 5200-20200 plus grade pay of Rs.3200/- plus 100/- special pay in the form of revised pay scale along with interest @ 6% per annum but the Lower Appellate Court has modified the judgment of the trial Court by relying upon the judgment of ***State of Haryana and others v. Rikhi Ram in LPA No. 520 of 2012, decided on 17.04.2012 and Chandi Parsad Uniyal and others vs. State of Uttarakhan and others, 2012(8) SCC 417.*** The Lower Appellate Court has rightly held that there is no justification in allowing the respondent to be benefitted by the illegality, the chances of which being perpetrated and resultant benefit being made to him cannot be ruled out on account of collusion/proximity of the respondent with the officers/officials who have been instrumental in draining the hard earned money of the tax payers. Impugned orders Ex D6 was held to be good as far as the recovery pertaining to the second benefit of second ACP is concerned but the order of the trial Court in

undoing the order dated 05.08.2011 to the extent of withdrawal of first ACP is concerned, was upheld.

After going through the detailed judgment dated 20.08.2014 passed by learned Addl. District Judge, Kurukshetra , no interference is required.

No substantial question of law arises for adjudication by this Court.

The appeal is dismissed.

28.07.2015

G Arora

(RITU BAHRI)
JUDGE