

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 11489 of 2014
Date of Decision:- 11.02.2016

Karam Chand Gupta

....Petitioner

Versus

Haryana State Agricultural Marketing Board, Panchkula and another

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Naveen Daryal, Advocate
for the petitioner.

Mr. Udai Vir Singh, Advocate
for Mr. Partap Singh, Advocate
for the respondents.

RITU BAHRI, J. (Oral)

The petitioner is seeking quashing of impugned notice dated 09.05.2014 (Annexure P-5) by which the benefit of 2nd Higher Standard Scale and 3rd ACP scales, which was granted to him w.e.f. 01.01.1994 and the 3rd ACP Scales w.e.f. 01.01.2006 has been withdrawn.

The brief facts of the case are that the petitioner was appointed as a Clerk on 05.05.1971 in the Marketing Committee, Karnal. Thereafter, he was selected on the post of Mandi Supervisor on 11.07.1972, by way of direct recruitment. He was promoted to the post of Accountant on

05.11.2004. He was not availed any promotion from 11.07.1972 till 05.11.2004. He had completed more than 30 years of service before he was promoted as Accountant on 05.11.2004. As per the promotion order given, he was promoted to the post of Accountant purely on Adhoc basis in the pay scale of Rs.5000-7850. Thereafter, his promotion was withdrawn by the department, vide order dated 30.11.2004 (Annexure P-3). The petitioner retired on 29.02.2008, after completion of 58 years service. He was allowed 3rd ACP Scales, vide order dated 19.12.2011 (Annexure P-4) on the post of Mandi Supervisor. Vide order dated 09.05.2014 (Annexure P-5), the benefit of 2nd Higher Standard Scale and 3rd ACP Scales has been withdrawn on the ground that the petitioner has forgone promotion for the post of Accountant.

Learned counsel for respondent has produced the instructions dated 26.11.2002, by which Rule 11 of ACP Rules, 1998 has been clarified. Perusal of the clarification shows that as per Rule 11, in case the Government employee choose to forego any functional promotion on any ground whatsoever, while drawing his pay in any ACP scale with reference to him, he shall cease to be entitled to draw his pay in the ACP scale and shall draw his pay in the functional pay scale prescribed for the post on which he is substantively working from the date of such forgo of promotion.

The clarification issued on 26.11.2002. 3rd ACP has been granted to the petitioner, vide order dated 19.12.2011 as is evident from Annexure P-4. Since, the petitioner has retired on 2008 and there was no question that after availing the benefit ACP he would forego any

promotion. ACP has been granted rightly in view of ACP Rules, as per the date of appointment as Mandi Supervisor w.e.f. 11.07.1972 till 22.11.2004. He has not availed any promotion for the said period. Hence, the order granting him 3rd ACP scale, which was passed on 19.12.2011, cannot be withdrawn on the basis of clarification issued on 26.11.2002. In this clarification, Rule 11 has been incorporated, which lays down that if after drawing pay scale an employee forgoes any functional promotion, then he shall not be entitled to draw his pay in the ACP scale and shall draw his pay in the functional pay scale prescribed for the post on which he is substantively working.

Since the petitioner has been granted benefit of 3rd ACP scales, vide order 19.12.2011 (Annexure P-4) after his retirement, therefore, the clarification 26.11.2002 cannot be applied to withdraw the benefit already granted to the petitioner. Consequently, the present writ petition is allowed. The impugned notice dated 09.05.2014 (Annexure P-5) is set aside and direction issued to the respondent(s) to release all the consequential benefits to the petitioner in accordance with law.

February 11, 2016
naresh.k

(RITU BAHRI)
JUDGE