

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.150 of 2013 (O&M)
Date of Decision: 14.09.2016

NARAIN SINGH CHAHAR

.... Petitioner

vs.

STATE OF HARYANA AND OTHERS

.... Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. S.K. Rana, Advocate for the petitioner
Mr. Naveen Sheoran, DAG, Haryana.

Kuldip Singh J.(Oral)

Petitioner seeks the writ in the nature of mandamus, claiming the benefit of five years special addition to his qualifying service for pension under Rule 4.2-A of the Punjab Civil Services Rules Volume II, (as applicable to Haryana). (in short, 'service Rules') and financial benefit accruing therefrom along with interest. Secondly, he seeks financial benefit of first ACP w.e.f. 01.01.2006 as per Haryana Civil Services (Assured Career Progression) Rules, 2008 (in short, 2008 Rules').

The brief facts required to be noticed for the purpose of disposal of writ are that the petitioner was practicing as an Advocate. On 11.06.1987, he joined as Assistant District Attorney at Karnal. He was promoted as Deputy District Attorney on 23.05.2003. He retired on 31.05.2011 after serving for 23 years 11 months 20 days.

Petitioner claims that the benefit of 5 years of service is to be added to his qualifying service under Rule 4.2-A Punjab Civil Services Rules Volume II (as applicable to Haryana).

So far as this contention is concerned, the State of Haryana has not disputed the same. It has been stated that now the benefit of 5 year qualifying service towards pension has been added. However, for the purpose of gratuity, the said benefit of 5 years has not been counted.

I have heard learned counsel for the parties and have also carefully gone through the file.

The perusal of Rule 4.2-A of the Punjab Civil Services Volume II, Haryana shows that in the present case, the 5 year service of the petitioner was to be counted on account of his practice at Bar. Once, it is counted as a qualifying service for the pension, the same is also to be counted for grant of other retiral benefits, including gratuity. Therefore, the respondents shall count 5 year service towards qualifying service for the purpose of grant of gratuity also and release the enhanced gratuity to the petitioner along with interest @ 9 % per annum starting three months from the date of retirement.

Now coming to the second prayer regarding grant of 1st ACP under Haryana Civil Services Rules (Assured Career Progression) Rules, 2008. The few dates are required to be noticed as under:-

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|--|-------------|
| (i) Date of joining as ADA | -11.06.1987 |
| (ii) Promotion as Deputy District Attorney - | 23.5.2003 |
| (iii) Date of retirement | -31.05.2011 |

Rule 7 of the Haryana Civil Services (Assured Career Progression) Rules, 2008 (for short '2008') is reproduced as under:-

Eligibility for Grant of ACP grade Pay under the general ACP scheme:—

“(1) Every Government servant covered under the general

ACP scheme shall for the purposes of drawal of pay, be eligible for the first ACP grade pay (given in column 4 of Part II of Schedule I in respect of the functional pay scale or pay structure of his post) if he has completed 10 years of regular satisfactory service and has not got any financial upgradation in these ten years with reference to the functional pay structure of the post to which he was recruited as a direct entrant. Financial upgradation in this context includes functional promotion in the hierarchy or further revision/modification of the pay structure for the same post after 01.01.2016.

(2) Every Government servant covered under the general ACP scheme shall, for the purposes of drawal of pay, be eligible for the second ACP grade pay (given in column 5 of Part II of Schedule I in respect of the functional pay scale or pay structure of his post) if he has completed 20 years of regular satisfactory service and has not got any financial upgradation in the last ten years. Financial upgradation in this context includes functional promotion in the hierarchy or further revision/modification of the pay⁶ structure for the same post after 01.01.2006”.

It goes to show that on completion of the satisfactory service of 10 years, the ACP was to be granted w.e.f. 01.01.2006 if the employee has not got any financial upgradation in these 10 years, which included functional promotion in the hierarchy or the further revision or modification in the pay structure. Now, the question would arise as to when the petitioner

has got first promotion on 23.05.2003, whether he is entitled to the benefit of said rule. The matter was clarified by the Government itself vide letter dated 28.06.2011 (Annexure-P10). The necessary clarification is reproduced as under:-

<i>What will be the entitlement of a Government employee as per provisions contained in HCS(ACP) Rules, 2008 in the following circumstances:</i> <i>1. Mr. 'X' was appointed as Vice Principal (Group-B) on 08.04.1986, whether he is eligible for 1st ACP upgradation w.e.f. 01.01.2006 and 2nd ACP upgradation w.e.f. 01.05.2006 as he has stagnated for 10 years or more on or before 31.12.2005 and completed his 20 years regular satisfactory service as on 07.04.2006.</i> <i>2. Mr. 'X' was appointed as Clerk on 10.05.1982. He was promoted to the post of Assistant on 21.04.1986. Whether he is eligible for 1st ACP grade pay with reference to the pay structure of Assistant w.e.f. 01.01.2006 and 2nd ACP grade pay w.e.f. 01.05.2006.</i>	<i>1 & 2 – It is clarified that official/officer is entitled for 1st ACP grade pay with reference to the functional pay structure of the post of Assistant/vice Principal w.e.f. 01.01.2006 and 2nd ACP grade pay w.e.f. 01.05.2006.</i>
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Therefore, it is clear that as per the stand of the Government itself, if the employee does not get financial upgradation or functional promotion in the hierarchy for 10 years, he is to be given 1st ACP w.e.f. 01.01.2006 and in case he does not get the functional upgradation in last 10 years and has completed 20 years, he is to be given 2nd ACP w.e.f.

01.05.2006. In the present case, petitioner got promotion w.e.f. 23.05.2003. Therefore, he is not entitled to 2nd ACP. However, so far as 1st ACP was concerned, he completed 10 years of service on 10.06.1997. Therefore, subject to his record being satisfactory, he is entitled to 1st ACP. The service record of the petitioner is not on the file. Therefore, the Competent Authority is to examine whether the record of the petitioner is satisfactory. If it is so, the Competent Authority is to pass the order granting 1st ACP w.e.f. 01.01.2006 along with the consequential benefits.

It being so, the writ petition is allowed. The writ of mandamus is issued, directing the respondents to count five years qualifying service under Rule 4.2-A of service Rules for the purpose of grant of payment of gratuity and also release the same along with interest @ 9 % per annum, starting three months from the date of retirement.

Secondly, the Competent Authority is to examine the record of the petitioner and if the same is found to be satisfactory, grant him 1st ACP on completion of 10 years service w.e.f. 10.06.1997, effective from 01.01.2006, as per Rules of 2008.

14.09.2016
gk

(Kuldip Singh)
Judge

Whether speaking / reasoned
Whether reportable

Yes
No