

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

**CWP No. 2261 of 2011
Date of decision : 24.05.2016**

Gobind Rai and ors.**...Petitioners****versus****Punjab & Haryana High Court Chandigarh & anr.****...Respondents****CORAM: HON'BLE MS. JUSTICE RITU BAHRI**

Present: Mr. Ashwani Bhardwaj, Advocate
for the petitioners.

Mr. Daman Dhir, Advocate
for respondent Nos. 1 and 2.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest? **Yes**

**********RITU BAHRI, J.**

Petitioners have filed the present petition seeking quashing of impugned orders dated 08.09.2008 (P-4) and 03.09.2009 (P-6) passed by respondent No. 2, rejecting the claim of the petitioners for grant of first ACP after completion of 10 years of regular service, in terms of ACP Rules 1998.

It is not in dispute that the petitioners joined the service of Clerks in the Sessions Division Bhiwani and the joining date of petitioners are as under:-

<i>Sr. No.</i>	<i>Name</i>	<i>Date of Joining</i>
1	Gobind Rai	12/12/96
2	Vivek	12/07/95
3	Boby	13/12/96
4	Rajiv Gautam	13/12/96
5	Ram Parkash	05/02/97
6	Kishan Ram	03/03/97
7	Ram Dhari	07/03/97
8	Satbir	12/03/97

<i>Sr. No.</i>	<i>Name</i>	<i>Date of Joining</i>
9	Devender Kumar	05/06/97
10	Dhiraj	05/06/97
11	Sant Kumar	05/06/97
12	Anuj Kumar	08/01/98
13	Anita Jain	10/08/98
14	Dushyant Bhardwaj	10/08/98
15	Subhash Chander	10/08/98
16	Mahinder Kumar	07/06/97

Thereafter, ACP Rules were made effective from 01.01.1996. All the petitioners in the year 1998 after completion of 10 years have applied with respondent No. 2 for grant of 1st ACP scales to them under ACP Rules, 1998. One of the representation filed by petitioner No. 1 is Annexure P-2. However, Superintendent of office of Sessions Division Bhiwani recommended (P-3) that petitioners are not entitled for grant of 1st ACP Scale as the petitioners have already received a financial up-gradation within a period of 10 years and their scales from Rs.3050-4590 has been modified to Rs.4000-6000. Thereafter, vide impugned order dated 08.09.2008, respondent No. 2 rejected the claim of the petitioners on the ground that the pay scale of the petitioners have been modified w.e.f 01.08.2005 and thus the petitioners have got one up-gradation of pay scale within prescribed period and are not entitled for 1st ACP scale.

Thereafter, petitioner No. 1 made representation dated 17.10.2008 (P-5) stating therein that he had joined services on 12.12.1996 and has completed 10 years of regular service on 14.12.2006 and thus his case for first ACP has wrongly been declined by misinterpreting the ACP Rules 1998 and orders dated 08.09.2008 suffers from non-application of judicious mind. The modification of functional pay scale cannot be treated as grant of one financial upgradation. Further it has been submitted that the

Clerks serving in the different Sessions Division at Rohtak, Karnal, Kurukshetra and Gurgaon have already been given the 1st ACP scale of Rs.5000-7850/- after completion of 10 years of regular satisfactory service.

The above said representation was rejected by respondent No. 2, vide order dated 03.09.2009 (P-6).

On notice, a written statement has been filed by respondent Nos. 1 and 2 and the stand taken in the written statement is that since the pay scale of the petitioners have been modified w.e.f 01.08.2005, they have got one up-gradation of pay scale within prescribed period and are thus not entitled for 1st ACP scale. Reference has been made to Rule 5 (b) of ACP Rule, 1998 on the ground that since a revision of pay scale has been granted to the petitioners, which has been accepted by them, they are not entitled for grant of scale of Rs.5000-7850/-. The object of this Rule was to grant financial up-gradation only in case the employee was not being given any higher pay scale than his functional pay scale.

In compliance of order dated 01.05.2015, an affidavit of Baljeet Singh, District and Sessions Judge, Bhiwani has been filed clarifying that the benefit of ACP scale given in Kaithal Sessions Division has been withdrawn by State of Haryana vide its letter dated 14.05.2008 (R-2) and the benefit of ACP Scale was being granted to the employees of Sessions Division, Rohtak on account of modification of pay scale. Further benefit of ACP pay scale in Sessions Division, Kurukshetra, Rohtak and Ambala have been granted to Graduate clerks. Further it has been stated that the pay scales of non-judicial staff of Subordinate Courts in State of Haryana were modified vide letter dated 03.08.2005 (R-3) issued by State of Haryana, in compliance with the directions of Hon'ble Supreme Court to implement the Justice Shetty

Commission Report.

Learned counsel for the petitioner at the very outset has referred to Rule 12 of ACP Rules which provides that the functional pay scales prescribed have been revised through Haryana Civil Services (Revised Pay) Rules, 1998, the existing pay scales shall be considered as the corresponding existing scales to the so revised pay scales under the Haryana Civil Services (Revised Pay) Rules, 1998 for the purpose of this Rule. Learned counsel while referring to Rule 12 contends that due to modification/revision of pay scale pursuant to Shetty Commission Report, petitioners cannot be deprived from the benefit of ACP scales under Rule 5 of ACP Rules, 1998.

Further respondents in the written statement has clarified that except petitioner No. 5 are graduate clerks and were granted modified scale of Rs.3050-4590 to Rs.4000-6000/- w.e.f 01.08.2005. Further reference has been made to Annexure R-2 whereby clarification was sought from the Haryana Government, Financial Commissioner and Principal Secretary to Government of Haryana vide letter dated 14.05.2008 and it has been stated that the persons similarly placed like the petitioners were not entitled to the scale of Rs.5000-7850/-.

Reference at this stage can be made to instructions dated 03.08.2005

From

The Financial Commissioner & Principal Secy. to Govt.,
Haryana, Finance Department.

To

The Registrar, Punjab & Haryana High Court, Chandigarh,
The L.R. and Secretary to Government Haryana, Law Department,
All Heads of Departments, All Commissioners of Divisions,
All District & Sessions Judges,
All Deputy Commissioners &

Sub Divisional Officers (Civil) in Haryana.

Dated, Chandigarh, the 3rd August, 2005

Subject : Revision of pay scales of Haryana Government Employees under Haryana Civil Services (Revised Pay) Rules, 1998 and Haryana Civil Services (Assured Career Progression) Rules, 1998 - Non-Judicial staff of Subordinate Courts.

Sir,

I am directed to refer to Haryana Government Notification No GSR/3/Const./Art./ 309/98 dated the 7th January, 1998 and No. GSR/4/Const/Art / 309/98 dated 7th January, 1998 vide which the pay scales of State Government employees were revised w.e.f. 1.1.96

In compliance of the directions of the Hon'ble Supreme Court to implement the Justice Shetty Commission report for the grant of pay scales to the Non-Judicial staff of Subordinate Courts in the State of Haryana, the pay scales of the following categories of posts, as indicated against each is modified with effect from 1st August, 2005.

<i>Sr. No.</i>	<i>Name of Post</i>	<i>Present Pay scale</i>	<i>Modification pay scale</i>
	Usher	Rs. 2550-3200	Rs. 2650-4000
	Bailiff	Rs. 2650-4000+ Rs. 40/- Spl. Pay Rs. 3050-4350 w.e.f. 1.9.2001	Rs. 3050-4590
	Reader Grade-I (Distt. Judge & Addl. Distt. Judge Court)	Rs. 5500-9000	Rs. 6500-10500
	Grade-II (Court of Civil Judge (Sr. Div./CJM)	Rs. 5000-7850	Rs. 5500-9000
	Grade-III (Court of Civil Judge [Jr. Div.]/Magistrate)	Rs. 5000-7850	No Change
	Stenographer Grade-I (Court of Distt. & Sessions Judge)	Rs. 5500-9000	Rs. 6500-10500
	Grade-II (Court of Civil Judge [Sr. Div.])	Rs. 5000-7850	Rs. 5500-9000
	Grade-III (Court of Civil Judge [Jr. Div.])	Rs. 3050-4590	Rs. 4000-6000
	Superintendent Class-I/Group-A	Rs. 6500-10500	Rs. 8000-13500
	Clerk	Rs. 3050-4590	Rs. 4000-6000 to Graduate Clerks in the Courts
	All Ministerial staff (Common category posts) other than those to whom higher pay scale has been granted vide this order/letter	Rs. 5000-7850 & Rs. 5500-9000	The benefit of one increment at the initial rate be provided to the new entrants to the service

GAURAV ARORA
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I attest to the accuracy and
integrity of this document

The pay of the employees whose pay scales have been modified as detailed above is to be fixed in accordance with the normal rules laid down in the Punjab Civil Services Rules, Volume-I, Part I, the rules prescribed vide extraordinary gazette notification No. GSR/3/Const./ Art.309/98, dated 7.1.98 and GSR/4/Const./Art./309/98, dated 7.1.98 and the instructions issued on the subject from time to time.

Yours faithfully,

Sd/-

Under Secretary Finance (PR),
for Financial Commissioner &
Principal Secy. to Govt., Haryana,
Finance Department. “

Reference at this stage can further be made to Rule 5 of ACP

Rules 1998, which reads as under:-

*“5. **Eligibility for Grant of ACP Scales.**— (1) Every Government servant who, after a regular satisfactory service for a minimum period of 10 years, if the minimum period is not otherwise prescribed to be different than 10 years either in these rules or by the Government for any class or categories of Government servant from time to time, has not got any financial upgradation in terms of grant of a pay scale higher than the functional pay scale prescribed for the post as on 31.12.1995, on which he was recruited as a direct recruited fresh entrant:-*

*(a) either as a consequence of his functional promotion in the hierarchy, or
(b) as a consequence of the revision of pay scale for the same post, or
(c) as a consequence of any other event through which the functional pay scale of the post has been upgraded, with respect to the functional pay scale prescribed for the post as on 31.12.1995, shall for the purposes of drawal of pay, be eligible for placement into the First ACP scale with reference to him.*

(2) Every Government servant who after a regular satisfactory service for a minimum period of 20 years, if the minimum period is not otherwise prescribed to be different than 20 years either in these rules or by the Government for any class or categories of Government servant from time to time has not got more than one financial upgradation in terms of grant of a pay scale higher than the functional pay scale prescribed for the post as on 31.12.1995 on which he was recruited as a direct recruited fresh entrant :-

*(a) either as a consequence of his functional promotion in the hierarchy, or
(b) as a consequence of the revision of pay scale for the same post, or*

(c) as a consequence of any other event through which the functional pay scale of the post has been upgraded, with respect to the functional pay scale prescribed for the post as on 31.12.1995 shall for the purposes of drawal of pay, be eligible for placement into the Second ACP scale with reference to him;

Provided that grant of ACP scale shall also be considered financial upgradation for the purposes of this rule.

Note : For the purpose of these rules, —Regular satisfactory service|| would mean continuous service counting towards seniority under Haryana Government, including continuous service in Punjab Government before re-organisation commencing from the date on which the Government servant joined his service after being recruited through the prescribed procedure or rules etc. for regular recruitment in the cadre in which he is working at the time of being considered his eligibility for grant of ACP scales under these rules and after further fulfilling all the requirements prescribed for determining the suitability of grant of ACP scales.

EXPLANATION: The ACP scale upgradation will come into play only if due to functional promotion or upgradation of scale for the same post as specified above, the Government servant has not got the benefit of atleast one pay scale upgradation within the prescribed period of 10 years or any other prescribed period for the grant of 1st ACP scale or two such financial upgradations within a period of 20 years or within the period otherwise specified for grant of second ACP scale. If within 10 years of service or within the prescribed period of service for the grant of 1st ACP, the employee has already got atleast one financial upgradation or within 20 years of service, as the case may be, or otherwise prescribed period of service for the grant of second ACP scale, the Government servant has already got atleast two financial upgradations, benefit of these rules will not be extended to such employees save if otherwise provided in these rules.

(3) For determining the eligibility of grant of ACP Scale, following conditions must also be fulfilled by the Government servant :-

(a) After completing the respective prescribed period for eligibility for the grant of ACP scales the Government servant should be fit to be promoted to the next higher post in the functional hierarchy in his cadre, but could not be functionally promoted due to lack of vacancy in the promotional post in the hierarchy to which he is eligible to be promoted;

(b) If such promotion involves test of any departmental post or other test etc. such condition should also be fulfilled by such Government servant.

(4) The eligibility for grant of the ACP scales shall further be subject to any

other restriction as may be prescribed by the Government from time to time including the restriction of the number of Government servant to be granted the respective ACP scales in terms of percentage of posts in the cadre to which such ACP placements shall be limited; Provided that till the time such restrictions are not imposed by the Government.—

(a) there shall be no restriction on the number of Government servants to be granted the first or second ACP scales with reference to the Government servants covered in sub-rule (2) of rule 4.

(b) for the Government servants covered in sub-rule (1) of rule 4, there shall be no restriction on the number of Government servants for grant of first ACP scale. However, the grant of the second ACP scale for such Government servants as covered in sub-rule (1) of rule 4 shall be limited to 20% of the total posts in the cadre.”

It is not in dispute that Rule 5 provides for conditions of eligibility for placement/grant of ACP scales after 10 years and 20 years of regular satisfactory service.

Reference at this stage can further be made to Rule 12 of ACP

Rules:-

(a) the revised scale of pay for such Government servants working against the posts specified in column 2 of Part I of Schedule I shall be as specified against it in column 3 and 4 of the above said part of the above said schedule as the first and second ACP scales respectively:

(b) for all other Government servants on whom these rules apply but who are not covered under the sub-rule (a) above, the scale of pay shall be as specified in Part II of Schedule I in column 3 and 4 as the first and second ACP scale respectively corresponding to the existing scale mentioned in column 2 of above said schedule.”

Provided that in case of the posts for which the functional pay scales have been revised before pay revision through the Haryana Civil Services (Revised Pay) Rules, 2008, the so revised scales shall be considered as the functional scales of those posts for the purpose of this rule.

As per above said rule, when a functional pay scale has been revised, then the existing pay scale shall be considered as the corresponding

existing scale for the purpose of this rule

Thus, the necessary conclusion would be that even on revision of pay scale, the benefit of ACP is to be treated to be the existing scale.

In the present case, the claim of the petitioners was rejected on the ground that their pay scales been modified w.e.f 01.08.2005 and thus the petitioners have got one up-gradation of pay scale within prescribed period and are not entitled for 1st ACP scale. The modification of the pay scale cannot disentitle the petitioners for grant of 1st and 2nd ACP as per ACP Rules, 1998. The object of the ACP Rules is to compensate the employees by granting up-gradation in pay scale as he has not got any promotional avenue in the last 10 years. The pay scales of the petitioners were modified from Rs.3050-4590/- to Rs.4000-6000/- and not upgraded

In view of the above, impugned orders dated 08.09.2008 (P-4) and 03.09.2009 (P-6) passed by respondent No. 2 are set aside and the respondents are directed to pass a fresh order for extending the 1st ACP Scale to the petitioners as per ACP Rules, 1998 w.e.f the date after completion of 10 years of service. This exercise be concluded within a period of three months from the receipt of certified copy of this order and necessary payment shall be made to the petitioners within next two months along with interest at the rate of 9% per annum from the date of his retirement till actual payment is made.

Allowed accordingly.

(RITU BAHRI)
JUDGE

24.05.2016
G Arora