

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

CWP No.13871 of 2015

Date of decision: 26.05.2016

Brij Mohan Behl

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. B.S. Rana, Senior Advocate,
with Mr. Rajinder Paul, Advocate,
for the petitioner.

Mr. Ravi Partap Singh, AAG, Haryana.

Mr. A.S. Virk, Advocate,
for respondent No.3.

Ritu Bahri, J.

The petitioner, who is a retired Technical Assistant, is seeking quashing of the order dated 15.07.2014 (Annexure P-7), whereby benefit of 1st and 2nd ACP has been declined to him.

The petitioner was appointed in Kurukshetra University, Kurukshetra as Technician in the pay scale of Rs.220-370 on 12.08.1971. The said post was re-designated as Technical Assistant, Grade-II w.e.f. 01.04.1978 on the pattern of Panjab University, Chandigarh. His pay scale was revised from 220-370 to 250-500 w.e.f. 10.12.1975, Rs.350-800 w.e.f. 01.04.1978, Rs.700-1250 w.e.f. 01.04.1979 and Rs.1600-2660 w.e.f. 01.01.1986 (on acceptance of the recommendation of 4th Pay Commission).

The petitioner was granted the first Higher Standard Scale (1st HSS) of

Rs.1640-2900 w.e.f. 01.01.1994 and after completion of the 20 years non-promotional service, he was granted the Second Higher Standard pay scale of Rs.2000-3200 w.e.f. 01.04.1995. Consequently, on 31.12.1995, his basic pay was fixed at Rs.3050 in the pay scale of Rs.2000-3200. As per ACP Rules, 1998, the first ACP scale is of Rs.5500-9000/- w.e.f. 01.01.1996 on completion of 10 years of service and the second ACP scale is of Rs.6500-9900/- on completion of 20 years of service for the post of Technical Assistant, Grade-II. The said benefit has not been granted to the petitioner on the ground that he had been earlier granted the financial up-gradation of Rs.250-500/- w.e.f. 10.12.1975 (after 4 years of service) and Rs.350-800 w.e.f. 01.04.1978 (after 7 years of service). Vide letters dated 20.02.2002, 17.04.2003 and 17.05.2007 (Annexures P-1 to P-3), respondent No.2 recommended the case of the petitioner for exercising the relaxation clause as provided under Clause 20 of the ACP Rules, 1998. Thereafter, the petitioner filed CWP No.14300 of 2007, wherein the respondents took a stand that he had already been allowed two financial up-gradations w.e.f. 10.12.1975 and again w.e.f. 01.07.1978 and his case is not covered under the ACP Rules. During the pendency of said petition, respondent No.2 passed an order dated 11.06.2008 and rejected the recommendations of respondent No.3-University. The said petition was dismissed as withdrawn with liberty to challenge the aforesaid order. Thereafter, the petitioner filed another petition i.e. CWP No.18813 of 2009 challenging the order dated 11.06.2008, which was disposed of on 15.05.2014 by giving direction to the respondents to pass a speaking order while considering the proposal of the University. Ultimately, the order dated 11.06.2008 was set aside. Thereafter, the respondents have passed the impugned order dated 15.07.2014

2nd ACP Scale after completion of 10 and 20 years of service.

Upon notice, respondent Nos.1 and 2 have filed their written statement by taking a stand that the petitioner was initially appointed as Technician on 12.08.1971 in the pay scale of Rs.220-10-370 and subsequently, the scale was revised to Rs.250-15-400-20-500 w.e.f. 10.12.1975. Thereafter, the post of Technician was re-designated as Technical Assistant Grade-II and the pay scale was revised to Rs.350-25-650-EB-30-800 w.e.f. 01.04.1978 on the pattern of Punjab University, Chandigarh. Hence, after getting two financial up-gradation, the petitioner is not entitled to get ACP scale on completion of 10 and 20 years of service.

In a separate written statement filed by respondent No.3, it has been stated that the matter of revision of pay scale was referred to the State Government. However, the State Government, after considering the whole aspect of the matter, declined to grant the benefit of ACP Scale on the ground that he had already got two up-gradations w.e.f. 10.12.1975 and 01.04.1978. Hence, his case is not covered by the ACP Rules. It has been further stated that pay scales of the employees of respondent-university cannot be revised without prior sanction of the State Government. Rule 5 of ACP Rules, 1998, which provides for eligibility for grant of ACP Scales 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 no 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.....”

In the case of the petitioner, after his appointment as Technician in the year 1971, he has retired without getting any promotion in the hierarchy. Moreover, functional pay scale of the post has not been upgraded. As on 31.12.1995, the functional pay scale of the petitioner was Rs. 2000-3200 and his pay was fixed at Rs.3050/-. This functional pay scale was granted to the petitioner after getting the benefit of Second Higher Standard pay scale. Prior to grant of this pay scale, the petitioner was in the scale of Rs.1600-2660 w.e.f. 01.01.1986. He got the pay scale of Rs.1640-2900 at par with the employees of the Panjab University. It is not the case of the respondents

petitioner was granted any functional promotion in the hierarchy at any stage. For all intents and purposes, on 31.12.1995, his pay scale was of Rs.2000-3200, which was given on account of Higher Standard Pay Scales admissible to Technicians appointed in the pay scale of Rs.1640-2900. When the ACP Rules became effective from 01.01.1996, the petitioner had a right to be considered for grant of 1st and 2nd ACP Scales, as he had not got the benefit of function promotion or upgradation of scales or at least, one pay scale upgradation. The explanation to Rule 5 of ACP Rules is very clear on the subject, which reads as under:-

“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.”

The question for consideration in this case is, 'whether modification of the pay scales from Rs.250-500 to Rs.350-800 at par with the employees of the Panjab University would amount to upgradation of pay scales in order to deny the benefit of ACP Rules to the petitioner'.

At this stage, reference can be made to Rule 12 of ACP Rules, 1998, which reads as under:-

“12. “Scale of Pay”: The pay scale for the purpose of these rules for the Government servant shall be as under:-

(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.”

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. As on 31.12.1995, the petitioner was in the functional pay scale of Rs.1600-2660 and the corresponding 1st and 2nd ACP scales were of Rs.5500-9000 and Rs.6500-9900 respectively. This fact is not being disputed in the written statement. The only ground to deny the benefit of 1st and 2nd ACP Scale is that prior to coming in the pay scale of Rs.1600-2660, the pay scale of the petitioner had been modified at par with the employees of the Panjab University in the years 1975 and 1978. The modification of the pay scale cannot disentitle the petitioner for grant of 1st and 2nd ACP as per ACP Rules, 1998. After being appointed as Technician in the year 1971 in the pay scale of Rs.220-10-370, pay scales of the petitioner were modified and not upgraded. In 1978, the petitioner was in the pay scale of Rs.350-800 and thereafter, he was placed in the scale of Rs.1600-2660 w.e.f. 01.01.1986. On this pay scale, he was granted the benefit of first and second Higher Standard scales. Hence, for the purpose of ACP Rules, 1998, the modifications made in the year 1975 and 1978 would not carry any weightage. As on 01.01.1986, his pay was fixed in the pay scale of Rs.1600-2660. Therefore, as per Schedule I, Part II of ACP Rules, 1998, his case should have been considered for grant of 1st and 2nd ACP

Scale of Rs.5500-9000 & Rs.6500-9900 respectively w.e.f. 01.01.1996. The recommendation had rightly been made by the respondent-university vide Annexures P-1 to P-3.

In view of the above, the impugned order dated 15.07.2014 (Annexure P-7) is set aside and the respondents are directed to pass a fresh order for extending the 1st and 2nd ACP Scale to the petitioner as per ACP Rules, 1998 by taking his pay scale as Rs.1600-2660, which was the pay scale of Assistant Technician as on 31.12.1995. 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 petitioner 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.

26.05.2016
ajp

(RITU BAHRI)
JUDGE