

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

CWP No. 14707 of 2014

Date of Decision: 17.10.2016

GOVERDHAN DUTT

... Petitioner

VS.

STATE OF PUNJAB AND OTHERS

.... Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH.

Present: Mr. R.K. Arora, Advocate,
for the petitioner.

Mrs. Vandana Malhotra, Addl. A.G., Punjab.

KULDIP SINGH, J (ORAL)

Brief facts of the case are that the petitioner joined the Department of Agriculture, Punjab on 12.10.1970 as Sectional Officer on regular basis. The said post was re-designated as Junior Agriculture Engineer without any change in the cadre. The petitioner throughout his service worked on the same cadre. He was granted proficiency step up on completion of 8/18 years of service as per the Government's instructions dated 01.12.1988, 01.01.1986 and 12.10.1988. The benefit of ACP scheme on completion of 24 years of service was also granted w.e.f. 01.01.1996 as per the Government's instructions dated 25.09.1998. He ultimately retired from service as Junior Agriculture Engineer on 30.10.2000.

The Government of Punjab vide instructions dated 27.06.2000 removed the anomalies in the pay scales of Junior Engineers and granted them the career progression with Class II status and designation as Assistant Engineer. However, the petitioner was never granted the benefit in terms of

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said instructions dated 27.06.2000 as his pay was never fixed as per these instructions.

It comes out that some of the employees namely Vijay Kumar Sharma and others filed *CWP No. 10524 of 2012* which was disposed at motion stage by this Court vide order dated 29.05.2012, wherein the respondent department was directed to consider the representation of the petitioner regarding grant of ACP on completion of 24 years of service. Accordingly, the order dated 11.07.2012 (*Annexure P-5*) was passed by the Director Agriculture, Punjab whereby said benefit was not given to the said petitioners. However, at the same time, the benefit of ACP scheme on completion of 24/32 years of service granted to the employees mentioned in the *Annexure P-9* who had retired from service, was withdrawn.

Aggrieved by the said order, the petitioner approached this Court and filed CWP No. 19377 of 2012 which was decided by this Court on 14.08.2013 in which the impugned order was set aside and the respondents were directed to pass a fresh order in accordance with law after observing the principles of natural justice. Thereafter, the impugned order dated 12.05.2014 (*Annexure P-9*) was passed. The said order is reproduced as under: -

“Vide this office order issued vide endst. No. 2-3196/E2(2)/1833-35 dated 18.07.2012, it was decided to withdraw the benefit of 24/32 years given to the petitioners as per decision in Civil Writ Petition No. 10524 of 2012. Against these orders, Sh. Goverdhan Dutt, Junior Agriculture Engineer and others filed CWP No. 19377/2012 before the Hon’ble Punjab and Haryana High Court, wherein they demanded that the benefit of 24/32 years already given to them may be maintained. The said writ petition was decided by the Hon’ble Punjab and Haryana High Court by passing the following order: -

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“Accordingly the present writ petition is allowed. Annexures P-10 to P-13 are quashed liberty is however granted to the respondent authorities to proceed afresh in the matter and to pass orders strictly in accordance with law and after observing the principles of natural justice.”

In view of the aforesaid orders, it is being clarified that while taking decision in terms of Civil Writ Petition No. 10524 of 2012, opinion was taken from Government and Accounts Officers. Earlier, as per the advice of the Government and opinion received from Accounts Officers, the benefits given to the petitioners were withdrawn. Therefore, on considering the decision rendered in Civil Writ Petition No. 19377 of 2012 filed by Sh. Goverdhan Dutt, the decision of withdrawal of benefit of 24/32 years given to the petitioners is ordered to be restored.

By the said order, the order withdrawing the benefit of ACP Scheme on completion of 24/32 years of service was maintained. Accordingly, pay of the petitioner was fixed vide order dated 11.07.2014 (Annexure P-10).

The grouse of the petitioner is that by the impugned order dated 12.05.2014 (Annexure P-9), the benefit of ACP scheme granted on completion of 24/32 years of service cannot be withdrawn after nearly 14 years of service rendered by the petitioner and the same is illegal.

In the reply, the respondents have taken the stand that the petitioner was not entitled to ACP Scheme on completion of 24 years of service as the petitioner also falls in the category of Harbhajan Singh, one of the petitioners in the previous petition CWP No. 10524 of 2012. It is stated that clarification was sought vide letter dated 26.07.2014 from the office of Personnel Department and on account of the said clarification of Personnel Department, the benefit was rightly withdrawn.

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

The policy dated 25.09.1998 (*Annexure P-2*) with regard to grant of ACP, shows that proficiency step up was to be given on completion of 16 years of service. The relevant Rule 3 (iii) is reproduced below:-

“3 (iii)

A proficiency step up shall be granted to such an employee after 16 years of service and a second proficiency step-up shall be granted after 24 years of service if the employee still continuous in the same post. Service rendered by an employee in the lower and higher pay scale granted as per (i) above shall be reckoned as service in the same post for this purpose.”

The above rule makes it clear that if an employee continues on the same post after 16 years of service, the second proficiency step up is to be granted after completion of 24 years of service. The service rendered by the employee in lower or in higher pay scale granted as per Rule 3 (iii) shall be reckoned as service on the same post. Therefore, the relevant fact for grant of ACP is as to whether the person is working on the same post or not?

In the present case, admittedly the petitioner had worked on the same post till his retirement i.e. post of Junior Agriculture Engineer. The subsequent instructions dated 27.06.2000 (*Annexure P-3*) regarding removal of anomalies were never implemented qua the petitioner.

The respondents claimed that in view of clarification received from the Government in the year 2004, the benefit has been withdrawn. The petitioner had already retired in the year 2000. The clarification cannot supersede the Rule even if it is explanatory. The interpretation of the Rules

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shows that if an employee has worked in the same cadre, he has to be granted the benefit of the ACP on completion of 16/24 years of service.

In these circumstances, impugned order dated 12.05.2014 (*Annexure P-9*) is not sustainable in the eyes of law. Hence, the impugned order (*Annexure P-9*) alongwith order dated 11.07.2014 (*Annexure P-10*) regarding re-fixation of pay, are hereby quashed.

The pension earlier granted to the petitioner is ordered to be restored. The arrears be paid to him with interest @ 8 % per annum within two months from the date of receipt of this order.

In view of the above, the petition stands allowed.

October 17, 2016
Suresh Kumar

(KULDIP SINGH)
JUDGE

	✓		
Whether speaking / reasoned	Yes	/	No
			✓
Whether Reportable	Yes	/	No