

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

CWP No. 23957 of 2011

Date of decision : 06.04.2016

Chameli Devi

...Petitioner

versus

State of Haryana and ors.

..Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. B.K. Bagri, Advocate
for the petitioner.

Mr. Hitesh Pandit, Addl.A.G. Haryana

Mr. C.B. Goel, Advocate
for respondent Nos 2 and 3.

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

RITU BAHRI , J.

Petitioner has approached this Court by way of instant writ petition filed under Articles 226/227 of the Constitution of India, seeking a writ in the nature of certiorari for quashing letter dated 30.09.2005 and 17.12.2008 and further prayer is issuance of direction to the respondents to grant the benefit of ACP scales to the husband of the petitioner at par with junior employee.

The husband of the petitioner i.e Uday Ram was appointed as Octroi Peon in the year 1967 on Class IV post in Municipal Council,

Rewari and was promoted as Octroi Clerk in 1968 after abolition of the Octroi in State of Haryana. Thereafter, he was adjusted as Clerk in the year 1999 after abolition of Octroi in the office of respondent No. 3. Thereafter, staff of Municipal Council in State of Haryana was declared surplus and the employees of that department were absorbed in various departments of Government of Haryana and petitioner's husband was also adjusted in the office of respondent No. 3 but the benefit of ACP scale was not granted to him and stood retired on 31.07.2003 after rendering about 36 years of service.

After the retirement of the husband of the petitioner, vide letter dated 30.09.2005 recovery of Rs.9554/- was made and it has been stated that the recovery of Rs.25368/- was recovered due to audit objection and recovery of Rs.19414/- recovered from the arrear and the difference of Rs.5954+3600 i.e Rs.9554 was recovered after more than 02 years of his retirement on 30.09.2005. The husband of the petitioner sent a legal notice dated 10.11.2008 with regard to recovery and for stepping up of his pay, which was replied to by respondent No. 3 on 17.12.2008. In the meantime, husband of the petitioner expired on 28.05.2009.

Learned counsel for the petitioner submits that the husband of the petitioner served for about 3 ½ years in the office of respondent No. 3 and retired on 31.07.2003 and he has rendered about 36 years of

service at the time of his retirement but the benefit of pay scale was not granted to him and Shish Ram, Sat Narain, Ram Parshad and Rishi Kumar all Octroi Clerk, who were appointed on Class III post after the death of petitioner's husband in the year 1969 were granted the benefit of 1st and 2nd ACP pay scales despite the fact that they were junior to the petitioner's husband, as he was appointed in the year 1968.

Reference has been made to instructions dated 06.02.2007 and 13.04.2007 which was passed after the judgment of Hon'ble the Supreme Court in a case of Commissioner and Secy to Government of Haryana vs. Ram Sarup Gaiinda, decided on 02.08.2006, reported in RSJ 2007 Vol III, Page 154. These instructions were with regard to stepping up of pay at par with junior employees in case of ACP matters.

Learned counsel for respondent No. 3 while referring to written statement has stated that the husband of the petitioner was appointed as Octroi Peon on 28.12.1965 and was promoted as Octroi Clerk on 09.09.1968. Learned counsel further submits that since Uday Ram was initially appointed in the Municipal Council, Rewari and he continued to serve the Municipal Council till he retired in July 2003, so he was not adjusted as Clerk and thus was not entitled for grant of ACP pay scale.

Learned counsel while referring to para No. 19 of the written statement further stated that Shish Ram, Sat Narain, Ram

Parshad and Rishi Kumar were all senior to the husband of the petitioner.

Reference at this stage can be made to a reply dated 17.12.2008 given by M.C. Bawal which was given in response to the legal notice wherein husband of the petitioner was directed to sent the service record of the junior employee so that his case be sent to D.C. Rewari for further action.

The point for consideration before this Court is that if Uday Ram after being appointed as Moharrir on 07.09.1968, was not given any promotion till the date of his retirement, can be given the benefit of ACP pay scales after completion of 10/20 years of service, as per ACP Rules.

Reference at this stage can 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.

Thus, the case of the husband of the petitioner is squarely covered by the above said Rule, as in the written statement, it has nowhere been mentioned by the respondents that the petitioner was granted any financial upgradation after completing 10/20 years of

service. It is not the case of the respondents that the husband of the petitioner did not fulfill the requirement for the grant of ACP pay scales. The purpose of giving ACP pay scales was to remove stagnation.

Reference at this stage can be made to a judgment passed by this Court in a case of ***Ramesh Dahiya v. UHBVNL, passed in CWP No. 3528 of 2008, decided on 04.04.2008*** wherein also the petitioner remained on one post and was not granted 1st and 2nd ACP pay scale. This Court allowed the writ petition by referring to Rule 5 of ACP rules.

With regard to the recovery effected from the petitioner, reference at this stage can be made to a judgment of Hon'ble the Supreme Court in a case of ***State of Punjab and others vs. Rafiq Masih and others, 2015 (1) RSJ 177*** wherein in para 12 and 13, it has been observed as under:-

"12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law :

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been

required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.

13. We are informed by the learned counsel representing the appellant-State of Punjab, that all the cases in this bunch of appeals, would undisputedly fall within the first four categories delineated hereinabove. In the appeals referred to above, therefore, the impugned orders passed by the High Court of Punjab and Haryana (quashing the order of recovery), shall be deemed to have been upheld, for the reasons recorded above."

For the reasons recorded above, the writ petition is allowed and letter dated 30.09.2005 is quashed and the respondents are directed to give the benefit of ACP scale to the husband of the petitioner and also return the recovered amount of Rs.28968/-, within a period of three months @9% per annum from the date of his retirement.

(RITU BAHRI)
JUDGE

06.04.2016

G Arora