

CWP No. 3922 of 2011 (O/M) and connected matters

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision : 3.10.2016

1. CWP No. 3922 of 2011 (O/M)
Narender Pal Singh Arya and another Petitioner (s)

Versus

State of Haryana and others Respondent (s)
2. CWP No. 1200 of 2011 (O/M)
Sita Ram and another Petitioner (s)

Versus

State of Haryana and others Respondent (s)
3. CWP No.1927 of 2011 (O/M)
Sween Malik and others Petitioner (s)

Versus

State of Haryana and others Respondent (s)
4. CWP No.12030 of 2011 (O/M)
Urmila Devi and another Petitioner (s)

Versus

State of Haryana and others Respondent (s)
5. CWP No. 2048 of 2011 (O/M)
Shri Ram and others Petitioner (s)

Versus

State of Haryana and others Respondent (s)
6. CWP No.2089 of 2011 (O/M)
Naresh Kumar and others Petitioner (s)

Versus

State of Haryana and others Respondent (s)

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7. CWP No.2750 of 2011 (O/M)
Vidya Nand and others Petitioner (s)
- Versus
- State of Haryana and others Respondent (s)
8. CWP No. 3185 of 2011 (O/M)
Naresh Kumar and others Petitioner (s)
- Versus
- State of Haryana and others Respondent (s)
9. CWP No. 3291 of 2011 (O/M)
Naresh Kumar and others Petitioner (s)
- Versus
- State of Haryana and others Respondent (s)
10. CWP No. 3366 of 2011 (O/M)
Jai Parkash Yadav and others Petitioner (s)
- Versus
- State of Haryana and others Respondent (s)
11. CWP No. 3874 of 2011 (O/M)
Gayatri Devi and others Petitioner (s)
- Versus
- State of Haryana and others Respondent (s)
12. CWP No.3919 of 2011 (O/M)
Uma Redhu and othes Petitioner (s)
- Versus
- State of Haryana and others Respondent (s)
13. CWP No. 6134 of 2011 (O/M)
Smt. Suman Lata and another Petitioner (s)
- Versus
- State of Haryana and others Respondent (s)

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14. CWP No. 6213 of 2011 (O/M)

Wazir Singh and others Petitioner (s)

Versus

State of Haryana and others Respondent (s)

15. CWP No.7517 of 2011 (O/M)

Rakesh Mishra and another Petitioner (s)

Versus

State of Haryana and another Respondent (s)

16. CWP No. 8785 of 2011 (O/M)

Om Prakash Yadav Petitioner (s)

Versus

State of Haryana and others Respondent (s)

17. CWP No. 9336 of 2011 (O/M)

Praveen Sharma and others Petitioner (s)

Versus

State of Haryana and others Respondent (s)

18. CWP No. 9390 of 2011 (O/M)

Randhir Singh and others Petitioner (s)

Versus

State of Haryana and others Respondent (s)

19. CWP No.9884 of 2011 (O/M)

Renu Sharma and others Petitioner (s)

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20. CWP No.15746 of 2011 (O/M)

Kanta Devi and others Petitioner (s)

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21. CWP No. 17628 of 2011 (O/M)

Babu Lal Yadav and others Petitioner (s)

Versus

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22. CWP No. 18522 of 2011 (O/M)

Smt. Sunita Gupta and others Petitioner (s)

Versus

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23. CWP No. 20666 of 2011 (O/M)

Virender Kumar and others Petitioner (s)

Versus

State of Haryana and others Respondent (s)

24. CWP No. 20752 of 2011 (O/M)

Mukhtiar Singh and others Petitioner (s)

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25. CWP No.22000 of 2011 (O/M)

Pawan Kumar and others Petitioner (s)

Versus

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26. CWP No. 2878 of 2012 (O/M)

Vinay Gulati and others Petitioner (s)

Versus

State of Haryana and others Respondent (s)

27. CWP No. 4532 of 2012 (O/M)

Ashok Kumar and others Petitioner (s)

Versus

State of Haryana and another Respondent (s)

28. CWP No. 4909 of 2012 (O/M)

Balwant Singh and others Petitioner (s)

Versus

State of Haryana and others Respondent (s)

29. CWP No.7500 of 2012 (O/M)

Rajpati Petitioner (s)

Versus

State of Haryana and others Respondent (s)

30. CWP No.9260 of 2012 (O/M)

Jai Bhagwan Sharma and others Petitioner (s)

Versus

State of Haryana and others Respondent (s)

31. CWP No.9896 of 2012 (O/M)

Rajinder Singh and others Petitioner (s)

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32. CWP No. 14511 of 2012 (O/M)

Naresh Kumar Kamboj and others

..... Petitioner (s)

Versus

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..... Respondent (s)

33. CWP No.16255 of 2012 (O/M)

Sunil Kumar Sharma and others

..... Petitioner (s)

Versus

State of Haryana and others

..... Respondent (s)

34. CWP No.16457 of 2012 (O/M)

Satya Dev Parkash

..... Petitioner (s)

Versus

State of Haryana and another

..... Respondent (s)

35. CWP No.19675 of 2012 (O/M)

Jitender Pal Singh and others

..... Petitioner (s)

Versus

State of Haryana and others

..... Respondent (s)

36. CWP No.21058 of 2012 (O/M)

Girish Chander Sharma

..... Petitioner (s)

Versus

State of Haryana and others

..... Respondent (s)

37. CWP No.22442 of 2012 (O/M)

Habi Singh Sharma and others

..... Petitioner (s)

Versus

State of Haryana and others

..... Respondent (s)

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38. CWP No.25495 of 2012 (O/M)

Ram Avtar Sharma Petitioner (s)

Versus

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39. CWP No.6594 of 2013 (O/M)

Baljit Kaur Petitioner (s)

Versus

State of Haryana and others Respondent (s)

40. CWP No.11094 of 2013 (O/M)

Usha Rani Petitioner (s)

Versus

State of Haryana and others Respondent (s)

41. CWP No.11880 of 2013 (O/M)

Nafe Singh and others Petitioner (s)

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State of Haryana and others Respondent (s)

42. CWP No.15971 of 2013 (O/M)

Chand Singh Yadav Petitioner (s)

Versus

State of Haryana and others Respondent (s)

43. CWP No.21778 of 2013 (O/M)

Smt. Bhupesh Kumari Petitioner (s)

Versus

State of Haryana and others Respondent (s)

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44. CWP No.23790 of 2013 (O/M)

Ashwani Kumar and others Petitioner (s)

Versus

State of Haryana and others Respondent (s)

45. CWP No.24581 of 2013 (O/M)

Surender Singh Petitioner (s)

Versus

State of Haryana and others Respondent (s)

46. CWP No.25887 of 2013 (O/M)

Karan Singh and others Petitioner (s)

Versus

State of Haryana and others Respondent (s)

47. CWP No.446 of 2014 (O/M)

Satish Kumar and others Petitioner (s)

Versus

State of Haryana and another Respondent (s)

48. CWP No.4380 of 2016 (O/M)

Veena Sharma Petitioner (s)

Versus

State of Haryana and another Respondent (s)

49. CWP No.6406 of 2016 (O/M)

Rajesh Kumar and others Petitioner (s)

Versus

State of Haryana and another Respondent (s)

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50. CWP No. 1762 of 2011 (O/M)

Partap Singh and others Petitioner (s)

Versus

State of Haryana and others Respondent (s)

51. CWP No. 2879 of 2011 (O/M)

Anita Dagar and others Petitioner (s)

Versus

State of Haryana and others Respondent (s)

52. CWP No. 7710 of 2011 (O/M)

Mian Singh and others Petitioner (s)

Versus

State of Haryana and others Respondent (s)

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Anurag Goyal, Advocate,
for the petitioner(s) in CWP-3922, 1200, 1762, 2750, 7517,
22000, 3874, 3919, 7710, 2879, 9884-2011, 2878, 9896-2012.

Mr. Balbir Kumar Saini, Advocate, for, Mr. R.N. Sharma,
Advocate, for the petitioner (s) in CWP-2089, 3185-2011.

Mr. N.D. Achint, Advocate, for the petitioner (s)
in CWP-6134-2011.

Mr. R.K. Malik, Senior Advocate, with,
Mr. Kuldeep Sheoran, Advocate, for the petitioner (s)
in CWP-9336-2011.

Mr. Bhag Singh, Advocate, for the petitioner (s)
in CWP-15746-2011.

Mr. Umesh Narang, Advocate, for the petitioner (s)
in CWP-17628, 1927, 6213, 18522-2011, CWP-14511, 4532,
4909, 9260, 16255-2012, CWP-11880, 24581, 25887-2013,
CWP-446-2014, CWP-6406-2016.

Mr. B.K. Bagri, Advocate, for, the petitioner (s)
in CWP-22442-2012 and CWP-15971-2013.

None for the petitioner in CWP-6594-2013.

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Ms. Kiranjeet Kaur, Advocate, for, Mr. R.S. Malik, Advocate,
for the petitioner (s) in CWP-11094-2013.

Mr. Naveen Daryal, Advocate, for the petitioner (s)
in CWP-21778-2013.

Mr. Ravinder Malik (Ravi), Advocate, for the petitioner (s)
in CWP-23790-2013.

Mr. M.S. Randhawa, Advocate, for the petitioner (s)
in CWP-6406-2016.

Mr. Naveen Sheoran, Deputy A.G. Haryana.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

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KULDIP SINGH, J.

On request of the Court, Mr. Anurag Goyal, Advocate, has addressed the arguments on behalf of the petitioners, who were not represented by their respective counsels today.

By this single judgment, I shall dispose of abovenoted 52 writ petitions, in which same questions of law and facts have been arisen. In some of the petitions, the petitioners are retired Lecturers and in some of the writ petition, the petitioners are still working as Lecturers. In some other writ petitions, the petitioners are either working or retired as Masters, Head Masters or Principals. In the Civil Writ Petitions No. 2878 of 2012, , 16457 of 2012, 7500 of 2012, 22000 of 2011, 24581 of 2013, 25887 of 2013, 3291 of 2011, 248 of 2011, 9884 of 2011, 20666 of 2011, 3366 of 2011, 15971 of 2013, 20752 of 2011, 8785 of 2011, 6134 of 2011, 4380 of 2016, 6406 of 2016, 15746 of 2011, 12030 of 2011, 9390 of 2011, 2750 of 2011, 9896 of 2012, 3919 of 2011, 1762 of 2011, 7710 of 2011 and 2879 of 2011, the

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petitioners have impugned the letter/instructions dated 13.5.2010 (Annexure-P-5) regarding clarification of financial upgradation in the case of ACP matters in the State of Haryana, whereas in remaining matters i.e. Civil Writ Petitions No. 1200 of 2011, 3922 of 2011, 25495 of 2012, 6594 of 2013, 14511 of 2012, 3185 of 2011, 4532 of 2012, 16255 of 2012, 446 of 2014, 19675 of 2012, 7511 of 2011, 1927 of 2011, 4909 of 2012, 17628 of 2011, 21778 of 2013, 11880 of 2013, 6213 of 2011, 18522 of 2011, 2089 of 2011, 21058 of 2012, 9336 of 2011, 23790 of 2013, 3874 of 2011, 22442 of 2012, 11094 of 2013 and 9260 of 2012, in addition to letter/instructions dated 13.5.2010 (Annexure-P-5), the notification dated 9.4.2010 (Annexure-P-6), giving clarification regarding the Haryana Civil Services (Assured Career Progression Scheme) Rules, 2008-pay fixation, is also challenged.

The facts are extracted from the lead case i.e. CWP No. 3922 of 2011 and some of the facts are extracted from CWP No. 1200 of 2011.

In the State of Haryana, there is a hierarchy of teachers as Masters, Lecturers and Principals. The Lecturers are governed by rules called School Lecturers (Group B) Service Rules, 1998 (in short 'Rules of 1998 of Lecturers') and the Headmasters and Principals are governed by the rules called School Cadre (Group B) Service Rules, 1998 (in short 'Rules of 1998 of Headmasters and Principals'). A person, who is appointed as a Master, is entitled to be promoted to the post of Lecturer. The Lecturer is also entitled for promotion to the post of Headmaster or Principal. Some of the petitioners were promoted from the post of Masters to the post of Lecturers and some of them were directly recruited as Lecturers. Some of the petitioners are promoted from the posts of Lecturers to the posts of

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Headmasters/Principals. The report of 5th Pay Commission was implemented in the Haryana State with effect from 1.1.1996 through Haryana Civil Services (Revised Pay) Rules, 1998 (in short 'the Revised Pay Rules, 1998'). The Lecturers were given the functional pay scale of Rs. 6500-200-10500, whereas the Principals were given the functional pay scale of Rs. 8000-285-13500. The petitioners were accordingly given the revised pay scales as per their cadre with effect from 1.1.1996. There was no provision of Assured Career Progression (in short 'ACP') scale qua the posts of Lecturers, and Headmasters upto 1.1.2006. Vide notification dated 7.8.1992 (Annexure-P-2), additional increments were introduced to Group 'C' and 'D' employees on completion of 8/18 years of regular satisfactory service on a particular post. Vide another notification dated 8.2.1994 (Annexure-P-3), the higher standard pay scale was introduced on completion of regular satisfactory 10 years or more than 20 years or more service. The said higher standard pay scales were also admissible to the Group 'C' and 'D' employees of the State of Haryana. For the first time, vide notification dated 12/19.12.2001 (Annexure-P-1), the selection grade was introduced for the posts of Lecturers of the Government Senior Secondary Schools and they were given the scale of 7500-12000 with effect from 1.8.2000. The selection grade was granted to 20% cadre posts of Lecturers. On account of revision of pay with effect from 1.1.1996 on account of implementation of report of 5th Pay Commission, the pay of the Masters in the State of Haryana was fixed in the Pay Band-2 i.e. Rs. 9300-34800 with grade pay of Rs. 4600/-. The pay of the Lecturers was fixed in the Pay Band-2 i.e. Rs. 9300-34800 with grade pay of Rs. 4800/-. The pay of the Principals was fixed in Pay Band-3 i.e. Rs. 15600-39100 with grade pay of

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Rs. 6000/-. Alongwith the pay revision, ACP Rules in the name of Haryana Civil Services (Assured Career Progression) Rules, 2008, were also framed (in short 'ACP Rules of 2008'). Rule 7 of the said ACP Rules of 2008, is regarding eligibility for grant of ACP grade pay under the general ACP Scheme on completion of 10/20/30 years of regular satisfactory service for those employees, who have not got any financial upgradation in these 10 years. Rules 18 of the said ACP Rules of 2008 provides for formula for calculation of fixation of initial pay in the revised ACP pay structure. Rule 19 provides for rate of increment in the revised ACP pay structure. The petitioners were accordingly granted the benefit of Revised Pay Rules of 2008 and revised ACP Rules of 2008.

Subsequently, on 13.5.2010, notification (Annexure-P-5) was issued, whereby a clarification of financial upgradation was given. The petitioners claim that the said notification infact amends the meaning of financial upgradation after a span of two years, whereby it was observed that the additional increments granted at 10/20 years and 8/18 years would not be treated as financial upgradation for the purpose of revision of pay scale as per Rules 2008. However, the selection grade granted to certain categories of employees would be treated as financial upgradation, if the pay of the incumbents, who were drawing their pay in the pay scale of selection grade prescribed for the post, had been fixed in the corresponding selection grade pay scale or applicable ACP pay scale under other scheme (ACP Scheme) applicable on them during the general revision of pay scale. Some examples were also mentioned therein. It is stated that the notification dated 13.5.2010 (Annexure-P-5) is illegal and sought to be challenged on the ground that the word 'financial upgradation' was not

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defined in the Revised Pay Rules of 2008 or ACP Rules of 2008 and that the effect of the said notification would be that those Lecturers, who got 20% selection grade, will not be granted the benefit of ACP. In view of the said notification, the pay of those Lecturers, who got the selection grade, having fallen in 20% of the cadre strength, has been revised and they have been declined the benefit of ACP and increments thereon with the result that their pay has become less than those 80% of the cadre strength, who were not given the selection grade. Had the petitioners been told at the time of grant of ACP that they have the option either to opt for ACP scheme or the selection grade, they would have opted the appropriate option, so as to get the beneficial scale. For the retired employees, their pension has also been re-fixed with the order of recovery of excess amount. Admittedly, the recoveries were stayed by this Court.

The retired Principals and Headmasters have also impugned the notification dated 9.4.2010 (Annexure-P-6), vide which the clarification regarding the pay fixation, was given. According to the petitioners, this is contrary to Rule 13 of Revised Pay Rules of 2008, wherein the fixation formula is provided. The stand of the petitioners is that by way of clarification through administrative instructions, the original rules cannot be amended.

The State in the reply has defended the rules. It is stated that the grant of selection grade amounts to financial upgradation and the clarification dated 13.5.2010 (Annexure-P-5) is nothing, but reiteration of the actual situation. It does not amend the original rules. Regarding the notification dated 9.4.2010 (Annexure-P-6), it is stated that it is only a clarification and not amendment of the original rules. The necessity arose

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to give clarification as some complications had arisen in the fixation of pay. The factual position regarding notification is not denied. In short, the respondents have defended the validity of notification/instructions (Annexures-P-5 and P-6).

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

First of all, the validity of notification dated 13.5.2010 (Annexure-P-5) shall be examined.

The notification dated 13.5.2010 (Annexure-P-5) is regarding clarification of financial upgradation in case of ACP matters. The disputed clause of clarification is reproduced as under :-

“2. Whether the selection grade granted may be treated as a financial upgradation or not ?

Selection grade granted to certain categories of employees on completion of certain period/limited to certain percentage may not be counted as financial upgradation under HCS (ACP) Rules, 2008 in the following circumstances :-

(i) If the pay of the incumbent(s) who were drawing their pay in the pay scale of Selection Grade prescribed for the post had been fixed in the corresponding functional pay scale of the post he was holding due to the reason that time scale and selection grade of a post have been clubbed together and replaced by one single revised pay scale during general revision of pay scale as already clarified vide para No. 9 of F.D. memo No. 1/34/93-4PR(FD) dated 8.2.1994.

However, Selection Grade granted to certain categories of employees on completion of certain period/limited to certain percentage may be counted as financial upgradation under HCS (ACP) Rules, 2008 in the following circumstances :-

(ii) If the pay of the incumbent(s) who were drawing their pay in the pay scale of Selection Grade prescribed for the post

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had been fixed in the corresponding selection grade pay scale or applicable ACP pay scale under other scheme (ACP Scheme) applicable on them during general revision of pay scale.”

It is the later part of this clarification, which is being impugned by the petitioners as some of the petitioners were given selection grade and their pay was accordingly fixed and according to this clarification, it is to be treated as financial upgradation. This is regarding clarification of ACP Rules of 2008.

Reverting to ACP Rules of 2008, which were published in the official gazette, vide notification dated 30.12.2008, it comes out that Rule 3 of the ACP Rules of 2008 provides for definition of certain terms used in the rules. Rule 3(f) of the ACP Rules of 2008 defines the functional pay scale as under :-

“3(f) “functional pay scale” in relation to a Government servant means the pay scale which is prescribed for the post held by the Government servant. It does not mean any other pay scale in which the Government servant is drawing his pay as a personal measure to him on account of either length of service or higher/additional qualification or upgradation of pay scale due to any other reason.”

However, unluckily, in the said rules, the financial upgradation has not been specifically defined.

Rule 7 (i) of the ACP Rules of 2008 defines the eligibility for grant of ACP grade pay under the general ACP Scheme, is reproduced as under :-

“7. Eligibility for Grant of ACP grade Pay under the ACP scheme :-

(1) Every Government servant covered under the general

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ACP scheme shall, for the purpose 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 1.1.2006.”

The perusal of the Rule 7(1) of the ACP Rules of 2008 shows that though the financial upgradation is partly defined, but in the said rule, it is stated that it will include the functional promotion in the hierarchy or further revision/modification of the pay structure for the same post after 1.1.2006. However, it is silent regarding whether the grant of selection grade amounts to financial upgradation or not.

Rule 11 of the ACP Rules of 2008 provides for grant of assured career progression grade pays. Sub-rule (3) of Rule 11 of the ACP Rules of 2008, which is attracted in the present case, is reproduced as under :-

“11. Grant of Assured Career Progression grade pays :-

(1) xxxxx xxxxx xxxxx

(2) xxxxx xxxxx xxxxx

(3) In case of Government servants who are drawing pay in a pay scale other than the functional pay scale of the post held by them on or before the date of notification of these rules, there shall be no need to pass any orders under the provisions of sub-rules (1) and (2) above and they shall be entitled to draw their pay in the ACP pay structure corresponding to the pay scale in which they are drawing their pay :

Provided that this deemed grant of ACP pay structure will not affect his entitlement for revised pay structure in which he will be placed as a consequence of application of these rules.

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Such Government servants shall be placed in the appropriate revised ACP pay structure as per their eligibility under these rules for the purposes of fixation of pay as a consequence of application of these rules.”

Rule 18 of the ACP Rules of 2008 provides for fixation of initial pay in the revised ACP pay structure. In this rule, a formula is given, in which the pay in the revised ACP pay structure is to be fixed.

Rule 19 of the ACP Rules of 2008 provides for rate of increment in the revised ACP pay structure. Rule 19 of the ACP Rules of 2008 is reproduced as under :-

“19. Rate of increment in the revised ACP pay structure :-

The rate of increment in the revised ACP pay structure will be 3% of the sum of the pay band and grade pay applicable, which will be rounded off to the next multiple of 10. The amount of increment will be added to the existing pay in the pay band. Illustration 6 in this regard is in the Explanatory Memorandum of these rules.”

Rule 22 of the ACP Rules of 2008 deals with the fixation of pay on placing in ACP pay structure on or after 1.1.2006, wherein one increment equal to 3% of the pay in the ACP pay band is to be given. Rule 22(1) of the ACP Rules of 2008 is reproduced as under :-

“22. Fixation of pay on placing in ACP pay structure on or after 1.1.206 :-

(1) In the case of moving from one grade pay to another in the revised ACP pay structure, the fixation will be done as follows :-

One increment equal to 3% of the pay in the ACP pay band and the existing be computed and rounded off to the next multiple of 10. This will be added to the existing pay in the pay band. The grade pay corresponding to the immediate next higher present pay

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scale will thereafter be granted in addition to this pay in the ACP pay band. In cases where ACP involves change in the pay in the ACP pay band after adding the increment is less than the minimum of the higher ACP pay band to which ACP is taking place, pay in the ACP pay band will be steeped up to such minimum.”

Rule 27 and Rule 28 of the ACP Rules of 2008, under which the Government has the power of interpretation and residuary provisions, are reproduced as under :-

“27. Interpretation :-

If any question arises relating to the interpretation of any of the provisions of these rules, it shall be referred to the Government for decision.

28. Residuary provisions :-

In the event of any general or special circumstance which is not covered under these rules or about which certain inconsistency comes to the notice, the matter shall be referred to the Government and Government will prescribe the conditions to be followed under such circumstances. Such conditions as prescribed by the Government under this rule shall be deemed to be part of these rules. Further, if the Government is satisfied that there is a requirement to prescribe certain additional conditions under these rules, the Government shall prescribe such additional conditions and such additional conditions shall be deemed to be part of these rules.”

The plea of the learned counsel for the petitioners is that since the petitioners fall in 20% of the cadre strength, therefore, they were granted the selection grade and their pay was accordingly fixed. In the notification regarding the grant of selection grade, it was not mentioned that it is a financial upgradation. The word 'financial upgradation' was used for the first time when ACP Scheme of 2008 was introduced i.e. ACP Rules of

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2008. The word 'financial upgradation' was not directly defined in the definition, but in Rule 7(1) of the ACP Rules of 2008, it deemed to include certain cases, as mentioned above. The petitioners, who were in the selection grade, were accordingly granted the ACP scale under the ACP Rules of 2008. Now, on account of interpretation of 'financial upgradation', the ACP benefit as well as the consequential increments have been withdrawn.

The learned counsel for the petitioners has argued that the effect of the said notification is that those Lecturers/Headmasters/Principals, who were in the 80% strength of the cadre and were not granted the selection grade, will stand to gain as they were given ACP benefit and increment under Rule 19 of the ACP Rules of 2008 and their pay has become higher than the petitioners, who are senior to them having fallen in 20% of cadre strength. Had the petitioners been given option as to whether they wanted to opt for the ACP scheme or the selection grade, when ACP scheme was introduced, they would have chosen appropriate option to avail the maximum benefit of the rules. Infact, no option was given with the result that the selection grade, in which the pay is on the lower side as compared to ACP scheme, already availed by the petitioners. Now, the benefit of ACP scheme has been denied to them. It is further argued that the notification dated 13.5.2010 (Annexure-P-5) infact amends the ACP Rules of 2008 as the selection grade has been termed as financial upgradation. The mere issuance of notification/instructions cannot amend the statutory rules framed by the State Government under Article 309 of the Constitution of India.

On the other hand, the learned State counsel has argued that if

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the pay of the petitioners has become less, their pay is to be upgraded equal to their juniors. He has defended the stand of the Government, stating that the clarification was rightly given and the pay of the petitioners has been rightly fixed and accordingly, their pension has been fixed and recovery has been correctly ordered.

If Rules 7, 18 and 19 of the ACP Rules of 2008 are read together, it would show that these were advantageous to the employees, who availed it as compared to employee who had earlier availed the selection grade. The word 'financial upgradation' was never defined in the ACP Rules of 2008. Rather, in Rule 7 of the ACP Rules of 2008, the functional promotion in the hierarchy or further revision/modification of the pay structure for the same post after 1.1.2006, was ordered to be included in the definition of financial upgradation. The net result of notification dated 13.5.2010 (Annexure-P-5) is that those petitioners, who were working as Lecturers, Headmasters and Principals and who got the selection grade by way of their seniority in their cadre stand to lose as compared to other employees, who were not eligible for the selection grade. The learned State counsel has heavily relied upon Rules 27 and 28 of the ACP Rules of 2008, which give power to the Government relating to the interpretation of any provision of the rules.

Now, the question is whether notification dated 13.5.2010 (Annexure-P-5) amounts to interpretation of any rule or it has the effect of amending the ACP Rules of 2008 ?

I am of the considered view that the notification dated 13.5.2010 (Annexure-P-5) is nothing, but amendment of the original ACP Rules, whereby those employees, who had got selection grade, were

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excluded from the benefit of grant of ACP without they being given option as to whether they want to continue with the selection grade or opt for the ACP scheme. The result is that the petitioners, who got the selection grade, stand to lose the benefit of ACP scheme, in which higher pay grade with one additional increment equal to 3% of pay in the ACP band, is provided. They also stand to lose the increment provided under Rule 19 of the ACP Rules of 2008, which is also at the rate of 3% of the sum of the pay band and grade pay. Consequently, I am of the view that by way of clarification dated 13.5.2010 (Annexure-P-5), the Government was not competent to virtually amend the original ACP Rules of 2008, without giving any option to the concerned employees either to opt for the selection grade or for the beneficial ACP grade. It is a established law that the instructions cannot amend the statutory rules. As a result of the notification, the petitioners, who were granted the benefit of ACP scheme and were given higher pay scale alongwith increment equal to 3% and subsequent increments, have been deprived of the same and their pay has been re-fixed and recoveries have been ordered from their pay. The employees, who have retired, have not only lost the said pay, but their pension has also been re-fixed and recoveries have been ordered from them. Consequently, I come to the conclusion that the notification dated 13.5.2010 (Annexure-P-5) is illegal and is hereby quashed.

As a result thereof, the pay of the petitioners, who were working as Lecturers, Headmasters and Principals, has to be re-fixed, as done earlier by granting them ACP and other benefits under the ACP Rules of 2008.

Now, coming to the notification dated 9.4.2010 (Annexure-P-

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6), it comes out that vide letter dated 13.5.2010 (Annexure-P-5), a clarification was given regarding ACP Rules of 2008. The said clarification was given apparently in exercise of power provided under Rules 27 and 28 of the ACP Rules of 2008. The said clarification is reproduced as under :-

“ On a careful consideration and in exercise of the powers vested under the provision of Rule 27 and 28 of HCS (ACP) Rules 2008 and all other powers enabling the Government so to do, it is ordered that :-

1. If the grade pay of the promotional post is higher than that of ACP pay structure in which the Government employee is drawing his salary prior to promotion, his pay will not be re-fixed and he will only get the difference of grade pay and his date of next increment will continue to be same as before promotion as it will not be treated Financial Upgradation under HCS (ACP) Rules, 2008.

For Example :- Mr. 'Y' drawing pay in functional pay structure of the post carrying grade pay of Rs. 3600/- has been granted ACP grade pay of Rs. 4000/- being stagnated for 10 years on the post and further granted regular promotion in the hierarchy of his cadre carrying grade pay of Rs. 4200/-.”

The contention of the learned counsel for the petitioners is that the pay is to be fixed as per Rule 13 of the Revised Pay Rules of 2008. Rule 13 of the Revised Pay Rules of 2008 is reproduced as under :-

“13. Fixation of pay on promotion on or after 1.1.2006 :-

(1) In the case of promotion from one grade pay to another in the revised pay structure, the fixation will be done as follows :-

One increment equal to 3% of the pay in the pay band and the existing grade pay will be computed and rounded off to the next multiple of 10. This will added to the

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existing pay in the pay band. The grade pay corresponding to the promotion post will thereafter be granted in addition to this pay in the pay band. In cases where promotion involves change in the pay in the pay band after adding the increment is less than the minimum of the higher pay band to which promotion is taking place, pay in the pay band will be stepped to such minimum.”

The perusal of the said rule shows that in the said rule, a formula is given as to how the pay is to be fixed. It is to be fixed by granting one increment equal to 3% of the pay in the pay band and the existing grade pay will be computed and rounded off to the next multiple of 10. This will be added to the existing pay in the pay band. However, vide this clarification dated 9.4.2010 (Annexure-P-6), it has been clarified that if the grade pay of promotional post is higher than that of ACP Pay structure in which the Government employee is drawing his salary prior to promotion, his pay will not be re-fixed and he will only get the difference of pay scale and his date of next increment will continue to be the same as before promotion and it will not be treated as financial upgradation under the Revised Pay Rules of 2008. The effect of the said clarification is that it virtually amends the fixation formula given under Rule 13 of the Revised Pay Rules, 2008, wherein one increment equal to 3% of pay in the pay band is to be given. It is again reiterated that the administrative instructions cannot overrule the statutory rules, framed by the Government under Article 309 of the Constitution of India and cannot take away what has been provided in the said rules. The result of the notification is that the benefit of fixation of pay granted in Rule 13 above, stands withdrawn, due to which, some of the Lecturers and Principals are adversely affected. The pay of the

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petitioners has been revised without giving any hearing. It is established law that the pay of an employee, once fixed, cannot be revised without giving him an opportunity of being heard. On this account also, the impugned orders of re-fixation and downgrading the pay of the petitioners are illegal. Hence, the notification dated 9.4.2010 (Annexure-P-6) is also found to be illegal and is also hereby quashed.

The net result would be that the re-fixation of pay of the petitioners, in terms of clarification given in Annexures-P-5 and P-6, is set aside. The recovery orders also stand set aside. The petitioners, who are in service, shall continue to draw the salary as drawn earlier. Some of the petitioners, who have retired, shall continue to draw the pension as fixed earlier. Consequential benefits shall also follow.

Consequently, all the writ petitions are allowed.

(KULDIP SINGH)
JUDGE

3.10.2016
sjks

Whether speaking / reasoned : Yes

Whether Reportable : Yes