

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

**CWP No.20953 of 2013 (O&M)
Date of decision : November 07, 2016**

Karam Singh

..... Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Suresh Ahlawat, Advocate for the petitioner.

Mr. Naveen Sheoran, DAG, Haryana.

Mr. P.S. Poonia and Mr. Avi Dhankar, Advocates
for respondent Nos.2 to 4.

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 ?

KULDIP SINGH J. (ORAL)

Heard.

The short question arising out for consideration is as to whether ACP once granted can be withdrawn on the basis of subsequently framed rules?

The petitioner while working with respondents was granted 2nd ACP on 17.05.2004 on completion of 20 years of service as he was not granted any promotion and financial upgradation. Subsequently, on 16.10.2008, when the petitioner, who was then working as Head Clerk requested for foregoing his promotion as Circle Superintendent. The same was accepted, vide order dated 05.11.2008 (Annexure P-4).

It comes out that subsequently, the department issued Circular No.2, dated 28.02.2009 (Annexure R-1) regarding DHBVNL (Assured Carrier Progression) Rules, 2009. As per Clause 2 of the said Rules, these

came into force w.e.f. 01.01.2006, under which the Assured Carrier Progression Scheme was amended. Rule 14 is as under:

*“14. Ceasing the entitlement of ACP pay structure:-
In case the Nigam employee chooses to forego any functional promotion on any ground whatsoever, while drawing his pay in any ACP pay structure with reference to him, he shall cease to be entitled to draw his pay in the ACP pay structure last granted to him and shall draw his pay in the pay band and grade pay he was drawing before the grant of the last ACP grade pay from the date of such forgoing of promotion.”*

It was by implementing the Rule that order Annexure P-5 was passed on 22.09.2009, withdrawing the 2nd ACP granted on 17.05.2004.

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

The law question arising out for consideration before this Court is as to whether the ACP once granted can be withdrawn on the basis of subsequently framed rules and whether Rule 14 of the Circular 2, dated 28.02.2009 (Annexure R-1) has retrospective effect?

I am of the view that in this case, the petitioner was found entitled for 2nd ACP on completion of 20 years of service. Since, he was not given financial upgradation or promotion and the same was allowed on 17.05.2004. Subsequently, on 16.10.2008, when the petitioner was working as Head Clerk requested for foregoing the promotion of Circle Superintendent before the issuance of Circular No.2, dated 28.02.2009 (Annexur R-1). While allowing the request of forgoing of the promotion, the Department passed order dated 05.11.2008 (Annexure P-4), stating that the ACP will be withdrawn, if granted to him. Subsequently, the pay of the

petitioner was revised on 22.09.2009 (Annexure P-5) while implementing Rule in Circular No.2, dated 28.02.2009 (Annexure R-1).

I am of the view that when the petitioner was granted 2nd ACP, he was entitled to same. The Circular No.2, dated 28.02.2009 (Annexur R-1) cannot be made applicable retrospectively so as to deny the benefit, which has already accrued or availed by an employee.

As such, the petitioner, who has already availed and was granted 2nd ACP on completion of 20 years of service could not be withdrawn on the basis of subsequent Circular No.2, dated 28.02.2009 (Anenxure R-1). Similarly, while allowing the petitioner to forego the promotion, no condition could be put that ACP will be withdrawn. The ACP was granted on completion of 20 years of service as the petitioner was not given any financial upgradation or promotion.

It being so, the impugned order withdrawing the ACP Annexure P-4, dated 05.11.2008 stands quashed and the previous pay of the petitioner is restored. The respondents are directed to release the arrears to the petitioner along with interest @ 9% per annum from the date of filing of the present writ petition till its realization within two months from the date of receipt of certified copy of this order.

As such, the present petition is allowed.

(KULDIP SINGH)
JUDGE

November 07, 2016

sarita

Whether speaking / reasoned Yes

Whether Reportable: Yes