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

**CWP No.21423 OF 2014
DATE OF DECISION : 30th MAY, 2016**

Kalu Ram (Retired Patwari) & others

…. Petitioners

Versus

State of Haryana & others

…. Respondents

CORAM : HON'BLE MS. JUSTICE RITU BAHRI

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Present : Mr. Pankaj Mehta, Advocate for the petitioners.
Mr. Ravi Partap Singh, AAG Haryana.
Mr. D. K. Khanna, Advocate for respondent No.7.

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RITU BAHRI, J. (ORAL)

The petitioners are seeking directions to the respondents to grant them ACP/pension and other retrial benefits. They have further prayed for issuance of writ of certiorari for quashing the order dated 11.09.2014 (Annexure P-14) passed by respondent No.4.

Petitioners were initially appointed as Patwari on 10.07.1974, 24.07.1975 and 01.10.1976 under the then Haryana State Minor Irrigation and Tubewell Corporation (referred as HSMITC). The petitioners were transferred on account of decrease in the workload of the Corporation. The Government decided to transfer the Patwaris to Revenue Department as per letter dated 05.01.1990 (Annexure P-1). Thereafter, vide order dated 02.07.1997 a decision was taken to absorb them permanently in the Revenue Department and letter dated 10.03.1998 (Annexure P-2) was issued in this regard. The petitioners, along with other 20 Patwaris, were transferred from HSMITC to Revenue Department vide letter dated 16.03.1998 (Annexure P-

3). Thereafter, appointment letters were issued to the petitioners. After serving the department for more than three decades the petitioners have retired on 31.08.2008, 30.04.2011 and 31.12.2011. The State of Haryana introduced Haryana Civil Services (Assured Career Progression) Rules, 1998 referred as ACP rules. According to Rule 5 of the above said Rules, any employee, who has completed 10 years of regular satisfactory service and has not got any financial upgradation, he would be granted higher pay scale. Similarly, the benefit of ACP scale was extended for those employees who have served for 20 years of regular satisfactory service and has not got more than one financial upgradation. Thereafter, a new scheme was formulated in the year 2010 (Annexure P-4), whereby an employee, who has completed 30 years of regular satisfactory service without any financial upgradation in the last ten years, was entitled for the 3rd ACP.

The service rendered by the petitioners in HSMITC was not taken into consideration for grant of benefit of ACP Rules. Similarly situated employees who were absorbed from the Corporation in the Revenue Department, had approached this Court in ***CWP No.7669 of 2009*** titled ***Jai Singh & others versus State of Haryana & others*** and in ***CWP No19638 of 2008*** titled ***Raj Kuamr (Retired Patwari) versus State of Haryana & others*** decided on 14.01.2010 and the same were allowed and they were granted the benefit of ACP by counting their service in the Corporation.

Stand taken by the respondents in the written statement is that as per the Rule 5 of the ACP Rules, 1998 one of the eligibility conditions for grant of ACP is that if in case of any promotion, passing of any departmental examination is a condition then the said condition should be fulfilled by the said Government employee. In the case of the petitioners, from the post of

Patwari the next promotional post is Field Kunungo as per the Haryana Kanungo Service (Group C) Rules, 1981. Under the Group C Rules, Rule 9(1) deals with promotion to the post of Field Kanungo. As per Appendix B for promotion to the post of Field Kanungo, a Patwari has to pass the examination which is held by Director. Hence, only the qualified Patwaries can be considered for the next promotion post and since the petitioners have not passed the departmental examination under the Rule 8(b) of the Haryana Civil Services, Assured Career Progression Rules, 2008 the petitioners are not eligible for the grant of ACP benefits.

It is further stated in the written statement that against the judgment passed in ***CWP No.4446 of 2008*** titled ***State of Haryana & another versus Deepak Sood & others***, State of Haryana has filed SLP No.11224 of 2009 which was dismissed by holding that the service rendered by the respondents cannot be considered as regular satisfactory service as defined in Rule-5 of the ACP Rules. After the dismissal of the SLP, general instructions have been issued vide Annexure R-1, whereby it has been decided to add service rendered by the employees in the HSMITC before absorption in the Government Department as special category under the provisions of ACP rules by exercising powers under the provisions of Rules 21 of Haryana Civil Service (ACP) Rules 1998 and Rules 26 of Haryana Civil Services (ACP) Rules, 2008. All the employees as per instructions, who were declared surplus subsequently appointed on transfer basis in other department and the benefit of pay protection, were entitled to the benefit of incentives introduced under the Scheme of ACP after competition of requisite length of service rendered in Boards/Corporations/Municipal Committees.

After hearing counsel for the parties, the respondents as per Annexure R-1 have taken decision to count the service rendered by the employees before the Corporation HSMITC at the time of their absorption. However, the only ground for rejecting the relief is that they have not passed the departmental examination under Rule 8(b) of the ACP rules 2008.

Petitioners have made reference to the judgments passed by this Court in the cases of ***Prithvi Singh vs. State of Haryana & others*** in ***CWP No.10051 of 2013*** decided on 27.04.2016 and in the case of ***Ram Pal Patwari & others versus State of Haryana and other*** in ***CWP No.23074 of 2010***, decided on 24.07.2015, whereby similarly situated employees had been granted benefit of ACP without insisting on the condition of passing of the departmental examination. It was further noticed in the above referred judgments that Haryana Government had allowed higher pay scales to the employees of Group C and D without insisting on the condition of passing of the departmental test. In the case of ***Ram Pal Patwari (supra)*** reference was also made to instructions issued on 09.10.2006 by the Revenue Department, whereby they have adopted instructions dated 17.02.2003 issued by Principal Secretary to Government of Haryana, Consolidation Department, whereby the employees who had been granted higher scale were exempted from passing the departmental examination. The writ petition in that case was allowed and this view has been followed thereafter in the case of ***Prithvi Singh (supra)***.

The case of the petitioners is squarely covered by the above said two judgments. The instant writ petition is being allowed with direction to the respondents to consider the case of the petitioners within a period of three months from the date of receipt of certified copy of this order.

In view of the aforesaid finding and directions, the writ petition is accordingly allowed.

30TH MAY, 2016 **(RITU BAHRI)**
'raj' **JUDGE**