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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP of 2938 of 2014

Date of Decision: 05.08.2016

AMAR ASHOK PATHAK

... Petitioner

VS.

STATE OF PUNJAB AND OTHERS

..Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. Vikas Mohan Gupta, Advocate,
for the petitioner.

Mr. Rajat Bansal, AAG, Punjab.

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

KULDIP SINGH (J.)

Learned State counsel has filed the reply by way of short affidavit of Vijay Kumar Batra District Treasury Officer, Patiala on behalf of respondent No. 4 and the same is taken on record.

Brief facts of this case are that Amar Ashok Pathak-petitioner joined as Law Officer on 17.03.1977 in the State of Punjab. In the year 1983, he was promoted to Deputy District Attorney and subsequently promoted to District Attorney in the year 2000. Further, he was promoted to the post of Joint Director (Prosecution and Litigation) in the year 2009. It comes out that prior to his promotion as Joint Director (Prosecution and Litigation) in the year 2009, he was also offered promotion to the post of Joint Director, vide order dated 05.12.2005 (*Annexure R-2*), but vide letter dated 08.12.2005 (*Annexure R-3*) of the petitioner, he refused the promotion to the said post. Thereafter, the petitioner retired from service on 30.11.2010 vide order dated

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30.11.2010 (*Annexure P-1*). After the retirement of the petitioner, the Principal Secretary, Department of Home Affairs and Justice, Punjab passed an order dated 21.11.2013 (*Annexure P-12*) whereby the ACP, on his having completed 4 and 9 years of service, granted vide orders dated 05.10.2009 and 25.06.2010, was cancelled. The due recovery was ordered to be adjusted against the payment of DCRG. The order dated (*Annexure P-12*) is reproduced as under: -

“The order regarding giving benefits to Sh. Amar Ashok Pathak, Joint Director, Prosecution and Litigation (Retired) being District Attorney under ACP Scheme on his having completed 4 year and 9 year service, vide order No. 4(472)-83-AD-/10303-06 dated 05.10.2009 and letter No. 4(472)-83-AD-/7469-74 dated 25.06.2010 of Punjab Government, are hereby cancelled.

The due recovery against additional payment be adjusted from DCRG of the officer and balance amount of DCRG be issued.”

Consequently, order dated 10.12.2013 (*Annexure P-13*) was passed wherein re-fixing the pay of the petitioner was done and subsequent to this order another order dated 17.12.2013 (*Annexure P-14*) was passed, whereby, out of ₹ 3.00 Lacs retained out of gratuity, ₹ 2,11,550/- were ordered to be recovered and remaining amount was sanctioned. Thereafter, another follow up order dated 18.12.2013 (*Annexure P-15*) was passed wherein the pension of the petitioner was accordingly fixed. The petitioner has impugned all the aforementioned Annexures P-12 to P-15 in the present writ petition being illegal and seeks consequential benefits.

The State in the reply has taken the stand that as per the instructions (*Annexure P-4*) for grant of Assured Career Progression Scheme (ACP), the ACP was to be granted on completion of 4/9/14 years of service to the employees who are not promoted to the higher level on account of

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unavailability of vacancy or non-existence of promotional avenues in the cadre. It was stated that the petitioner was promoted vide order dated 05.12.2005 (*Annexure R-2*) but he refused the promotion as Joint Director vide his letter dated 08.12.2005 (*Annexure R-3*). In this way, the promotional avenue was available but this was not availed by the petitioner, hence, the ACP on completion of 4 years was rightly withdrawn.

Admittedly, the ACP granted to the petitioner was withdrawn by the respondent department. In this regard, it is stated on behalf of the State that since the policy instructions (*Annexure P-4*) was to be effective from 03.11.2006 and that the ACP after completion of 4/9 years of service was granted after the said date and therefore, the same has been withdrawn. It is also not denied that initially the petitioner has refused the promotion to the post of Joint Director vide letter dated 08.12.2005.

Now, question would arise whether on account of the refusal for promotion, the ACP on completion of service of 4/9 years could be withdrawn or not ?

The relevant extract of the policy (*Annexure P-4*) is reproduced as under. :-

“ 3(a) After a service of 4,9 and 14 years in a post or posts in the same cadre (herein after referred to as the same post) and service rendered in the same post in different Government Departments, who is not promoted to a higher level on account of non-availability of a vacancy or non-existence of promotional avenue in the cadre, shall be granted the pay scale, which is next, higher in the hierarchy of pay scales given in the column 3 of the first schedule annexed to Revised Pay Rules, 1998. On placement in the next higher scale in the hierarchy of pay scales after a service of 4, 9 and 14 years, the pay of an employee shall be fixed at the next higher stage in the pay scale and he shall be allowed next increment from the date he would have earned

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his next increment had he continued in the lower pay scale. If the minimum of higher scale is higher than the stage arrived at, his pay shall be fixed at such minimum and next increment shall be allowed after qualifying service of 12 months in higher scale.”

In the said policy, it is nowhere provided that if the promotion is refused, ACP will not be granted.

The matter came up for consideration before the Division Bench of this Court in CWP No. 7642 of 2001 titled as **Shashi Kiran and Others** Vs. **State of Punjab** decided on 28.11.2002 in which there is a case where the proficiency step up increments, on completion of 8 and 18 years of service, as prevailing at that time, were allowed, in the event of the petitioner's refusal to the promotion. The Division Bench relied upon the authority of **Tipan Chand Sharma and another** Vs. **State of Punjab and others**, passed in CWP No. 6049 of 1997 decided on 06.05.1998 in which following observation was made: -

“So far as the case of the present petitioner is concerned, it can be found that none of the petitioners can be punished for alleged non-availing of the promotions before the appointed date. Both the petitioners had completed 8/18 years on the appointed date. Therefore, even if the petitioners had not availed of the promotional avenues as alleged, their right to get the proficiency step up on their appointed date cannot be washed away. We, therefore, do not want to go into discussion of the question to the effect of not availing the promotional avenues in case 8 and 18 years service is not completed by any of the petitioners on the appointed date.

We are therefore, of the opinion that the reasons for not granting the proficiency step-up to the petitioners are not justified. We, therefore, allow this writ petition and direct the respondents to grant proficiency step up increments to the petitioners on the completion of 8 and 18 years of service. However, the arrears so calculated shall be

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restricted for a period of three years and two months prior to the filing of the writ petition which was filed on 03.05.1997.”

Similar view was taken by the Division Bench of this Court in CWP No. 6135 of 2003 titled as **Varinder Pal** Vs. **State of Punjab and others** decided on 05.07.2005. Therefore, I am of the view that the ACP granted after completion of 4/9 years of service could not be withdrawn after the retirement of the petitioner stating that it was wrongly granted, merely on the ground that at one stage the petitioner had refused the promotion since this was not stipulated in the policy (*Annexure P-4*).

It being so, the impugned orders Annexure P-12 to Annexure P-15 are hereby set aside. The respondents are directed to accordingly re-fix the pay of the petitioner and grant the consequential benefit in the matter of pay, pension and any other benefits.

The recovery, so made on the basis of order dated 10.12.2013 (*Annexure P-13*), shall also be refunded to the petitioner alongwith interest @ 9 % per annum.

The compliance of this order be made within three months from the date of the receipt of this order.

The petition is accordingly, allowed.

August 5, 2016
Suresh Kumar

[KULDIP SINGH]
JUDGE

Whether speaking / reasoned

✓
Yes / No

Whether Reportable

✓
Yes / No