

CWP No. 2931 of 2015 (O/M)

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 2931 of 2015 (O/M)

Date of decision : 19.9.2016

Balbir Singh

..... Petitioner (s)

Versus

State of Punjab and others

..... Respondent (s)

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Surinder Garg, Advocate, for the petitioner.

Mr. Rajat Bansal, Deputy A.G. Punjab.

Mr. Shekhar Kumar, Advocate, for,
Mr. Nitin Kaushal, Advocate, for respondent No. 4.

Mr. Amit Kundra, Advocate, for respondent No. 5.

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.

The petitioner, who has retired as a Junior Engineer (Civil) from Municipal Council, Raman, has sought a writ of certiorari for setting aside the order dated 2/4.7.2014 (Annexure-P-9), vide which the claim of the petitioner regarding grant of Assured Career Progression (in short 'the ACP') Scheme with effect from 1.11.2006 on completion of 9 years of service, has been rejected. Further, a writ of mandamus has been sought for directing the respondents to grant the benefit of ACP Scheme with effect from 1.11.2006 on completion of 9 years of service.

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The petitioner was initially appointed as a Clerk on 24.10.1978. Thereafter, he was appointed on the post of Work Supervisor on 25.1.1985. Thereafter, he rose to become Junior Engineer (Civil) on 12.7.1996 and ultimately, retired from service on 31.1.2010. The Punjab Government, vide circular dated 25.9.1998, implemented the ACP Scheme with effect from 1.1.1996 on completion of 8/16/24/32 years of service in order to break the financial stagnation of its employees on account of non availability of promotional avenues. Vide circular dated 27.6.2000 (Annexure-P-2), Class-II status and designation of the Assistant Engineer upto the corresponding stage of 8/16 years of service was provided to the cadre of the petitioner. Thereafter, the Government, vide notification dated 3.11.2006, introduced a new Assured Career Progression Scheme (in short 'ACP Scheme of 2006'), on the completion of 4, 9 and 14 years of service, applicable with effect from 1.11.2006, superseding the earlier ACP Scheme. It was stipulated in the said notification dated 3.11.2006 that the said scheme is optional i.e. the existing employees including the employees having less than four year service will have the option either to continue in the existing ACP Scheme after a service of 8, 16, 24 and 32 years or to opt for new 4, 9 and 14 years ACP Scheme. The petitioner was promoted as Junior Engineer (Civil) on 12.7.1996. So, the petitioner completed 9 years of service as Junior Engineer (Civil) on 12.7.2005 i.e. prior to issuance of notification dated 3.11.2006. Therefore, the petitioner is entitled to benefit of new ACP Scheme of 2006 on completion of 9 years of service with effect from 1.11.2006. On 3.10.2013, the petitioner served a legal notice to the respondents to give him benefits of the said scheme, but no action was taken. On 13.12.2013, the petitioner served another legal notice to the

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respondents to grant him benefit of gratuity by considering his service as 33 years instead of 32 years. Thereafter, the petitioner filed the CWP No. 912 of 2014 for grant of benefit of ACP Scheme of 2006 with effect from 1.11.2006 on completion of 9 years of service on the post of Junior Engineer (Civil). He also made request for release of full gratuity amount on the ground that he worked for 33 years, instead of 32 years. The said writ petition was disposed of by a Coordinate Bench of this Court on 20.1.2014 (Annexure-P-8) with a direction to the respondents to take a decision on the legal notices dated 3.10.2013 and 3.12.2013. Thereafter, respondent No. 2 passed the impugned order dated 2/4.7.2014 (Annexure-P-9), rejecting the claim of the petitioner for grant of benefit of ACP Scheme of 2006 on the ground that in accordance with the instructions of Government dated 27.6.2000, the petitioner is entitled to grant of ACP Scheme on completion of 8/16 years of service. He has already been granted benefit of ACP Scheme on completion of 8 years of service on 15.7.2004 and next benefit was to be granted to him on 15.7.2012, whereas he stood retired on 31.1.2010. The payment regarding gratuity was declined on the ground that the State has filed LPA No. 1857 of 2013 before the Division Bench of this Court against the judgment dated 16.8.2013, passed by a Coordinate Bench of this Court in CWP No. 11373 of 2012, titled as Rattan Singh and others Versus State of Punjab and others, in which Stay has been granted. The petitioner has now challenged the impugned order only qua the non grant of ACP Scheme of 2006 and for setting aside the impugned order dated 2/4.7.2014 (Annexure-P-9).

The State, in the reply, has taken the stand that the petitioner is governed by notification dated 27.6.2000. The Instructions dated 25.9.1998

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(Annexure-P-1), issued by the Government, are not applicable to the case of the petitioner. It is stated that vide notification dated 25.9.1998, the employees were granted next pay scale on completion of 8 years of service and thereafter one increment each on completion of 16 and 24 years of service and new pay scale and one increment on completion of 32 years of service. This Scheme was applicable to other employees. The notification dated 27.6.2000 was exclusively issued for Junior Engineers for granting them the benefit of Assured Career Progression Scheme. They were given new pay scales and one increment on completion of 8 years of service with Class-II status. It was further stated that the Punjab Government issued the instructions dated 3.11.2006, whereby the employees could exercise their option to continue in the existing ACP Scheme after a period of 8/16/24/32 years of service or opt for 4/9/14 years of service, but the said scheme is applicable only for the employees other than Junior Engineers. The Government had issued specific instructions dated 1.12.2011 (Annexure-R-1) only for the Junior Engineers, under which the Junior Engineers were not only granted new pay scales on completion of 8/16 years of service, but were also granted increment as well as new designation, which have not been granted to other employees as per notification dated 1.11.2006. It is stated that the petitioner is not entitled to benefit of ACP Scheme dated 1.11.2006.

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

To shorten the controversy, it comes out that the Punjab Government had issued the instructions dated 25.9.1998 (Annexure-P-1), implementing the recommendations of the Punjab 4th Pay Commission

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under the Assured Career Progression Scheme on completion of 8/16/24/32 years of service. Vide copy of letter dated 27.6.2000 (Annexure-P-2), the anomalies of pay scales of the Junior Engineer were removed and grant of Career Progression-Class-II status and designation as Assistant Engineer to Junior Engineers was given. Vide the said letter, the Government decided to grant the pay scale of Rs. 5800-9200 and Class-II status and designation as Assistant Engineer on completion of 16 years of service to the Junior Engineers. There is no dispute qua said instructions.

Now, the question is whether the instructions dated 3.11.2006 (Annexure-P-3) are applicable to the case of the petitioner (Junior Engineer). Vide the said letter dated 3.11.2006, the Assured Career Progression Scheme on completion of 4/9/14 years of service was introduced with effect from 1.11.2006. The said scheme was optional. The employees were to file the option within two month from the date of issue of the notification alongwith an affidavit to the effect that they accept this scheme effective from 1.11.2006 and that they will not claim any arrear. The service rendered in the cadre by an employee in the same post before 1.11.2006 shall be counted for the purpose of grant of benefit under the said scheme. The other feature so far as attracted in the scheme for the benefit of the petitioner is as under :-

“d. An employee who has completed 9 years of service but less than 14 years of service in a cadre in the same post and availed one placement in the next higher scale in the hierarchy of pay scales under the existing Assured Career Progression Scheme after a service of 8 years shall be placed in the next higher scale in the hierarchy of pay scales and his pay shall be fixed at the next higher state in that pay scale.”

The perusal of the impugned order dated 2/4.7.2014

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(Annexure-P-9) shows that the claim of the petitioner has been denied on the ground that he has been granted the benefit of assured career progression scheme on completion of 8 years of service on 15.7.2004 and next benefit was to be granted to him on 15.7.2012 and he retired from service on 31.1.2010.

I am of the view that the impugned order is not sustainable in the eyes of law. The ACP Scheme of 2006 is not confined to a particular set of employees. It is applicable to all the employees of the State Government. There is nothing in the scheme to show that the Junior Engineers were excluded from the said scheme. Accordingly, the petitioner submitted the option (Annexure-P-5) on 29.3.2007. The matter was considered by this Court in Jaswinder Singh Bedi and others Versus State of Punjab and others, (CWP No. 16446 of 2010, decided on 20.5.2013), wherein the Single Bench of this Court observed as under :-

“ Perusal of the Scheme dated 3.11.2006 would show that it is altogether independent Scheme, where the Assured Career Progression Scheme was made applicable on completion of 4/9/14 years of service in a cadre. This was totally different from the earlier Scheme with regard to the period for which the benefit would be claimed as per the said Scheme. In any case, this Scheme, as per Clause-2 thereof, was made optional and all employees were given option to either continue in the existing Assured Career Progression Scheme after completion of 8/16/24/32 years service as provided under the Scheme dated 25.9.1998, which was further modified for Junior Engineers on 27.6.2000 or to opt under the 4/9/14 years Assured Career Progression Scheme. This clearly indicates that all employees had an option either to continue with the old Scheme or to opt for the new Scheme, which was now made applicable to the employees. Petitioners having opted for the

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said Scheme, which was published on 3.11.2006 were, therefore, entitled to the benefit under the said Scheme. That apart, Junior Engineers working in the Punjab Mandi Board have already been granted the benefit of the Scheme dated 3.11.2006 and, therefore, the petitioners cannot be denied the same benefit.”

I am of the view that the ACP Scheme of 2006 is an independent scheme. The employees, who had opted for earlier scheme, were not excluded from the same. Therefore, the petitioner could opt for the said ACP Scheme of 2006 on completion of 9 years of service. The petitioner is held entitled to the benefit of said ACP Scheme with effect from 1.11.2006. Consequently, the impugned order dated 2/4.7.2014 (Annexure-P-9) is set aside. The present writ petition is allowed. The writ of mandamus is issued, directing the respondents to grant ACP to the petitioner with effect from 1.11.2006, as per the ACP Scheme dated 3.11.2006 (Annexure-P-3) and re-fix the pay and other pensionary benefits and release the same within three months from the date of receipt of copy of this judgment with interest at the rate of 9% per annum from 1.11.2006 till payment.

(KULDIP SINGH)
JUDGE

19.9.2016
sjks

Whether speaking / reasoned : Yes

Whether Reportable : Yes