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

Civil Writ Petition No.3028 of 2016

Date of Decision: 16.02.2016

Union Territory, Chandigarh and another

.....Petitioners

Vs

Central Administrative Tribunal and another

.....Respondents

CORAM:HON'BLE MR. JUSTICE M. JEYAPPAUL

HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. Amit Arora, Advocate
for the petitioners.

1. *Whether Reporters of local papers may be allowed to see the judgment ?*
2. *To be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

RAJ MOHAN SINGH, J.

[1]. Petitioners-UT Administration have assailed order dated 16.04.2015, passed by Central Administrative Tribunal, Chandigarh Bench (hereinafter referred to as 'the Tribunal), in Original Application No.060/00765/2014 vide which the claim of respondent No.2-Sheela Masih with regard to revision of pay in accordance with 4/9/14 ACP Scheme was accepted and Union Territory, Chandigarh through the Director Higher Education, Chandigarh Administration was directed to treat respondent No.2 as having opted for the 4/9/14 ACP Scheme and arrears of

pay be released to her within a period of three months.

[2]. Respondent No.2 sought quashing of order dated 31.05.2014 passed by Registrar Education (C) for Director Higher Education, Chandigarh Administration before the Tribunal with a direction to the Administration to release the benefit of ACP Scheme to her in pursuance to the Government letter dated 03.11.2006 i.e. new ACP Scheme issued by the Punjab Government which was adopted by the Chandigarh Administration on 21.11.2006 along with interest @ 12% per annum on the arrears so estimated from the due date till actual realisation of the amount.

[3]. The respondent No.2 was appointed as Hostel Nurse in the Department of Higher Education i.e. in Home Science College, Sector 10, Chandigarh on 17.08.1979. On completion of about 32 years of service, she was retired on 31.07.2011. During the service tenure, respondent No.2 was given benefit of pay scale of higher post under ACP Scheme (8/16/24 years).

[4]. Government of Punjab, Department of Personnel issued instructions dated 03.11.2006 thereby issuing new ACP Scheme on completion of 4, 9 and 14 years of service in a cadre. The Scheme was optional. The existing employees including the employees having less than four years of 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 adopt the new Scheme i.e. ACP Scheme of 4, 9 and 14 years of service. Under the said Scheme, an option was required to be given by the employees within two months from the date of issue of the letter dated 03.11.2006 along with an undertaking as per proforma by way of an affidavit that they want to accept the Scheme which was effective from 01.11.2006 and will not claim any arrears.

[5]. The UT Administration adopted the aforesaid Scheme dated 03.11.2006 on 21.11.2006.

[6]. During the entire service tenure of 32 years the respondent No.2 was never promoted to any higher post after joining the post of Hostel Nurse on 17.08.1979. According to respondent No.2, she had exercised the option of fixation of pay after giving benefit of ACP Scheme on the completion of 4, 9 and 14 years of regular service pursuant to the Scheme in question. She had relied upon affidavit (Annexure A-1) with the Original Application. Thereafter respondent No.2 filed representation dated 17.05.2010 for the release of the benefit in question claiming that she was working on the solely isolated post of Hostel Nurse since the year 1979 and is entitled to the relief in terms of new Assured Career Progression Scheme on completion of 4, 9 and 14 years of service.

[7]. Vide letter dated 02.08.2010, the Director Higher Education, Chandigarh Administration requested the Principal, Government Home Science College, Sector 10, Chandigarh to grant the ACP benefit to respondent No.2 at his own level as per delegation of financial powers to him and thereafter the case of respondent No.2 be sent to the concerned office for verification of the pay.

[8]. As per communication in pursuance to the aforesaid letter dated 02.08.2010, the Principal, Government Home Science College, Sector 10, Chandigarh sent a revised pay fixation proforma along with service book of respondent No.2 for granting ACP benefit on completion of 4, 9 and 14 years of service to the office of Director, Higher Education, Chandigarh Administration.

[9]. Thereafter the Principal, Govt. Home Science College, Sector 10, Chandigarh sought direction from the office of Higher Education, Chandigarh Administration on the basis of service record of respondent No.2 alleging that relevant option was not available on record, nor any affidavit was found in the service record of respondent No.2.

[10]. Since the financial powers were delegated to the Principal on 05.10.2007, therefore, Director Higher Education entrusted the assignment to the Principal himself for disposal of

the claim at his own level vide communication dated 19.04.2011. The order dated 31.05.2014 came to be passed by the Director, Higher Education on the premise that respondent No.2 had failed to exercise the option within stipulated period for opting new ACP Scheme on completion 4, 9 and 14 years of service.

[11]. The claim of the respondent No.2 was that vide the affidavit dated 16.11.2006, she had opted for the new ACP Scheme. The Department of Personnel, UT Administration adopted the new ACP Scheme sponsored by the Punjab Government vide letter No.28/43/95-IH(7)-2006/21532 dated 21.11.2006. Almost all the staff members eligible under the new ACP Scheme opted for the same in the month of December 2006 and January 2007, however in the case of respondent No.2 her option and affidavit were not found in the record. The Department took the stand that neither fresh proforma was submitted by respondent No.2, nor any affidavit was filed for opting new ACP Scheme on completion of 4, 9 and 14 years of service. It was communicated to the respondent No.2 vide the intimation challenged before the Tribunal that the benefit of new ACP Scheme could not be granted to her due to non-compliance.

[12]. The Scheme came to be enforced by the Punjab

Government on 03.11.2006 and the same was made effective from 01.11.2006. The retrospective applicability was made by the Punjab Government. At the time of adoption of the Scheme by the UT Administration on 21.11.2006, nothing has been brought out, as to the date on which the same was made effective. There is no material in the stand taken by the UT Administration as to whether the adoption was specifically communicated to the concerned employee/s.

[13]. The post held by respondent No.2 did not have any promotional avenues during her entire service tenure of 32 years. She was appointed on the post of Hostel Nurse and retired from the same post. In the adoption made by the UT Administration the time schedule has not been shown within which the option was to be made by its employees.

[14]. The Tribunal has pointed out that even if, the affidavit regarding option of the new ACP Scheme was not submitted by respondent No.2 timely, but since she was serving on isolated post and had no promotional avenues during her 32 years of service tenure, therefore, she should not be denied revision of pay scale in accordance with the new ACP Scheme on completion of 4, 9 and 14 years of service.

[15]. We further add that since in the Scheme sponsored by the Punjab Government, provision was made for making the

Scheme effective from 01.11.2006 i.e. with retrospective effect, the Scheme was optional and the employees were required to opt for the new Scheme within a period of two months. While adopting the aforesaid Scheme, Chandigarh Administration has not specified the date of giving effect to the Scheme, nor any condition of opting the Scheme within specified time was highlighted in the letter of adoption dated 21.11.2006. The letter of adoption has the following recital:-

“I am directed to address you on the subject noted above and to state that the Punjab Government have notified the “Assured Career Progression Scheme” as contained in their letter No.7/60/2006-5PPI/15963, dated 3.11.2006 (copy enclosed) which inter-alia provides for the grant of “Assured Career Progression Scheme” on completion of 4, 9 and 14 years of service in a cadre with effect from 1.11.2006. In pursuance of Government of India, Ministry of Home Affairs, New Delhi's notification No.14012/2/88-CHD, dated 13.1.1992, the Administrator, Union Territory, Chandigarh, is pleased to adopt the aforesaid Punjab Government's circular letter dated 3.11.2006 from the date specified by the Punjab Government in respect of the employees of the Union Territory, Chandigarh and deputationists from Punjab Government working in the Union Territory, Chandigarh, strictly on the same terms and conditions as mentioned therein.

2. This issues with the concurrence of the Finance Department, Chandigarh Administration, conveyed vide their U.O. No.FS/1488, dated 13.11.2006.

3. *These instructions may be brought to the notice of all concerned for information and necessary action.”*

[16]. In the light of aforesaid facts we also hold that due to technical flaw, the respondent No.2 should not be denied the benefit of revision of her pay in accordance with new ACP Scheme on completion of 4, 9 and 14 years of service. Since respondent No.2 remained on isolated post and had no promotional avenues throughout her entire service tenure, denial of such benefit would be totally unjustified particularly when an affidavit dated 16.11.2006 has been specifically pleaded by respondent No.2. Even if, the adoption of the Scheme came to be made by the UT Administration on 21.11.2006, the filing of affidavit on 16.11.2006 could be treated to have been submitted in anticipation of the adoption by UT Administration in pursuance to the Scheme sponsored by the Punjab Government on 03.11.2006 which was made effective on 01.11.2006.

[17]. In the absence of any such commencement of the Scheme viz-a-viz. UT Administration and in the absence of the period in which option was to be given, made the respondent No.2 to be entitled for the benefit of the Scheme in the light of her representation dated 17.05.2010 also. Since the beneficial Scheme was meant for the welfare of the employees, it cannot

be presumed that the respondent No.2 was not aware of her benefits and had not opted for the same.

[18]. In the light of aforesaid facts it appears that the order passed by the Tribunal has been passed after taking due consideration of ACP Scheme and benefit accrued thereunder to the employees with reference to the claim made by respondent No.2.

[19]. In considered opinion of this Court, we do not wish to take any other view except the view taken by the learned Tribunal while allowing the claim of the respondent No.2 for new ACP Scheme on completion of 4, 9 and 14 years of service. Hence, the present petition is accordingly dismissed.

(RAJ MOHAN SINGH)
JUDGE

(M. JEYAPPAUL)
JUDGE

February 16, 2016

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