

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

CWP No.6225 of 2013 (O&M)

Date of decision: 09.02.2016

Roshan Lal and others

.....Petitioners

Versus

Haryana Vidyut Prasaran Nigam Limited and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Ramesh Goyal, Advocate,
for the petitioners.

Mr. Pardeep Singh Poonia, Advocate,
for the respondents.

Ritu Bahri, J.

The petitioners are seeking a writ of certiorari for quashing the order dated 04.02.2013 (Annexure P-10), vide which, respondents have withdrawn the benefit of ACP granted to them.

A bunch of Civil Writ Petition Nos.CWP No.15558, 16278 and 17812 of 1997 was decided by a Co-ordinate Bench of this Court vide judgment dated 03.12.2008 (Annexure P-1). Challenge in those petitions was to a selection made for 2056 posts of Assistant Linemen and 556 posts of Shift Attendants. In the selection list, some of the candidates of reserved category who were put higher in merit than the general category candidates, were given appointment on the reserved category posts. The merit list had not been prepared in accordance with the judgment passed by the Hon'ble

Suppl. (3) SCC 217. While allowing the writ petitions, direction was given to the respondents to place the reserved category meritorious candidates in the merit list of general category and subsequently vacant posts be given to the candidates belonging to reserved category as per their merits.

Pursuant to the order (Annexure P-1) passed by this Court and filing of COCP No.1011 of 2011, titled as 'Subhash Chander and others Vs. Ms. Jyoti Arora, IAS, Managing Director, Haryana Vidyut Parsaran Nigam, the petitioners were appointed and they were assigned seniority w.e.f. 1997. The salary of the petitioners was fixed after counting their service from 1997 onwards on notional basis. Thereafter, the petitioners were granted the benefit of ACP scale by the competent authority on completion of 10 years regular satisfactory service vide order dated 31.05.2012 (Annexure P-4). The petitioners were surprised when the benefit of ACP, granted to them, has been withdrawn vide order dated 04.02.2013 (Annexure P-10). As per petitioners, there is no justification in passing this order. The order withdrawing the benefit is liable to be set aside as ACP benefit has been granted in other division to the persons, who had joined with the petitioners in the same capacity. As per memo dated 22.02.2013 (Annexure P-11), the entire recovery which is being sought from the petitioners, is to the tune of Rs.62,289/-.

The petitioners have placed on record affidavit of one Sushil Kumar, wherein it has been stated that as per the information received under the RTI Act, a number of employees who were appointed along with the petitioners have been granted the benefit of ACP Scheme in various divisions. Copies of such orders have been annexed as Annexures P-14 to P-17. The authorities have adopted a pick and choose policy while granting the benefit of ACP. It has been further stated that this benefit has been

withdrawn only in Ambala Circle.

Mr. Poonia has made a feeble attempt to justify the order withdrawing the benefit of ACP (Annexure P-10). He has referred to the order dated 22.02.2013 (Annexure P-11), whereby it has been observed that the 1st ACP had been sanctioned by the S.E. (OP) Circle, Ambala on 01.11.2007 after completing 10 years of service by taking the date of service from October, 1997. For this period, the petitioners had not actually performed their duties as their date of joining was 28.10.2009 and hence, the amount was sought to be recovered. At the same time, learned counsel for the respondents has not been able to dispute that the information received under the RTI Act, which has been placed on record by way of affidavit dated 29.01.2016, is wrong.

In the present case, the petitioners are belonging to reserved category and they had been denied appointment only on account of the fault of department in making the merit list wrongly. Instead of putting the meritorious reserved category candidates in the general category, they had appointed them on the post meant against the reserved category. This was against the verdict given by the Hon'ble Supreme Court in Indra Sawhney's case (supra). The said petition had been allowed with a direction to the respondents to appoint the petitioner(s). They were not held entitled to any back wages, however, all other consequential benefits were granted. Further, their appointments were made during the pendency of contempt petition No.1011 of 2011.

As per reply filed by the Managing Director, Haryana Vidyut Prasaran Nigam Limited (Annexure P-2) in COCP No.1011 of 2011, after appointments, the petitioners were given seniority and notional fixation of

seniority w.e.f. 1997, they had been rightly granted the benefit of ACP after completing 10 years of service w.e.f. 2007 vide order dated 31.05.2012 (Annexure P-4). A perusal of order dated 31.05.2012 shows that during these 10 years i.e. from 1997 to 2007, no deemed date of promotion was granted to the petitioners. Hence, the benefit of ACP had been rightly extended to the petitioners in order to remove stagnation in their service career. The subsequent order dated 04.02.2013 (Annexure P-10) withdrawing the said benefit was against the ACP Rules as well as the judgment dated 03.12.2008 passed by this Court (Annexure P-1). Therefore, the same deserves to be quashed.

In view of the above, this petition is allowed and the impugned order dated 04.02.2013 (Annexure P-10) is set aside.

09.02.2016
ajp

(RITU BAHRI)
JUDGE