

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

LPA No.225 of 2011 (O&M)

Date of Decision: 22.07.2016

State of Haryana & Ors.

... Appellants

VS.

Joginder Sethi

... Respondent

CORAM: HON'BLE MR.JUSTICE SURYA KANT

HON'BLE MR.JUSTICE DARSHAN SINGH

Present: Mr. Ravi Dutt Sharma, DAG Haryana

Mr. BK Bagri, Advocate for the respondent

SURYA KANT, J. (Oral)

CM-615-LPA-2011

For the reasons mentioned in the application, the same is allowed and the delay of 50 days in filing the appeal is condoned.

CM stands disposed of.

LPA-225-2011 (O&M)

(1) This Letters Patent Appeal assails the order dated 10.11.2010 whereby learned Single Judge has set aside the order rejecting the claim of respondent for grant of ACP scale on the ground that she refused to accept the functional promotion from the post of Clerk to the higher post of Sub Divisional Clerk, hence she ceased to be eligible for grant of ACP scale in terms of Rule 11 of the Haryana Civil Services (Assured Career Progression) Rules, 1998. Though the learned Single Judge has in the order under appeal noticed the plea taken by the appellants that in view of Rule 11 *ibid*, the claim of the respondents was rightly declined but allowed the writ petition on the basis of a judgment of this Court in CWP No.5786 of 2007 decided on 11.08.2008.

(2) It would be apt to point out at this stage that Rule 11 of the 1998 Rules provides that in case a Government servant chooses to forego any

functional promotion on any ground whatsoever, while drawing his pay in any ACP scale, he shall cease to draw his pay in the ACP pay scale and shall draw his pay in functional pay scale prescribed for the post on which he is substantively working.

(3) The validity of Rule 11 was questioned but a Division Bench of this Court in **Rakesh Kumar vs. State of Haryana & Ors., 2010(3) SLR 434** upheld the same and repelled the challenge. The respondent's case, on the other hand, is that Rule 11 cannot be construed or applied in the manner that it takes away the service benefit granted to an employee much before such employee became due for functional promotion, namely, that the effect of Rule 11 cannot be to withdraw the service benefit retrospectively.

(4) Since these aspects of the matter have not been dealt with in the order under appeal and the Division Bench judgment in **Rakesh Kumar's** case (supra) was not even brought to the notice of learned Single Judge, we are satisfied that the matter requires re-consideration.

(5) For the reasons afore-stated, the appeal is allowed in part; the order under appeal is set aside and the case is remitted to learned Single Judge for fresh adjudication leaving it open for the parties to raise their respective pleas.

(6) Parties are directed to appear before learned Single Judge, as per roster on 16.08.2016.

(7) Meanwhile, no recovery shall be effected.

(Surya Kant)
Judge

22.07.2016
vishal shonkar

(Darshan Singh)
Judge