

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

**CWP No.8587 of 2014 (O&M)
Date of decision : October 25, 2016**

Dr. Pawan Kumar

..... Petitioner

Versus

State of Punjab and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Mukand Gupta, Advocate for the petitioner.

Mr. R.S. Pathania, DAG, Punjab.

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 ?

KULDIP SINGH J. (ORAL)

Petitioner joined as Medical Officer on 30.12.1989 and sought voluntarily retirement from service (for short 'VRS') and ultimately after the intervention of the Court, he was granted VRS w.e.f. 31.01.2010.

It comes out that on account of the report of 4th Pay Commission, the petitioner was granted the benefits of Assured Career Progression (for short 'ACP') on completion of 4-9-14 years of service w.e.f. 01.01.1996, 01.01.1999 and 01.01.2004 respectively.

It also comes out that later on Public Interest Litigation i.e. CWP No.15473 of 2009, titled as “Sham Lal Saini vs State of Punjab and others” was filed, in which it was claimed that the doctors, who were having

satisfactory record have been granted ACP. The State in the said writ petition took the stand that the cases of all such doctors are being reviewed.

However, at the same time, it was also stated that the benefits already drawn are not being recovered. The said writ petition was, accordingly, disposed of vide order dated 21.04.2011 (Annexure P-4).

Apparently, on the basis of the said writ petition, the respondents passed the order, reviewing the order of granting ACP of the petitioner. The petitioner being aggrieved with the said order, filed CWP No.16956 of 2012, stating that he was not heard before passing the order. The said CWP was decided on 21.08.2013 with a direction to hear the petitioner and pass the order. Accordingly, the petitioner was heard and the impugned order dated 20.02.2014 (Annexure P-6) was passed, whereby considering the service record of the petitioner, the grant of ACP on completion of 4-9-14 years of service was refixed w.e.f. 01.01.1999, 01.01.2004 and 01.01.2009 respectively and in pursuance of that, the recovery was sought to be effected from the petitioner.

The State in the reply has justified their action, stating that as per the Instructions dated 17.04.2000 issued by the Personnel Department, Punjab, the grant of ACP has been reviewed and the recovery was justified.

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

The ACP scheme was introduced w.e.f. 01.01.1996. The Government issued the Notification on 17.04.2000, which laid down the guidelines for grant of ACP. It was stipulated that the over all service record during the span should be good and the employees otherwise are suitable for

promotion. The 'Good' record was defined to mean that more than 50% of the Annual Confidential Reports (in short 'the ACR') are good and out of last three years at least two should be 'Good' for the remaining years the bench mark may be 'Average'.

A perusal of the ACRs reproduced in the impugned order shows that the petitioner had more than 50% 'Average' ACRs till the year 1998. Therefore, he did not fulfill the criteria of more than 50% 'Good' ACRs for getting the benefits of ACP on completion of 4 years of service.

After going through the ACRs of the petitioner, I am of the view that there is no illegality in reviewing the grant of ACP to the petitioner on completion of 4-9-14 years of service w.e.f. 01.01.1999, 01.01.2004 and 01.01.2009.

Learned counsel for the petitioner contends that since the 'Average' reports were never conveyed to the petitioner, therefore, it cannot be acted upon.

In this case, no departmental action was taken on account of 'Average' report' but for grant of ACP, the reports were considered. Therefore, there is no illegality in the said action. However, so far as , the recovery is concerned, in view the authority of ***“State of Punjab and others vs Rafiq Masih”, 2015(1) S.C.T., 195***, recovery cannot be effected. There is no fault on the part of the petitioner. His pay was wrongly fixed by granting the benefits. The same have been withdrawn.

Hence, the present petition is partly allowed only to the extent that the refixation of the pay on account of review of ACP is upheld but on account of refixation of the pay, no recovery shall be effected from the

pension of the petitioner and recovery already made shall be refunded to him with interest @ 8% per annum.

(KULDIP SINGH)
JUDGE

October 25, 2016

sarita

Whether speaking / reasoned Yes

Whether Reportable: No