

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

CWP No. 7673 of 2016

DATE OF DECISION : 04.10.2016

Municipal Corporation, Union Territory, Chandigarh and others
.... PETITIONERS

Versus

Central Administrative Tribunal, Chandigarh Bench, Chandigarh and others
..... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Ms. Deepali Puri, Advocate,
for the petitioners.

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RAMENDRA JAIN, J.

1. Brief facts leading to the filing of this writ petition are that Pala Ram (respondent No.2 herein) joined the petitioner department as Sweeper on 01.11.1972. On 01.11.1995, he was put to work in the Department of Health, Municipal Corporation, Chandigarh and was further promoted as Sanitary Jamadar on 28.03.2002. Vide notification dated 03.11.2006, Government of Punjab introduced a new Assured Career Progression (ACP) Scheme with effect from 01.11.2006, which was adopted by the Chandigarh Administration, Department of Personnel vide letter dated 21.11.2006. The said Scheme envisaged that after a service of 4, 9 and 14 years on a post or posts in the same cadre i.e. service rendered in the same post in different Government Departments, an employee who is not promoted to a higher level on account of non-availability of a vacancy or non-existence of a promotional avenue in the cadre, shall be granted the pay scale which is

next higher in the hierarchy of pay scales, if he exercises an option for the same within two months from the date of the said letter along with an undertaking in the proforma through a sworn affidavit. Respondent No.2 did not exercise the said option within the stipulated time as according to him it was not brought to his notice till 30.06.2008, the date of his retirement on attaining the age of superannuation. He had already completed 4, 9 and 14 years of service in the same cadre much before his superannuation and was, thus, entitled to the benefit of ACP Scheme. Accordingly, he got issued legal notices dated 24.01.2009 and 27.04.2009 requesting the petitioners to grant him the benefit of the aforesaid Scheme, but to no avail.

2. Aggrieved by the aforesaid action of the petitioners in not granting him the benefit of financial up-gradation as per Punjab Government letter dated 03.11.2006, as adopted by the Chandigarh Administration, Department of Personnel vide letter dated 21.11.2006, respondent No.2 filed OA No. 060/00181/2014 before the Central Administrative Tribunal, Chandigarh Bench, Chandigarh, seeking direction to the petitioners to consider his claim for correct fixation of pay on grant of financial upgradation due to him from due dates in terms of the aforesaid ACP Scheme dated 03.11.2006, by giving him opportunity to opt for the same. The said OA has been allowed by the Tribunal, while holding that respondent No.2 being illiterate and working at the lowest level as Sweeper, perhaps really was not aware of the need for exercising his option regarding ACP. The petitioner department has been directed to allow respondent No.2 to exercise his option for grant of ACP under 4, 9 and 14 Scheme with effect from 01.11.2006. On the submission of "Option" as required, the

petitioners have been directed to take action to revise the pay of respondent No.2, release arrears due to him and also issue revised PPO in his favour.

3. The petitioners have impugned the aforesaid order of the Tribunal by way of the instant writ petition under Articles 226 and 227 of the Constitution.

4. The only contention raised by learned counsel for the petitioners is that the impugned order has been passed by the Tribunal only on the ground that the matter deserves sympathetic consideration as respondent No.2 is illiterate. However, despite specific direction by this court vide interim order dated 27.04.2016 passed by this court, the petitioner Department – Municipal Corporation, U.T. Chandigarh, has not explained as to how much additional financial burden would be caused on them if the impugned order of the Tribunal is given effect.

5. After hearing learned counsel for the petitioners and perusing the impugned order, we are of the opinion that the Tribunal has rightly accepted the claim of respondent No.2 on equitable grounds, so as to eliminate the inadvertent discrimination which has taken place between him and other Class – IV sweepers for the reason that he could not exercise the option on time for want of adequate knowledge as he is an illiterate person. Even otherwise, non-compliance of the aforesaid interim order dated 27.04.2016 by the petitioners leads to the conclusion that if the impugned order is implemented, the petitioner Department is not going to suffer much financial burden. Moreover, in the facts of the instant case, it cannot be presumed that respondent No.2 was aware of the need to exercise his option regarding ACP, because if he would have had a little knowledge of the

same, there was no reason for him not to exercise the option resulting in financial benefit to him. Thus, we are not inclined to interfere with the impugned order passed by the Tribunal.

6. Dismissed.

**(RAMENDRA JAIN)
JUDGE**

October 04, 2016
ndj

**(AJAY KUMAR MITTAL)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No