

LPA-2332-2016 (O&M)

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

LPA-2332-2016 (O&M)

Date of Decision: December 01, 2016

Dr.Pawan Kumar

.....Appellant

Versus

State of Punjab and another

.....Respondents

**CORAM: HON'BLE MR.JUSTICE SURYA KANT
HON'BLE MR. JUSTICE SUDIP AHLUWALIA**

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|----|---|---------|
| 1. | To be referred to the Reporters or not? | Yes/No |
| 2. | Whether the judgment should be reported in the Digest? | Yes/No. |
| 3. | Whether Reporters of local papers may be allowed to see the judgment? | Yes/No |

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Present: Dr.Surya Parkash, Advocate
for the appellant.

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SURYA KANT, J.

This Letters Patent Appeal is directed against the order dated 25.10.2016 vide which the learned Single Judge has allowed appellant's writ petition in part to the extent that the order withdrawing the benefit of Assured Career Progression (for brevity, 'the ACP') has been upheld but consequently recovery has been set aside.

[2] The appellant joined the Punjab Civil Medical Services as a Medical Officer on regular basis on 30.12.1989. Immediate on completion of 20 years service when he became entitled to pension, the appellant got voluntarily retirement w.e.f. 31.01.2010.

[3] While in service he was granted ACP on completion of 4,9 and 14 years of service w.e.f. 01.01.1996, 01.01.1999 and 01.01.2004, respectively.

[4] It is undeniable that the Statutory Rules expressly requires that the employee must have rendered 'Regular Satisfactory Service' and he must have earned at least 50% 'Good' and 'Above' Annual Confidential Reports to become eligible for ACP.

[5] It appears that several medical officers including the appellant to whom benefit of 'ACP' was granted, were not fulfilling the criteria prescribed under the Statutory Rules. This led to initiation of 'Public Interest Litigation' (PIL) in this Court and pursuant to some interim directions issued in the pending 'PIL', their cases were reviewed by the Competent Authority. Since the appellant was also found not possessing the requisite 'Good' reports to make him entitled to ACP benefits from the date it was originally granted to him, the Competent Authority reviewed those orders and postponed the dates of grant of 'ACP' to the appellant from the dates, he was found entitled to, as per service record. Consequently, the appellant was granted 'ACP' on completion of 4, 9 and 14 years w.e.f. 01.01.1999, 01.01.2004 and 01.01.2009. The postponement of the above-stated dates led to resultant recovery of excess amount paid to him.

[6] The aggrieved appellant approached this Court and the learned Single Judge though has upheld the order of redetermination of 'ACP' claim of the appellant but relying upon the judgment of Hon'ble the Supreme Court in **State of Punjab and others vs Rafiq Masih**, 2015(1) S.C.T. 195, has viewed that no recovery can be effected from him as he has already retired from the service.

[7] We have heard learned counsel for the appellant and do not find any merit in this appeal.

date of grant of `ACP' has been postponed were not conveyed to the appellant has to be rejected keeping in view the policy regime at the relevant time. It is undeniable that there was no rule or instruction under which an `average report' was required to be conveyed during the years 1989-90, 1991-92, 1992-93, 1994-95 or 1995-96. Otherwise also it becomes difficult to find out from the old and stale record as to whether such reports were conveyed to the appellant or not.

[9] It cannot be disputed that once those reports are taken into consideration, the appellant did not qualify for the grant of `ACP' from the dates it was granted to him.

[10] For the reasons aforestated, we do not find any error in the order under appeal.

[11] Dismissed.

(SURYA KANT)
JUDGE

December 01, 2016
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(SUDIP AHLUWALIA)
JUDGE

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| 1. | Whether speaking/reasoned ? | Yes/No |
| 2. | Whether reportable ? | Yes/No |