

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

1. CWP No.19568 of 2010

Anil Kumar and others ... Petitioners

Vs.

State of Haryana and others ... Respondents

2. CWP No.25881 of 2015

Bimla Devi ... Petitioner

Vs.

State of Haryana and others ... Respondents

Date of Decision:14.02.2017

CORAM : HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present : Mr. Virender Kumar, Advocate for the petitioners.

Mr. Harish Rathee, Sr. D.A.G. Haryana.

P.B. BAJANTHRI J.

By this common judgment, both the aforementioned writ petitions shall be decided together as controversy is identical in both the cases.

For the sake of convenience, facts are taken from CWP No.19568 of 2010. In the instant petition, the petitioners are seeking writ of mandamus directing the respondents to grant first ACP scale to them while taking into consideration the service rendered in Shaheed Udham National College Matak Majri, Indri, District Karnal in terms of the reported decision i.e. Tejveer and others v. State of Haryana and others; SCT 2008 (4) 469 as well as the judgment passed in CWP No.6115 of 2008; Jagmal Singh and others v. State of Haryana and others; decided on 18.3.2010.

The petitioners were stated to have been appointed between 1998 to 2000 in the unaided institute namely Shaheed Udham National College Matak Majri, Indri, District Karnal. The said institute was taken

over by the Government on 17.5.2005 vide Annexure P-10. Subsequently, the petitioners were appointed on various dates i.e. 17.06.2005 and 28.6.2005 on ad-hoc basis for a period of six months. However, their services have been subsequently regularized.

Learned counsel for the petitioners submitted that the petitioners are entitled for first ACP scale while counting the service rendered in the unaided institute namely Shaheed Udham National College Matak Majri, Indri, District Karnal. Learned counsel for the petitioners further submitted that in the case of Jagmal Singh and others v. State of Haryana and others; CWP No.6115 of 2008 decided on 18.3.2010, service in unaided institute has been taken into consideration for the purpose of granting ACP and the present case is covered by the said decision.

On the other hand, learned counsel for the respondents pointed out from the relevant rules governing grant of ACP to the employees vide notification dated 7.1.1998 which are called the Haryana Civil Services (Assured Career Progression) Rules 1998 (for short "Rules 1998"). Learned counsel for the respondents relied on Rule 7 which reads as under:

"7.Consequences of ACP scales etc.:—Placement in the ACP scale will entitle only financial benefit of drawl of pay and dearness relief on pay in the ACP pay scale. The other entitlements including the entitlement generally dependent on the status 'of the employee shall continue to be determined with reference to his post on which he is working in the substantive capacity or to the functional pay scale of the post against which he was working substantively, before being granted the ACP Scale (s)."

Having regard to the language employed in the above rule, it is evident that the petitioners are not continuing to hold the post and are

working in the substantive capacity or to the functional pay scale to the post for the reasons that from the service particulars of the petitioners, it is crystal clear that they were initially appointed on ad-hoc basis on 17.6.2005 and 28.6.2005 subsequent to taking over unaided institute by the Government. Therefore, the petitioners were not working against substantive post or in a substantive capacity. Therefore, service rendered in the unaided institute cannot be taken into consideration for the purpose of extending benefit of ACP scale to the petitioners.

Heard learned counsel for the parties.

The petitioners' claim for ACP scale is whether the service rendered in unaided institute is to be counted or not?

Learned counsel for the petitioner relied on the decision in Tejveer's case (supra). That decision is relating to grant of scale and the Court has not examined the Rules 1998 particularly Rule 7. Further insofar as reliance on the case of Jagmal Singh's case (supra) is concerned, this Court has extended the benefit of ACP scale to such of the persons who have completed 10 years of service including the service rendered in the unaided institute. Perusal of the judgment, it is evident that Rule 7 of the Rules 1998 has not been taken into consideration. Therefore, the petitioners cannot claim that the service rendered in an unaided institute would be taken into consideration for the purpose of extending the benefit of first ACP. Having regard to the language employed in Rule 7 of the Rules 1998, it is crystal clear that a person who claims ACP must have held the post in substantive capacity or to the functional pay scale post against which he was working substantively. In the present case, admittedly, the petitioners were working in unaided institute from the date of their appointment till the date

on which the State has taken over the unaided institute. Thereafter, the petitioners were appointed on 17.6.2005 and 28.6.2005 on ad-hoc basis. Subsequently, their services have been regularized. Having regard to the service particulars of the petitioners read with Rule 7 of the Rules 1998, the decisions cited by the petitioners are distinguishable. Moreover, in the said decisions Rule 7 of the Rules 1998 has not been taken note of read with service particulars of the parties. Hence, the petitioners have not made out a case so as to seek writ of mandamus directing the respondents to consider their grievance relating to grant of first ACP while counting the service rendered in unaided institute.

Accordingly, the petition stands dismissed.

14.02.2017
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned **Yes/No**

Whether reportable **Yes/No**