

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

CWP No.19689 of 2012

Date of Decision:24.01.2017

Smt. Raj Dahiya

... Petitioner

Vs.

State of Haryana and others

... Respondents

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

Present : Mr. S.R. Hooda, Advocate for the petitioner.

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

P.B. BAJANTHRI J.

In the present petition, the petitioner has questioned the validity of the order dated 16.11.2010 (Annexure P-5).

The petitioner is stated to have been appointed as J.B.T. Teacher on 25.01.1984. The respondent-State introduced Haryana Civil Services (Assured Career Progression) Rules, 1998 on 7.1.1998. The petitioner completed 20 years of service on the post of J.B.T. Teacher on 25.01.2004. Thus, he has been granted benefit of 1st and 2nd ACP on completion of 10 and 20 years of service respectively. Thereafter revision of pay took place in the year 2006 w.e.f. 1.1.2006. Accordingly, pay of the petitioner has been revised.

In the month of April 2010, the petitioner was promoted to the post of Head Teacher. Due to some reason, the petitioner did not accept the said post and he has foregone the promotion which has been granted to him. Pursuant to the fact that the petitioner was promoted in the month of April 2010 to the post of Head Teacher read with fact that he has foregone the promotion, the respondents proceeded to withdraw the 2nd ACP benefit on the score that the petitioner had foregone the promotion to the post of Head

Teacher. Consequently, the petitioner's pay has been re-fixed after withdrawing the benefit of 2nd ACP. Thus, the present petition has been filed questioning the validity of the order dated 16.11.2010 (Annexure P-5).

Learned counsel for the petitioner submitted that once ACPs are granted to the petitioner in accordance with ACP scheme, the same cannot be withdrawn merely on the ground that he had been promoted subsequently after completion of 20 years. In the present case, the petitioner was promoted in October 2010 i.e. after a long period of granting 2nd ACP. Thus, the action of the respondents is highly arbitrary and contrary to the scheme of ACP and so also object of granting ACP with reference to number of years service rendered in particular post.

Learned counsel for the petitioner relied on decision of this Court passed in Vijay Singh v. State of Haryana and others; 2011 (4) SLR 64 and also latest decision of the Apex Court passed in Special Leave to Appeal (C) No.32555 of 2009; decided on 19.1.2016. (Rakesh Kumar v. State of Haryana)

On the other hand, learned State counsel submitted that there is no infirmity in the impugned action having regard to the claim of ACPs. Claim of ACP is to grant on two stages as and when employee completes 10 years of service without any promotion so also for 20 years. The petitioner had been granted 2nd ACP as and when he has completed 20 years of service. If an employee denies or forego promotion, in such circumstances 2nd ACP granted prior to promotion could be withdrawn. In this regard, he relied on decision of this Court passed in CWP No.14653 of 2008; Rakesh Kumar v. State of Haryana and others; decided on 5.8.2009.

Heard learned counsel for the parties.

Crux of the matter is that the petitioner had a right to seek 2nd ACP as and when he completed 20 years of service on the post of J.B.T. Teacher or not? Whether 2nd ACP granted would stands cancelled if petitioner forgone promotion subsequent to completion of 20 years read with order of promotion ordered after 20 years of service in a post or not?

The respondents have granted benefit of 2nd ACP on completion of 20 years of service. The object of granting 1st and 2nd ACP is that an employee who has not been granted any promotion and who remains 10 years or 20 years in a particular post, in such circumstances, 1st and 2nd ACP would be entitled and it is to be granted. The petitioner has been promoted from the post of J.B.T. Teacher to that of Head Teacher after number of years from the date of granting 2nd ACP. The said promotion has been foregone by the petitioner. On that score, the respondents cannot withdraw the benefit of 2nd ACP granted to him. The object of granting ACP is that an employee who completes 10 years or 20 years of service without promotion.

It is not disputed that the petitioner has not been granted any promotion within 10 years or 20 years from the date of holding the post of J.B.T. Teacher. Thus, he has been granted the benefit of 2nd ACP on completion of 20 years of service. The subsequent event that the petitioner has been promoted to the post of Head Teacher in the month of October 2010 i.e., after rendering about 26 years of service in a cadre i.e., J.B.T. Teacher does not empower the respondents to take away the benefit of 2nd ACP granted on completion of 20 years of service (25.1.2004).

Learned State counsel has not pointed out any specific provision under the ACP scheme that once ACP is granted and subsequently if an employees has been granted promotion and he denies the promotion, in

such circumstances, ACP granted can be withdrawn. In the absence of statutory provision for withdrawing the benefit of 2nd ACP, impugned order dated 16.11.2010 (Annexure P-5) is without any basis and the same is liable to be set aside.

Learned counsel for the petitioner also submitted that withdrawing the benefit of 2nd ACP on 16.11.2010 is without notice to the petitioner. Even on that score, impugned order dated 16.11.2010 is liable to be set aside.

That apart having regard to the decision in Special Leave to Appeal (C) No.32555 of 2009; **Rakesh Kumar** v. **State of Haryana and others**; the Supreme Court has held that such withdrawal is bad. The principle laid down in Rakesh Kumar's case is applicable to the present case.

Accordingly, petition is allowed. Order dated 16.11.2010 (Annexure P-5) is set aside. The respondents are directed to rectify the re-fixation of pay and extend all the monetary benefits within a period of six months from today.

24.01.2017
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned **Yes/No**

Whether reportable **Yes/No**