

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

CWP No. 15325 of 2015 (O&M)
Date of decision: May 19, 2017

Surinder Singh Bajwa

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Vipin Mahajan, Advocate,
for the petitioner.

Mr. Amit Chaudhary, Additional Advocate General, Punjab.

JAISHREE THAKUR, J.

1. The petitioner herein is seeking the benefit of grant of higher pay scale/Assured Career Progression Scheme under 4, 9 and 14 years of service on the basis of Policy dated 3.11.2006 with an alternate prayer that he be given benefit of higher pay under previous Assured Career Progression Scheme on completion of 24 years' service.

2. The petitioner was initially appointed as Assistant Superintendent of Jail on 9.1.1980. The petitioner was granted the benefit of higher pay scale after completion of 8/16 years of service w.e.f. 9.1.1996. On the basis of good work, he was promoted as Deputy Superintendent Jail Grade-II/District Probation Officer in the pay scale of Rs. 1800-3200 in officiating capacity on temporary basis as stop-gap arrangement against direct quota post, vide order dated 20.8.1997. The State Government issued an Assured Career Progression Scheme (ACP Scheme) on completion of 4,

9 and 14 years of service in a cadre, vide notification dated 3.11.2006. He was made regular as Deputy Superintendent Jail Grade-II w.e.f. January, 2005. The petitioner was not given the benefit of 4, 9 and 14 years of service under the ACP Scheme, as such, he submitted a representation dated 25.11.2009 for grant of same on the post of Deputy Superintendent Jail Grade-II. However, the same was declined. Aggrieved the instant writ petition has been filed.

3. Mr. Vipin Mahajan, learned counsel appearing on behalf of the petitioner, contends that the action of the respondents in denying the benefit of higher pay scale on completion of 4, 9 and 14 years of service is arbitrary. It is contended that the petitioner was promoted as Deputy Superintendent Jail Grade-II in August, 1997 and continued to work on the said post till his retirement. He was allowed annual increment on the post and, therefore, it will be deemed that he was regularly promoted for all intents and purposes and once promotion has been given to him, he would be entitled to ACP Scheme of 4, 9 and 14 years of service by counting his officiating service as Deputy Superintendent Jail Grade-II w.e.f. August, 1997.

4. Per contra, Mr. Amit Chaudhary, learned counsel appearing on behalf of the respondent-State, submits that the regular promotion of the petitioner was only in the year January 2005 and he superannuated in the year 2008 and, therefore, not having completed 4 years of service as Deputy Superintendent Jail Grade-II benefit of ACP Scheme could not be given.

5. The only question that comes up for consideration is, whether

the petitioner, who was promoted on purely temporary basis on 20.8.1997 on the post of Deputy Superintendent Jail Grade-II would be entitled to be given the ACP Scheme from the date he was given promotion on temporary basis or from the date when he was regularly promoted as Deputy Superintendent Jail Grade-II?

6. Learned counsel appearing on behalf of the petitioner relies upon the judgments rendered in **Khirod Chander Versus State of Haryana 2003 (2) S.C.T. 903** and **S.K. Malhotra Versus State of Haryana and others 2003 (5) SLR 546**, wherein the petitioner had approached this Court by filing a writ petition under Article 226 of the Constitution of India with the plea that the work charge service of a person should be counted towards total service for giving benefit of additional increments and higher pay scales. The Division Bench of this Court in **S.K. Malhotra's case (supra)** decided the matter by holding that the service rendered on work charge basis will form part of the continuous service for grant of limited benefits of additional increments after completion of 8/18 years of service by computing the service rendered on work charge basis as well.

7. As per policy dated 3.11.2006 relied upon by the petitioner, '*an employee including employee having less than four years' service will have option either to continue in the Existing ACP scheme after service of 8/16/24 and 32 years of service or to opt for 4, 9 and 14 years under the Assured Career Progression Scheme*'. The petitioner herein was appointed as Assistant Superintendent of Jail on 9.1.1980 and thereafter he was promoted in officiating capacity as stop gap arrangement against the direct quota post of Deputy Superintendent Jail Grade-II w.e.f. 20th August,

1997. The petitioner was granted the benefit of higher pay scale on completion of 8 years of service and proficiency step-up after completion of 16 years of service w.e.f. 1.1.1996. The claim in the writ petition is for grant of ACP Scheme on completion of 4, 9 and 14 years of service in a cadre on the basis of Policy dated 3.11.2006. Service in a cadre rendered by him in the same post before 1.11.2006 shall count for the purpose of grant of benefit under the Scheme.

8. The Assured Career Progression Scheme were brought into effect to remove stagnation when there was no promotional avenue available. The view of Hon'ble the Supreme Court as laid down in the case of **State of Haryana v. Haryana Veterinary and AHTA Association and another, (2000) 8 SCC 4** is absolutely clear that it is only regular service which could be counted for the purpose of grant of ACP scale. Further the term regular service has been defined in **Punjab State Electricity Board And Others Vs Jagjiwan Ram (2009) 3 SCC 661** to mean:

“20. A reading of the scheme framed by the Board makes it clear that the benefit of time-bound promotional scales was to be given to the employees only on their completing 9/16 years' regular service. Likewise, the benefit of promotional increments could be given only on completion of 23 years' regular service. The use of the term “regular service” in various paragraphs of the scheme shows that service rendered by an employee after regular appointment could only be counted for computation of 9/16/23 years' service and the service of a temporary, ad hoc or work-charged employee cannot be counted for extending the benefit of time-bound promotional scales or promotional increments. If the Board intended that total service rendered by the employees

irrespective of their mode of recruitment and status should be counted for the purpose of grant of time-bound promotional scales or promotional increments, then instead of using the expression “9/16 years' regular service” or “23 years' regular service”, the authority concerned would have used the expression “9/16 years' service” or “23 years' service”. However, the fact of the matter is that the scheme in its plainest term embodies the requirement of 9/16 years' regular service or 23 years' regular service as a condition for grant of time-bound promotional scales or promotional increments as the case may be.”

9. In the case in hand, the petitioner would not be entitled to the benefit as claimed under the policy dated 3.11.2006 since he was not regularly promoted on the post of Deputy Superintendent Jail Grade-II w.e.f. 20th August, 1997, as petitioner was only temporarily promoted on a stop gap arrangement. Even otherwise, he would have no claim, since he could have been considered for promotion only in his own quota i.e against a departmental quota, whereas he was officiating against a post meant for a direct recruit. The argument raised that he was given an increment while working against the said post and would be deemed to be promoted is not sustainable, in view of the fact that his promotion was purely as a stop gap arrangement on temporary basis against direct quota and there could be no substantive or regular promotion in the case of the petitioner being a departmental employee.

10. The case law, as relied upon by the petitioner, is distinguishable and not applicable to the facts of the instant case, especially in view of the judgment rendered by the Apex court that a work charged employee would

not be entitled to that the benefit of time-bound promotional scales which is to be given to the employees only on their completing 9/16 years' regular service.(**emphasis supplied**) .

11. The plea that the petitioner be given the benefit of ACP on completion of 24 years' service as Assistant Superintendent Grade II would be sustainable. He was granted a proficiency step up on completion of 16 years of service and thereafter would be entitled to the next benefit since regular promotion was only given to him in 2005. This benefit would only be available in case the petitioner had not been put in a higher scale by virtue of officiating as Deputy Superintendent Grade II. There is nothing available on the record to this effect other than a bare denial that the petitioner had been put in a higher scale.

12. Therefore, in view of the above, the writ petition is allowed to the limited extent that the petitioner would be allowed the next step up on completion of 24 years' service, if not already put in a higher scale on account of a temporary promotion granted . Let the matter be relooked into within a period of three months of receipt of certified copy of this order and if found entitled, the necessary relief be given with a period of two months thereafter.

May 19 , 2017
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(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No