

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 20033 of 2013 (O&M)

Date of decision: 20.02.2017

Jai Parkash Arora**...Petitioners**

V/s.

State of Haryana and others**...Respondents****CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI**

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

Mr. Harish Rathee, Sr. DAG, Haryana.

P.B. BAJANTHRI, J. (Oral)

In the instant petition, the petitioner has questioned the validity of the order dated 09.04.2010, communication dated 20.01.2011 and further order dated 20.08.2013 vide Annexures P-8, P-9 and P-10 respectively issued by respondent No. 1 and respondent No. 3. The petitioner while working as Section Officer promoted to the post of Accounts officer w.e.f. 23.03.2006. The petitioner's name was considered for grant of ACP on 15.09.2009 and the same was granted w.e.f. 01.01.2006 i.e. prior to date of his promotion to the post of Accounts Officer. The grant of ACP/increment w.e.f. 01.01.2006 it is on 15.09.2009. The grant of ACP is under Rules called the Haryana Civil Services (Assured Career Progression) Rules 2008 issued on 30.12.2008. On 09.10.2010, State Government passed an order issuing certain clarification in respect of Haryana Civil Services (Assured Career Progression) Rules 2008 and further a communication has been made on 20.01.2011. Based on these order and communication, the petitioner's pay has been revised while withdrawing the grant of ACP to the petitioner w.e.f. 01.01.2006 stating that in terms of Annexures P-8 and P-9 grant of ACP to the petitioner w.e.f. 01.01.2006 is not in order in view of

the fact that the petitioner was promoted to the post of Accounts Officer.

Learned counsel for the petitioner submitted that the impugned action as well as the orders at Annexure P-8 dated 09.04.2010 and 20.01.2011 vide Annexure P-9 are contrary to the Rules 2008 in particular note to Rule 18. Therefore, withdrawal of ACP granted to the petitioner is highly arbitrary and illegal and they are liable to be set aside.

On the other hand, learned counsel for the respondent submitted that having regard to the fact that the petitioner was promoted to the post of Accounts Officer on 23.03.2006 read with the order dated 16.04.2012 withdrawal of increment granted to the petitioner is in order since in the Section Officer post itself the petitioner had been granted additional increment who was further promoted to the post of Accounts Officer on 01.03.2006 in the pay scale of 9300-34800+5400 grade pay. In this regard, the petitioner had been given the option and he had exercised the option that his pay is required to be fixed in the promotional post of Accounts Officer in the pre-revised scale upto 01.07.2006. Therefore, there is no infirmity in the impugned action.

Heard the learned counsel for the parties. It is undisputed that the petitioner was promoted to the post of Accounts Officer on 23.03.2006. It is also undisputed that the petitioner had been granted benefit of ACP w.e.f. 01.01.2006 to 15.09.2009. Grant of ACP is drawn by the Rules called Haryana Civil Services (Assured Career Progression) Rules 2008) note to Rule 18 reads as under: -

“The placement in the first, second or third ACP pay structure, as the case may be, does not amount to a functional promotion and therefore the presumption of higher responsibility cannot

be taken in such placements in the ACP pay structure. However, still the benefit of fixation of pay corresponding to the placement in the higher pay structure as a consequence of promotion that is presuming the higher responsibility shall be extended at the stage of fixation of pay in the first, second or third ACP pay structure, as the case may be. Therefore, if the grade pay of the promotional post and the ACP pay structure in which the Government servant is drawing his pay prior to the promotion are identical, his pay will not again be fixed in the functional pay structure of the promotional post which is identical to the ACP pay structure in which he was drawing his pay before promotion. He will continue to draw his salary at the same stage and his date of increment will also continue to be the same as before the promotion.”

The respondents passed an order with reference to the next increment in the revised pay structure under Rule 10 of the Haryana Civil Services (Revised Pay) Rules 2008 and under Rule 18 of the Haryana Civil Services (Assured Career Progression) Rules 2008. Based on the said order, ACP granted to the petitioner on 01.01.2006 has been withdrawn. So also with reference to the order dated 09.04.2010. Perusal of the orders dated 09.04.2010 or 16.4.2012, it is evident that it is contrary to ACP Rules 2008 in particularly note to Rule 18. Therefore, by means of order of clarification, Government cannot amend or modify the rules of ACP Rules 2008. Therefore unless and until Rule 18 read with note to Rule 8 is amended appropriately, the respondents cannot modify the benefits granted to the petitioner while withdraw the ACP granted on 01.01.2006 with

reference to the ACP Rules 2008. Hence the impugned action of the respondents's order dated 09.04.2010, 20.01.2011 and 06.08.2013 vide Annexure P-8, P-9 and P-10 are set aside.

Petition stands allowed.

February 20, 2017
Divyanshi

(P.B.BAJANTHRI)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No