

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

CWP No.6744 of 2012

Date of Decision:24.01.2017

Santosh Mahlan

... Petitioner

Vs.

The State of Haryana and others

... Respondents

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

Present : Mr. Jagbir Malik, 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 17.12.2011 (Annexure P-6).

The petitioner is stated to have been appointed as J.B.T. Teacher on 14.11.1991. The respondent-State introduced Haryana Civil Services (Assured Career Progression) Rules, 1998 on 7.1.1998. The petitioner completed 10 years of service on the post of J.B.T. Teacher on 13.11.2001. Thus, he has been granted 1st ACP benefit on 3.12.2001 w.e.f. 1.12.2001. Thereafter revision 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 October 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 October 2010 to the post of Head Teacher read with he has foregone the promotion, the respondents proceeded to withdraw the 1st ACP granted on 3.12.2001 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

on 17.12.2011 after withdrawing the benefit of 1st ACP. Thus, the present petition has been filed questioning the validity of the re-fixation of pay dated 17.12.2011 (Annexure P-6).

Learned counsel for the petitioner submitted that once ACP is granted to the petitioner on 3.12.2001 w.e.f. 1.12.2001 which is in accordance with ACP scheme, the same cannot be withdrawn merely on the ground that he had been promoted subsequently after completion of 10 years. In the present case, the petitioner was promoted in October 2010 i.e. after more than 9 years of granting 1st 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 rendered in particular post.

Learned counsel for the petitioner relied upon 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.

On the other hand, learned State counsel submitted that there is no infirmity in the impugned action dated 17.12.2011 having regard to the claim of ACP. 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 1st ACP as and when he has completed 10 years of service. In between 1st ACP and 2nd ACP, if an employee denies or forego promotion, in such circumstances 1st ACP granted prior to promotion could be withdrawn. In this regard, he relied upon 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 petitioner had a right to seek 1st ACP as and when he completed 10 years of service on the post of J.B.T. Teacher.

The respondents have granted benefit of 1st ACP on 3.12.2001. The object of granting 1st ACP is that an employee who has not been granted any promotion and who remains 10 years in a particular post, in such circumstances, 1st ACP would be granted. The petitioner has been promoted from the post of J.B.T. Teacher to that of Head Teacher after completion of 9 years from the date of granting 1st ACP. The said promotion has been foregone by the petitioner. On that score, the respondents cannot withdraw the benefit of 1st ACP granted to him. The object of granting ACP is that an employee who completes 10 years of service without promotion.

It is not disputed that the petitioner has not been granted any promotion within 10 years from the date of holding the post of J.B.T. Teacher. Thus, he has been granted the benefit of 1st ACP on 3.12.2001 w.e.f. 1.2.2001. The subsequent event that the petitioner has been promoted to the post of Head Teacher in the month of October 2010 does not empower the respondents to take away the benefit of 1st ACP granted on 3.12.2001.

Learned State counsel has not pointed any specific provision under the ACP scheme that once 1st ACP is granted and subsequently if an employee has been granted promotion and he denies the promotion, in such circumstances, 1st ACP granted can be withdrawn. In the absence of statutory provision for withdrawing the benefit of 1st ACP, impugned order dated 17.12.2011 (Annexure P-6) 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 1st ACP on 16.11.2010 read with impugned order dated 17.12.2011 are without notice to the petitioner. Even on that score, impugned order dated 17.12.2011 is liable to be set aside.

That apart having regard to the case 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.

Accordingly, petition is allowed. Order dated 17.12.2011 (Annexure P-6) is set aside. The respondents are directed to rectify the refixation 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