

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

CWP No. 25891 of 2014 (O&M)
Date of decision : May 09, 2017

Attendra Singh,

..... Petitioner

v.

State of Haryana and others,

..... Respondents

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

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

Ms. Shruti Jain Goyal, AAG Haryana

Ajay Tewari, J (Oral)

By way of this writ petition, the petitioner has challenged the action of the respondents in not considering his case for grant of second ACP.

Brief facts are that the petitioner was appointed as Tanneries Instructor on adhoc basis on 9.4.1984. His services were regularized on 1.11.1986 and was granted first ACP after completion of 10 years' service on 1.11.1996. Thereafter, on 12.11.1999, the petitioner became surplus due to closure of his trade but was adjusted as Assistant in the same department. On 15.7.2005, he was adjusted as Footwear Technology Instructor. In the year 2006, the petitioner claimed that he should be granted second ACP, and the same having been denied, he is before this Court.

It is the case of the petitioner that he has rendered regular

satisfactory service under the Government of Haryana for 20 years and hence was entitled for the second ACP in 2006.

On the other hand, the stand of the respondents is that the expression 'regular satisfactory service' has been defined to include within its ambit only that service which would be counted towards seniority and since the petitioner was adjusted on the post of Assistant in the year 1999 at the tail-end of the seniority, his adjustment would have to be taken to be a fresh appointment and the previous service would have to be taken to be nil.

Counsel for the petitioner has relied upon the decision of the Supreme Court rendered in State of Haryana and another vs Deepak Sood and others, Civil Appeal No.4446 of 2008, decided on 15.7.2008 (Annexure P-6). In that case, some employees of the Municipal Committees/Corporations were declared surplus on account of octroi having been abolished and they were adjusted in different departments. The grant of ACP was denied on similar ground viz that their service in the Haryana State had to be counted with effect from the date of their absorption. The Supreme Court held as follows :-

“ A perusal of these terms and conditions makes it clear that what is being lost by these surplus staff is their seniority. They will have to get zero seniority in the new department but their past service has been counted for fixation of pay as well as pensionary benefits. The scheme of ACP Grade came subsequently. On that basis the respondents made a grievance that they were being denied the benefit of ACP and the services rendered by them in the Municipal Committee has not been counted for the purposes of calculating 10/20 years of service in the Department. It is a misfortune that the respondents have been declared surplus in the Municipal Committee, Panipat but the Government has been benevolent to them and absorbed them in the State Government but denied them the benefit of past service for the purpose of seniority. However, at the same time they have counted their past service for the purpose of pay and pensionary benefits. Once the Government considered them eligible

for fixation of pay and pensionary benefit and counted their past service then there is no reason why ACP grade should be denied to them. Having lost, at one hand their seniority in the new department, it would be unfair to deny them the benefit of ACP grade. When the Government counts their past service for grant of benefit of pay fixation and pension, there is no reason why their past service should not be given the benefit of ACP grade.”

Learned AAG Haryana is not in a position to cite any contrary judgment.

In view of the exposition of law by the Supreme Court, this petition is allowed. The respondents are directed to consider the claim of the petitioner for grant of second ACP from the due date after taking into account his previous service and to release him the benefits within three months from the date of receipt of a certified copy of this order failing which he would be entitled to claim the amount/s with interest @ 8% pa from the date/s the amount/s fell due.

Since the main case has been decided, the pending Misc. Applications, if any, also stand disposed of.

May 09, 2017
'kk'

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned:
Whether Reportable:

Yes/No
Yes/No