

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

CWP No. 3339 of 2015 (O&M)
Date of decision : March 28, 2017

Alisher

..... Petitioner

v.

State of Haryana and others,

..... Respondents

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

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

Mr. Ravi Partap, AAG Haryana

Ajay Tewari, J (Oral)

By way of this writ petition, the petitioner has claimed grant of
3rd ACP.

Brief facts are that the petitioner joined the Municipal Committee and his services were regularized on 4.5.1979. While he was serving with Municipal Committee, Palwal, he was granted 2nd ACP on 6.12.1999. After abolition of octroi by the Government, he was absorbed in the Panchayat department as Gram Sachiv and his pay was protected in the previous pay scale which he was drawing in the Municipal Committee in view of letter dated 11.1.2000 (Annexure P-1) by which services of the employees of the Municipal Committee were to be counted for all purposes except seniority. The claim raised in this writ petition is that he has not been granted the 3rd ACP.

In reply, the stand taken is that the petitioner was suspended for six months each on two occasions in 1990 and 1994 and no record was available with regard to that suspension period either in the office of the Municipal Committee or in the office of the Deputy Commissioner.

Counsel for the petitioner has argued that once 2nd ACP was granted to the petitioner in 1999 after considering the earlier suspension period, it could give rise only to the inference that his record was satisfactory and this issue cannot be revisited by the respondents. The case set up by the petitioner is that his case is covered by the decisions of this Court in Hari Parkash and others vs State of Haryana and others, CWP No.15039 of 2003, decided on 2.8.2005 (Annexure P-7), and of the Supreme Court in State of Haryana and another vs Deepak Sood and others, Civil Appeal No.4446 of 2008, decided on 15.7.2008 (Annexure P-8). Applicability of these decisions is not denied by learned AAG Haryana but he has argued that till such time as full explanation regarding the suspension period of the petitioner is not before the respondents, third ACP cannot be granted to him.

On 20.9.2016, the following order was passed :-

“ Mr. Rathee may produce whatever documents he relies on to deny the 3rd ACP to the petitioner. Non-production of the record on the next date of hearing will draw adverse inference against the State and the case will be decided on the basis of existing material on the judicial file.

Adjourned to 28.9.2016 for final disposal.”

Even till date, no material has come forth from the State. In this view of the matter, the absence of record cannot stall the grant of 3rd ACP to the petitioner, particularly when the 2nd ACP was granted to him after the two periods of suspension. Consequently, this writ petition is

allowed and the respondents are directed to grant 3rd ACP to the petitioner within three months from the date of receipt of a certified copy of this order failing which the petitioner would be entitled to claim the same with interest @ 12% pa from the date/s the amount/s fell due.

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

March 28, 2017
'kk'

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned:
Whether Reportable:

Yes/No
Yes/No