

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-5274-2015

Date of decision : 02.02.2017

Surender Kumar

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. Kartar Singh Malik, Advocate,
for the petitioner.

Mr. Naveen Sheoran, Deputy Advocate General, Haryana,
for the respondents.

KULDIP SINGH J. (ORAL)

Learned counsel for the petitioner does not press his claim regarding grant of 2nd Assured Career Progression (for short, 'ACP') and confines his prayer to the grant of 1st ACP.

Petitioner, who had initially joined as a Fitter in Haryana Tanneries Ltd., Jind, was absorbed as Peon from the post of Fitter in the office of Deputy Commissioner, Rohtak, w.e.f. 23.04.1991, on account of closure of the said institution. On completion of ten years satisfactory service, he was granted 1st ACP scale on 01.04.2001. Later on, vide order dated 22.01.2009 (Annexure P-1/A), he was promoted as a Clerk. However, he represented, vide application dated 29.01.2009 (Annexure P-2), that due to his family circumstances, he is not able to take the promotion. Consequently, he was reverted to the post of Peon, vide order dated 12.02.2009 (Annexure P-3). Thereafter, respondent No.3-Deputy Commissioner, Rohtak, passed order dated 18.06.2009 (Annexure P-4),

whereby the 1st ACP granted to the petitioner was withdrawn w.e.f.

01.05.2001. Another order dated 24.08.2009 (Annexure P-5) was passed, whereby a sum of Rs.4,081/- for the period from 30.01.2009 to 31.07.2009 @ Rs.500/- per month was ordered to be recovered from him. Petitioner challenged the said order by way of filing Service Appeal No.43 of 172-10, which was dismissed by the competent authority, vide order dated 27.11.2010 (Annexure P-8).

Now, counsel for the petitioner confines his prayer only to the point that his 1st ACP was wrongly withdrawn.

The State, in the reply, has relied upon Rule 14 of Haryana Civil Service (Assured Career Progression) Rules, 2008, (for short, 'the Rules'), wherein it is stated that when a Government servant chooses to forego any functional promotion on any ground whatsoever, while drawing his pay in any ACP pay structure with reference to him, he shall cease to be entitled to draw his pay in the ACP pay structure last granted to him and shall draw his pay in the pay band and grade pay he was drawing before the grant of the last ACP grade pay from the date of such foregoing of promotion.

I have heard learned counsel for the parties and have gone through the record of the case carefully.

Assured Career Progression was introduced to ensure that if an employee does not get functional promotion or financial upgradation for a specific period, he is to be given higher pay scale. Admittedly, in the present case, the petitioner did not get any functional promotion or higher pay scale till 01.04.2001. Consequently, 1st ACP was granted to him. There is no error in the same. Now, the trouble arose only in the year 2009, when he was promoted, vide order dated 22.01.2009 (Annexure P-1/A) to the post

of Clerk. If the petitioner had availed that promotion, the ACP would have continued. However, petitioner did not avail the promotion and consequently, he was reverted to the post of Peon. The Deputy Commissioner, accordingly, withdrew, the 1st ACP from 01.05.2001 and ordered the recovery from the date of his promotion till the date of withdrawal of the ACP. The Rules referred to by the respondents shows that ACP is to be withdrawn from the date the promotion is refused. The Rule referred above never means that ACP can be withdrawn from the date it was granted. Therefore, impugned order dated 18.06.2009 (Annexure P-4) to that extent seems contrary to the Rule. Now, the next question will arise whether the ACP once granted can be withdrawn? I find the reply in negative. ACP is granted to an employee on account of the fact that he could not get functional promotion or upgradation for a particular period. Petitioner did not get his functional promotion or upgradation till 2001, i.e., for 10 years of his service. Accordingly, he became entitled to the same. Once he became entitled to grant of ACP for having failed to get the functional promotion or upgradation then on account of subsequent promotion after some years and refusing to get the promotion, the benefit which was granted to him under the Rules, cannot be withdrawn as his right to get ACP had accrued at the time when he had completed the service of 10 years without getting any functional promotion or upgradation. Therefore, the Rule is found to be illegal to the extent it allows the withdrawal of ACP on account of refusal of promotion, and is hereby quashed.

In a similar case titled '**Vijay Singh Vs. State of Haryana and others'** (CWP No.9755 of 2009), this Court has expressed similar view that

the ACP once granted cannot be withdrawn on account of further refusal of

promotion. Consequently, the impugned order dated 18.06.2009 (Annexure P4) and order dated 24.08.2009 (Annexure P5), along with the order dated 27.11.2010 (Annexure P-8) passed by the appellate authority, are also hereby quashed.

Consequently, it is ordered that the 1st ACP granted to the petitioner shall be restored to the petitioner. His pension shall be re-fixed and the revised pension and pensionary benefits shall also be, accordingly, released to him within three months with interest at the rate of 9% per annum.

In view of the above, petition stands allowed.

(KULDIP SINGH)
JUDGE

02.02.2017
adhikari

Whether speaking/reasoned : ***Yes/No***

Whether Reportable : ***Yes/No***