

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

LPA-19-2017(O&M)

Date of decision: 04.05.2017

Kurukshetra University, Kurukshetra

..... Appellant

Versus

Brij Mohan Behl and others

..... Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN**

PRESENT: Mr. AS Virk, Advocate for the appellant.

RAMENDRA JAIN, J.

1. The instant Letters Patent Appeal has been filed by the appellant-University under Clause X of the Letters Patent, against the order dated 26.05.2016 passed by the learned Single Judge, whereby the writ petition bearing CWP-13871-2015 filed by respondent No. 1-Brij Mohan Behl was allowed.

2. Put pithily, respondent No. 1 joined the appellant-University on 12.08.1971 as Technician in the pay scale of ₹220-19-370 which was revised, from time to time, to ₹250-500 w.e.f. 10.12.1975; ₹350-800 w.e.f. 01.04.1978; ₹700-1250 w.e.f. 01.04.1979 and ₹1600-2660 w.e.f. 01.01.1986 (on the recommendations of 4th pay commission). Respondent No. 1 was granted first Higher Standard Scale (1st HSS) of ₹1640-2900 w.e.f. 01.01.1994 and thereafter, Second Higher Standard Pay Scale of

₹2000-3200 w.e.f. 01.04.1995, on completion of 20 years of non-promotional service. Consequently, his basic pay was fixed at ₹3050 on 31.12.1995. As per Haryana Civil Services (Assured Career Progression) Rules, 1998 (for short-'the Rules of 1998'), the first ACP scale is of ₹5500-9000 w.e.f. 01.01.1996 on completion of ten years of service and the second ACP scale is of ₹6500-9900 on completion of 20 years of service for the post of Technical Assistant, Grade-II. However, the said benefit was not granted to respondent No. 1 as he had earlier been granted the financial upgradations of ₹250-500 w.e.f. 10.12.1975 (on completion of 4 years service) and ₹350-800 w.e.f. 01.04.1978 (on completion of 7 years of service). The appellant-University recommended the case of respondent No. 1 to respondent No. 3 for exercising the relaxation of clause as provided under Clause 20 of the Rules of 1998 vide letters dated 20.02.2002, 17.04.2003 and 17.05.2007 (Annexures P-1 to P-3). However, no decision was taken by respondent No. 3 thereon. Consequently, respondent No. 1 filed CWP-14300-2007, wherein the stand of the appellant-University was that he had already been granted two financial upgradations on 10.12.1975 and again on 01.04.1978, therefore, his case was not covered under the provisions of the Rules of 1998. During the pendency of said petition, vide order dated 11.06.2008 respondent No. 3 rejected recommendations of the appellant-University. Respondent No. 1 withdrew said petition with liberty to challenge the aforesaid order. Thereafter, respondent No. 1 preferred CWP-18813-2009, challenging the order dated 11.06.2008, which was disposed of by this Court vide order dated 15.05.2014, with a direction to the respondents to pass a speaking order after considering the proposal of appellant-University and ultimately, the order dated 11.06.2008 was set

aside. Thereafter, respondent No. 3 passed the order dated 15.07.2014 (Annexure P-7) whereby the prayer of respondent No. 1 for grant of 1st and 2nd ACP scale on completion of 10 and 20 years of service was rejected. Being dissatisfied, respondent No. 1 had approached this Court by way of CWP-13871-2015, which was allowed by this Court vide order dated 26.05.2016 by setting aside the order Annexure P-7 and the appellant-University was directed to pass a fresh order extending the 1st and 2nd ACP Scale to respondent No. 1 as per the Rules of 1998 within a period of three months from the date of receipt of certified copy of the order and to make the necessary payment to the petitioner within next two months along with interest at the rate of 9% per annum from the date of his retirement till realization. Hence, by way of present appeal, the appellant-University has assailed the aforesaid order dated 26.05.2016, passed by the learned Single Judge.

3. Learned counsel for the appellant-University contended that the learned Single Judge, while allowing the petition filed by respondent No. 1 has erred in holding that respondent No. 1 did not get any financial upgradations during his service. Upgradation of pay scale of respondent No. 1 from ₹220-19-370 to ₹250-15-400-20-500 w.e.f. 10.12.1975 and then grant of pay scale of ₹350-25-650-EB-30-800 w.e.f. 01.04.1978 on re-designation of post of Technical Assistant, Grade-II, cannot be termed as financial upgradations to deny him the benefit of ACP scales. It was further contended that the learned Single Judge, has failed to consider the fact that as per the provisions of the Rules of 1998, the employee who had got at least one or two financial upgradations from the functional pay scale of his post was not entitled for the grant of 1st and 2nd ACP, respectively.

4. We have given our thoughtful consideration to the above submissions made by learned counsel for the appellant and find no merit in the instant appeal.

5. Undisputedly, respondent No. 1 had joined as Technician in the appellant-University in the year 1971 and retired in the year 2009 without getting any promotion in the hierarchy. The functional pay for the said post as on 31.12.1995 was ₹2000-3200 and pay of respondent No. 1 was fixed at ₹3050/- in the said scale. The scale of respondent No. 1 prior to grant of pay scale was ₹1600-2660 w.e.f. 01.01.1986. On 31.12.1995, his pay scale was of ₹2000-3200, which was given on account of Higher Standard Pay Scales admissible to Technicians appointed in the pay scale of ₹1640-2900. As per Rules of 1998, respondent No. 1 was entitled for grant of 1st and 2nd ACP scales, as he had not got the benefit of promotion or upgradation of scales. The learned Single Judge, in the impugned judgment dated 26.05.2016 has observed as under:-

“The question for consideration in this case is, 'whether modification of the pay scales from Rs.250-500 to Rs.350-800 at par with the employees of Panjab University would amount to upgradation of pay scales in order to deny the benefit of ACP rules to the petitioner'.

At this stage, reference can be made to Rule 12 of ACP Rules, 1998, which reads as under:-

“12. **“Scale of Pay”**:- The pay scale for the purpose of these rules for the Government servant shall be as under:-

(a) the revised scale of pay for such

Government servants working against the posts specified in column 2 of Part I of Schedule I shall be as specified against it in column 3 and 4 of the above said part of the above said schedule as the first and second ACP scales respectively:

- (b) for all other Government servants on whom these rules apply but who are not covered under the sub-rule (a) above, the scale of pay shall be as specified in Part II of Schedule I in column 3 and 4 as the first and second ACP scale respectively corresponding to the existing scale mentioned in column 2 of above said schedule.”

As per above said rule, when a functional pay scale has been revised, then the existing pay scale shall be considered as the corresponding existing scale for the purpose of this rule. As on 31.12.1995, the petitioner was in the functional pay scale of Rs. 1600-2660 and the corresponding 1st and 2nd ACP scales were Rs.5500-9000 and Rs.6500-9900 respectively. This fact is not being disputed in the written statement. The only ground to deny the benefit of 1st and 2nd ACP Scale is that prior to coming in the pay scale of Rs.1600-2660, the pay scale of the petitioner had been modified at par with the employees of Panjab University in the years 1975 and

1978. The modification of the pay scale cannot disentitle the petitioner for grant of 1st and 2nd ACP as per ACP Rules, 1998. After being appointed as Technician in the year 1971 in the pay scale of Rs.220-10-370, pay scales of the petitioner were modified and not upgraded. In 1978, the petitioner was in the pay scale of Rs.350-800 and thereafter, he was placed in the scale of Rs.1600-2660 w.e.f. 01.01.1986. On this pay scale, he was granted the benefit of first and second Higher Standard Scales. Hence, for the purpose of ACP Rules, 1998, the modifications made in the year 1975 and 1978 would not carry any weightage. As on 01.01.1986, his pay was fixed in the pay scale of Rs.1600-2660. Therefore, as per Schedule I, Part II of ACP Rules, 1998, his case should have been considered for grant of 1st and 2nd ACP Scale of Rs.5500-9000 & Rs.6500-9900 respectively w.e.f. 01.01.1996. The recommendation had rightly been made by the respondent-university vide Annexures P-1 to P-3.”

6. The above observation/finding of the learned Single Judge is well reasoned and legally sustainable. Therefore, we do not find any illegality or perversity in the impugned judgment dated 26.05.2016 passed by the learned Single Judge. The instant appeal being completely devoid of any merit stands dismissed.

7. There is a delay of 136 days in filing the appeal. Since the main appeal has been dismissed on merits, no further orders are required to be passed in the application for condonation of delay in filing the appeal and

the same is left open.

8. Registry is directed to bring this order to the notice of the respondents so as to avoid any concealment of this order by the appellant.

(RAMENDRA JAIN)
JUDGE

May 04, 2017
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(AJAY KUMAR MITTAL)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No