

*CM Nos.592 to 594-CWP-2015 &  
RA-CW-15-2015  
in CWP-11322-2012*

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

**CM Nos.592 to 594-CWP-2015 &  
RA-CW-15-2015 in CWP-11322-2012**  
**Date of Decision: February 03, 2017**

**S.K. Arora**

...Non-applicant

Versus

**State of Haryana & others**

...Applicants

**CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH**

Present: Mr. R.K. Singla, A.A.G., Haryana,  
for the applicants-respondents.

Mr. Sanjeev Gupta, Advocate  
for the non-applicant-petitioner.

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**AUGUSTINE GEORGE MASIH, J. (Oral):**

**CM-592-CWP-2015**

Exemption is granted from filing certified copies of order/judgment dated 21.01.2014 and order dated 25.08.2014 and typed copies of the same are taken on record as Annexures A-1 and A-2, subject to all just exceptions.

Application stands disposed of.

**CM-593-CWP-2015**

Prayer in this application is for condonation of delay of 323 days in filing the review application to review the judgment/order dated 21.01.2014 passed by this Court in CWP No.11322 of 2012.

For the reasons mentioned in the application, which are duly

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supported by an affidavit and having considered the submissions made by the counsel for the parties, the present application is allowed. Delay of 323 day in filing the review application stands condoned.

**RA-CW-15-2015**

Prayer in this application is for review of the order/judgment dated 21.01.2014 passed by this Court in CWP No.11322 of 2012 on the ground that the non-applicant-petitioner is not entitled to the benefit of the ACP scales in the light of the fact that he has not passed the departmental examination as mandated under Rule 15 of the Haryana Service of Engineers Class-II, Public Works Department (Irrigation Branch) Rules, 1970 (hereinafter referred to as '1970 Rules').

Counsel for the applicant-respondents submits that the petitioner having not fulfilled the minimum requisite qualification for grant of the higher scales and thereafter, as per the Haryana Civil Services (Assured Career Progression) Rules, 1998 (hereinafter called as '1998 Rules'), which came into effect from 01.01.1996, would not be entitled to the said benefit. He contends that unless the petitioner clears the departmental examination, he would not be entitled to the grant of the ACP scales. Contention has been raised that to determine the eligibility of grant of ACP scales as per the 1998 Rules, Rule 5 (3) puts a rider which has not been fulfilled by the petitioner especially when he is directly recruited candidate as he was appointed on the post of Assistant Engineer on 05.01.1979 and therefore, the order/judgment dated 21.01.2014 passed by

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this Court deserves to be reviewed.

On the other hand, counsel for the non-applicant-petitioner submits that the plea as has been pressed and is sought to be taken in the present review application cannot be accepted in the light of the fact that the benefit of grant of 1<sup>st</sup> ACP grade was given to the petitioner in the light of the direction issued by this Court in CWP No.3384 of 1994, which was decided on 21.01.2010. Further, according to the said judgment, the *ad hoc* service rendered by the petitioner had to be taken into consideration for the grant of ACP benefit, which benefit to that extent has been accepted. The denial of the second ACP grade on the ground that he does not fulfill the statutory requirement cannot be taken at this belated stage especially when in the earlier writ petition, no such stand was taken in the written statement by the respondent. Even the appeal preferred before the Division Bench stood dismissed as also the Special Leave Petition. All the pleas which the respondents could have taken should have been taken at the initial stage and now they cannot be allowed to change their stand and put forth such a plea, which would not be permissible in law especially when the judgment passed by this Court in CWP No.3384 of 1994 has attained finality upto the Supreme Court.

I have considered the submissions made by the counsel for the parties and am of the considered view that the plea as has been taken by the counsel for the non-applicant-petitioner deserves acceptance in the light of the fact that it is an admitted position that such a plea as has been taken by

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the applicant-respondents in the present review application was not earlier taken by them in CWP No.3384 of 1994 where the ACP grade was granted to the petitioner by counting his *ad hoc* service. The said judgment, admittedly, has attained finality after the dismissal of the Letters Patent Appeal No.825 of 2010 on 06.01.2011 and the Special Leave to Appeal (Civil) No.28133 of 2011 on 02.01.2012. The applicants-respondents, therefore, cannot be allowed at this stage to rake-up an issue which has already attained finality between the parties.

The present review application, thus, cannot be accepted and the same, therefore, stands dismissed.

**CM-594-CWP-2015**

In the light of the dismissal of the review application, no order is required to be passed in the present application for stay as the same has been rendered infructuous.

Disposed of as such.

**February 03, 2017**  
*Harish*

**( AUGUSTINE GEORGE MASIH )  
JUDGE**

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

**Whether Reportable:                                      Yes/No**