

12 (14.08.2017)

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 8999/2016**

Date of decision: 16th August, 2017

RAM KUMAR & ORS Petitioners
Through Mr.Pawan Reley and Mr.Vinod
Sharma, Adv.

versus

UNION OF INDIA & ORS Respondents
Through Ms.Jyoti Dutt Sharma, Adv.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE NAVIN CHAWLA

SANJIV KHANNA, J. (Oral)

The matter has been taken up today as 14th August, 2017 was declared a holiday on account of 'Janamastmi'.

CM No.28310/2017

Learned counsel for the applicants/petitioners seeks permission to withdraw the present application.

Application is dismissed as withdrawn.

WP(C) 8999/2016

Learned counsels for the parties state that petitioner No.23, Kaule Ram had filed an independent writ petition before Himachal Pradesh High Court which was disposed of vide order dated 17.11.2016. Thereafter, the representation made by Kaule Ram was considered and as he was matriculate, relief has been granted to him. Kaule Ram is directed to be deleted from the array of parties.

2. The petitioners, 26 in number after deletion of Kaule Ram, being non-matriculates have been denied benefit of financial upgradation under the Assured Career Progression Scheme (in short ACP Scheme) notified by the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) vide office memorandum dated 09.08.1999.

3. Learned counsel for the petitioners submits that most of the petitioners have remained at the same post after induction/joining and therefore are entitled to 1st and 2nd financial upgradation. Reliance is placed on the decision dated 13.04.2011 in ***M.N.Raghunatha Kurup & Ors. v. Union of India & Ors.***, Civil Appeal No. 3562/2007 to assert that the ACP Scheme, as interpreted by the Supreme Court, did not require the

possession of educational qualification for promotional post. Reliance is placed on the decision of Ernakulam Bench of Central Administrative Tribunal in O.A. No.20/2013 in ***P.K. Mochithan v. Union of India***, decided on 11.09.2015.

4. Learned counsel for the respondents, on the other hand, has drawn our attention to the paragraph 6 of the ACP Scheme and clarification No.53 vide office memorandum dated 18.07.2001 issued by Department of Personnel and Training. Reliance is placed on two judgments of Division Bench of this Court in WP(C) Nos.4578-79/2006 in ***Rameshwar Singh & Ors. v. Union of India & Ors.***, decided on 25.11.2009 and WP(C) No.1302/2002 in ***Shri Kumar Bajaj & Ors. v. UOI & Ors.***, decided on 19.08.2013.

5. Paragraph 6 of the ACP Scheme read as under:

“6. Fulfillment of normal promotion norms (bench mark, departmental examination, seniority-cum-fitness in the case of Group ‘D’ employees, etc. for grant of financial upgradations, performance of such duties as are entrusted to the employees together with retention of old designations, financial upgradation as personal to the incumbent for the stated purposes and restriction of the ACP Scheme for financial and certain other benefits (House Building Advance, allotment of Government accommodation, advance, etc.) only without conferring any privileges related to higher status (e.g. invitation to ceremonial functions,

deputation to higher post, etc) shall be ensured for grant of benefits under the ACP Scheme.”

Clarification No.53 given vide office memorandum dated 18.07.2001 read as under:

53	If for promotion on regular basis, an employee has to possess a higher/additional qualification, will it be necessary to insist on possession of these qualifications even while considering grant of financial upgradation under the ACPS	In terms of condition No.6 of, Annexure-I to DoP&T O.M. dated 9.8.1999, only those employees who fulfill all promotional norms are eligible to be considered for benefit under ACPS. Therefore, various stipulations and conditions specified in the recruitment rules for promotion to the next higher grade, including the higher/additional educational qualification, if prescribed, would need to be met even for consideration under ACPS.
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6. Paragraph 6 of the ACP Scheme stipulates that for grant of financial upgradation under the scheme, the employee must fulfill normal promotional norms for performance of duties in the promotional post. The bracketed portion stipulates that the employees would have to meet the bench mark, department examination, seniority-cum-fitness, etc. for grant of financial upgradation in the case of Group D employees. The

word 'etc.' indicates that the bracketed portion is not complete for the promotion norms which are to be fulfilled. If there is any other stipulation and mandate, that should be complied with. Clarification No.53 vide office memorandum dated 18.07.2001 states that the condition No.6 must be fulfilled by the employees who are to be given benefit of the financial upgradation. Therefore, various stipulations and conditions specified under the recruitment rules for promotion to the next higher grade, including higher or additional education, as stipulated, must be fulfilled before financial upgradation is granted.

7. As per the recruitment rules, non-matriculates are not eligible for promotion to the post of Head Constable (GD) and Sub-Inspector (GD). This being the position, we do not think the petitioners were eligible and entitled to grant of financial upgradation under the ACP Scheme. The view taken is a consonance view with the ratio of two division bench decisions of this court in *Rameshwar Singh(supra)* and *Shri Kumar Bajaj(supra)*. In *Rameshwar Singh(supra)* it was held that the ACP Scheme grants relief to those employees who were eligible for promotion, but were not granted promotion on account of stagnation and other similar reasons. Financial upgradation is not granted to the employees who were

not promoted on account of not having the requisite qualification. Any grant of financial upgradation in such cases would be contrary to the scheme and would contradict its basic object and purpose. Similarly, in *Sri Kumar Bajaj (supra)*, the Division Bench upheld the order of the Tribunal observing that the educational qualification of degree from a recognized university being pre-requisite for promotion, grant of financial upgradation was rightly denied to an ineligible employee.

8. The decision of Ernakulam Bench in the case of *P.K. Mochithan(supra)* does not impress and would not persuade us to refer the issue to a larger bench. In the said decision Ernakulam Bench had drawn distinction between higher/additional qualification specified for the promotional post for next grade and minimum qualification. It was held that the said requirement in clarification No.53 does not speak of any minimum qualification regarding the existing post. We do not accept this plea because it is contrary to the entire object and purpose of the scheme. Paragraph 6 is clear and categorical. Clarification No. 53 puts it beyond any pale of doubt.

9. Employee seeking benefit of financial upgradation should be eligible for promotion and therefore must meet the educational

qualification stipulated for promotion. The mandate of higher or additional education, etc. which is required, must be satisfied. This is the ratio and mandate of decisions in *Rameshwar Singh(supra)* and *Shri Kumar Bajaj (supra)*.

10. We have also examined the decision of Supreme Court in *M.N.Raghunatha Kurup (supra)*. The said decision is a short one and refers to an order dated 29.01.2003 passed by the Ernakulam Bench of the High Court of Kerala. It is not clear from the aforesaid order whether or not there was a specific stipulation in the recruitment rule regarding educational qualification for promotion to the higher grade. However, in the present case, there was specific stipulation regarding educational requirement for promotion to the next higher grade. It is pointed out by learned counsel for the respondents that for 'Group D' employees stipulation regarding educational qualification for further promotion was absent. The contention of the respondents is that the bracketed portion is relevant for 'Group D' employees, and as the petitioners were 'Group C' employees they would not be entitled to any relaxation. The petitioners being 'Group C' employees, had to fulfill all promotional norms before

benefit of financial upgradation under the ACP Scheme could be extended to them.

11. Recruitment rules stipulate that non-matriculate candidates could appear in Third Class, Second Class, or First Class Educational Department Examination, for promotion as Head Constable (GD), Sub-Inspector (GD), and Inspector (GD), respectively. The petitioners have not cleared Third, Second, or First Class Educational Department Examination. Thus the petitioners are not entitled to promotion as Head Constable (GD) or Sub-Inspector (GD) as the case may be. It is not pleaded and asserted that the examinations were not held from time to time, or for any other reasons the petitioners were denied opportunity and chance to appear and clear the tests.

12. In view of the aforesaid discussion, we are not inclined to accept the prayer made. The writ petition is dismissed with no order as to cost.

SANJIV KHANNA, J

NAVIN CHAWLA, J

AUGUST 16, 2017/vp