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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-10615-2015

Date of Decision : November 20, 2018

Tilak Raj

.... Petitioner.

Versus

State of Punjab and others.

.... Respondents.

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present Mr. Harbans Lal Sharma, Advocate
for the petitioner.

Mr. Balbir Singh Sewak, Addl. A.G., Punjab
for the respondents.

SHEKHER DHAWAN, J.

Present writ petition under Articles 226/227 of the Constitution of India is for issuance of a writ in the nature of Mandamus directing the respondents to grant proficiency step-ups to the petitioner on completion of 4 years of service as Senior Assistant (07.09.2006 to 06.09.2010) with all consequential benefits with interest @ 18% per annum from the due date.

2. As per the petitioner, he joined as Peon on 21.09.1978 in the office of Registrar Cooperative Societies Punjab, Chandigarh. He was promoted as Clerk and his services were regularized as Clerk from 31.12.1982. Thereafter, he was further promoted as Senior Assistant on

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07.09.2006 and posted in Head Office in Marketing Branch in office of Registrar Coop. Societies, Punjab, respondent No.2, Chandigarh in the pay scale of 10300-34800+4200 Grade Pay w.e.f. 7.9.2006 and he continued to work as Senior Assistant upto 04.04.2013 when he was promoted as Superintendent Grade-II in the pay scale of 14950+3800 Grade Pay. As per the petitioner, he had worked as Senior Assistant from 07.09.2006 to 04.04.2013 and had completed more than 6 years of service in one cadre without promotion and as such, he was entitled to proficiency step up as Senior Assistant on completion of 4 four year service in same cadre without promotion on 06.09.2010. The Punjab Government issued Instructions dated 03.11.2006 (Annexure P/1) and his service record was good during this period as per Punjab Government Instruction and he fulfilled the condition of good service record as per instructions.

3. As per the petitioner, Government of Punjab had issued instructions dated 21.07.1997 (Annexure P/2) and as per said instructions, for grant of proficiency step-ups, ACR of the last five years are to be considered and out of five 50% report should be good and the petitioner fulfilled this condition on 7.9.2010 and he was entitled to proficiency step-up after completion of four years of service on 06.09.2010, but the same was not granted to him. The State of Punjab also issued instructions dated 15.12.2006 (Annexure P/3) which provide that for grant of proficiency of group C and D Employees, the condition of good service record for grant of proficiency step-ups, will not apply from that date and the post of Senior Assistant at that time fell in the Group C Category.

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4. In the reply having been filed by the respondent-State, pleas were taken that the petitioner was not promoted as Senior Assistant in the pay scale of Rs.10300-34800 plus Rs.4200 Grade Pay, rather he was promoted as Senior Assistant in the pay scale of Rs.10300-34800 plus Rs.3800 Grade Pay. The respondents also denied that the petitioner was promoted as Superintendent Grade-II in the pay scale of Rs.14950-3800 grade pay, rather he was promoted in the pay scale of Rs.10300-34800 plus Rs.4800 Grade Pay. As per the Assured Career Progression (ACP) Scheme dated 3.11.2006 (Annexure P/1), the existing employee was to exercise option either to continue in the ACP scheme after a service of 8, 16, 24 and 32 years or to opt for 4, 9 and 14 years of service and the said scheme was optional. An employee, who wanted to opt this scheme was required to exercise the option alongwith an undertaking in the prescribed proforma through a sworn affidavit and he wanted to accept the scheme w.e.f. 1-11-2006 and that he was not to claim any arrears. The said option was never given by the petitioner to the competent authority and in this way, he was not entitled to claim benefit under the said ACP scheme (Annexure P/1). The respondents denied that the petitioner had given option in the office of Registrar to get the benefit of proficiency step up after 4, 9 and 14 years of service as per Government instructions and prayed that the present writ petition be dismissed.

5. Having considered the submissions made by learned counsel for the parties and appraisal of the record, this Court is of the considered view that most of the facts are not disputed regarding appointment of the

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petitioner and further his promotion as Senior Assistant and Superintendent Grade II. Petitioner was promoted as Senior Assistant on 7.9.2006 and as such, he had already completed four years of service as Senior Assistant on 6.9.2010, but he was not promoted during this period. As such, he was entitled to be granted the benefit of ACP after 4 years' of service as per policy (Annexure P/1) issued by the State Government as the service record of the petitioner was good and he had fulfilled all the conditions of the scheme. More so, the case of the petitioner for grant of benefit of ACP after 4 years of service was sent to the office of Registrar with the recommendations that he fulfilled all the terms and conditions of the Scheme for grant of proficiency step up after completion of 4 years service. As per the petitioner, he had already sent his option to the Head office when he joined as Senior Assistant in the office of respondent-department at Chandigarh and the same is in the custody of the respondent department and the respondents are making excuses just to deny the benefit of ACP scheme on completion of 4 years of service. If the case of the petitioner was not complete at that stage, the same should have been pointed out at that stage. This Court is of the view that due to technical flaw, the petitioner should not be denied the benefit of revision of pay in accordance with the ACP rules on completion of 4 years of service as the petitioner had no promotional avenue during that period and denial of such benefit would be totally unjustified.

5 Similar controversy was before Hon`ble Division Bench of this Court in **O.P.Garg Vs. State of Punjab and others** 2014(2) RSJ 655,

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where though, the petitioner (therein) had simply taken the plea that he was not aware of exercising the option and had exercised the option beyond the stipulated period, yet his claim was accepted by this Court, whereas in the present case, it is the specific case of the petitioner that he had given option in the office of Registrar to get benefits of proficiency step up after 4, 9, 14 years of service as per Govt. Instruction and the same is in the custody of Registrar Cooperative Societies Punjab in the Administration Branch in Head Office.

6. Resultantly, the present writ petition is allowed and the respondents are directed to grant proficiency step-up to the petitioner on completion of 4 years of service as Senior Assistant (07.09.2006 to 06.09.2010) with all consequential benefits

(SHEKHER DHAWAN)
JUDGE

November 20, 2018.
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Whether speaking/reasoned? :	Yes
Whether reportable? :	Yes

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