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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition No. 23932 of 2012 (O&M)
Date of Decision: 31.07.2018

Dr. Rajesh Gupta

.... Petitioner

Versus

State of Punjab and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE JASWANT SINGH

Present: Mr. Rajeev Anand, Advocate
for the petitioner.

Mrs. Sudeepti Sharma, Additional Advocate General, Punjab
for the respondents/State.

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JASWANT SINGH, J.

1. Petitioner (Dr. Rajesh Gupta) is serving as Veterinary Officer in the Department of Animal Husbandry, Fisheries and Dairy Development, Government of Punjab. He has filed the instant petition seeking the quashing of Para 7 of the Guidelines issued vide Executive Instructions dated 17.04.2000 **(Annexure P-1)** of the Department of Personnel, Government of Punjab, wherein the condition regarding the deferment of the financial upgradation in the Assured Career Progression (in short "ACP") has been made, i.e., from the date due of completion of 04, 09 and 14 years of regular service **carried forward to First (1st) January of the succeeding year** for a set of cadres of employees including the cadre of the Veterinary Officer from the date of its effectuation upto 30.11.2011, unlike and contrary to the general instructions for the other employees under and in relation to the Government of Punjab, without any justification or rationale and being an unreasonable classification without any nexus with the objective to be achieved. The petitioner has also prayed for the directions to the respondents to grant the financial upgradation under the "ACP" Scheme on completion of 14 years of Regular Service on 28.01.2009, in consonance with the latest Instructions dated 20.12.2011 **(Annexure P-10)** alongwith arrears and other consequential benefits alongwith interest from the date it became due, and to quash the order dated 31.01.2012 **(Annexure P-11)** to the extent that it gives the benefits of financial upgradation to the petitioner from 01.01.2010 and not from actual completion of 14 years of regular service on 28.01.2009.

A detailed reply by way of counter affidavit dated 31.12.2013 of Sh. Satya Prakash Gupta, Under Secretary Personnel on behalf of respondent Nos. 1 & 2 has been filed, as also additional affidavits dated 02.12.2015 and 22.08.2016, and thereby broadly denying the case of the petitioner. The impleaded respondent No. 3 has filed reply through the Director, Department of Animal Husbandry on same lines as per reply by respondent Nos. 1 & 2.

2. The uncontroverted facts of the case are that the petitioner was appointed in Department of Animal Husbandry, Government of Punjab as Veterinary Officer on 28.01.1995 in the pay scale of Rs. 2200-4000 which is being revised from time to time. The Government of Punjab, pursuant to the acceptance of the recommendation of the 4th Pay Commission notified the pay scales of different categories of its employees by way of Notification dated 19.05.1998 made effective w.e.f. 01.01.1996

During the course of hearing, counsel for the petitioner has referred to Punjab Civil Services (Revised Pay) (First Amendment) Rules 1998 notified on 19.05.1998 vide Notification No. 7/1/97-FPI/7370 issued by the Government of Punjab exercising the powers conferred by the Proviso to Article 309 read with Clause (3) of Article 187 of the Constitution of India, notified the **Punjab Civil Services (Revised Pay)** (First Amendment) **Rules, 1998**, **providing** for "The Second Schedule" to the Rules, wherein the existing and revised Pay Scales of various common categories of employees was notified effective w.e.f. 01.01.1996 including the post of '**Veterinary Officer'** held by the petitioner. In Schedule – II the pay scales for the Department of Animal Husbandry for the post of 'Veterinary Officer', the following was provided :

THE SECOND SCHEDULE

x x x

Sr. No. ***(1)***	***Name of the Category/Post*** ***(2)***	***Existing Pay Scale (in Rs.)*** ***(3)***	***Revised Pay Scale (in Rs.)*** ***(4)***	***Remarks*** ***(5)***
X	Xx	Xx	Xx	Xx
ANIMAL HUSBANDRY				
1	Xx	Xx	Xx	Xx
2	Veterinary Officer	2200-4000 (Entry Scale) 3000-4500 (After 8 Years) 3700-5300 (After 18 Years)	Pay Scale of 7880-13500/- (**Entry Scale with a start of Rs. 8000**), Rs. 10025-15100/- (**after 4 years of the Regular Service in the Entry Scale**), Rs. 12100-15500/- (**after 9 years of Regular Service in the Entry Scale**), Rs. 14300-18150/- (**after 14 years of Regular Service in the Entry Scale**).	

3. Thereafter, the **Guidelines** dated **17.04.2000 (P-1)** were issued by the Secretary Personnel, Department of Personnel, Government of Punjab, as the Executive Instructions for the implementation of the benefits under the "ACP" Scheme for categories where there is a direct recruitment in the existing Pay Scale of Rs.2200-4000 as on 31-12-1995. In **Para 7** of the said Guidelines dated 17.04.2000, it was laid that "***all placement in higher scales shall be given effect from the 1st day of the January of the year next to the year in which an employee completes the span of service required for placement in the higher scale.***"

The petitioner who joined his regular service on 28.01.1995 and completed his regular service of 4 years on 28.01.1999 by Order dated 15.01.2001 **(P-2)** was granted financial upgradation in the higher scale of Rs.10025-15100 on 01.01.2000 on completion of 4 years of regular service. Thereafter by the order dated 09.10.2007 **(P-3)** was passed wherein the petitioner having completed regular service of 9 years on 27.01.2004 was granted higher scale of Rs.12000-15500 on completion of 9 years of service but similarly the benefits were granted only w.e.f. 01.01.2005, by virtue of Para -7 of the instructions dated 17.04.2000 of the Department of Personnel, Government of Punjab.

4. In the meantime on 03.11.2006, the Government of Punjab announced another **Assured Career Progression Scheme, 2006,** for all the other employees also under the Government of Punjab, in which financial upgradation benefits were granted on completion of requisite period of 04, 09 and 14 years of their regular service and **effectuated from the same date itself on which the tenure of requisite service is completed** by the employees without any deferment. Thus, it is asserted that the insertion of conditions in Para-7 of the Guidelines dated 17.04.2000 **(P-1)** of Department of Personnel, Government of Punjab is totally unjust and unfair.

5. Upon implementation of the 5th Pay Commission Government of Punjab, the Government had notified the **Punjab Civil Services (Revised Pay) Rules, 2009** but the "ACP" Scheme was retained along with the guidelines dated 17.04.2000 **(P-1)** of the Department of Personnel, Government of Punjab.

6. The petitioner was entitled to the "ACP" placement in higher pay scale upon completion of 14 years of regular service on 28.01.2009 to be effectuated from 01.01.2010, but the petitioner was not extended these benefits as the benefits were held in abeyance for all employees w.e.f. 27.05.2009 till further instructions.

7. On his part, the petitioner gave a representation dated 01.12.2010 **(P-4)** under Note 1 and 2 of Rule 1.8 of the Punjab Civil Service Rules Volume-1 Part-1, to the respondents through his Administrative Department, seeking relaxation on basis of undue hardship for the grant of "ACP" from 01.01.2009 onwards and grant increments from the month when the petitioner completes 4, 9, 14 years of service, highlighting the financial loss suffered by the petitioner by deferring & granting the Financial Upgradation /Placement in higher scale after deferring it by 1 year at each instance of 4 and 9 years while he got these benefits on completing 5 and 10 years of service against the spirit of the Notification dated 19.05.1998. The case of the petitioner was processed by the Finance Department of Government of Punjab vide file notings dated 20.05.2011 **(P-5)**, and the undue hardship faced and suffered by the petitioner was conceded and it accorded recommendations in favour of the petitioner.

8. In supersession of both the Guidelines dated 17.04.2000 **(P-1)**, and the Assured Career Progression Scheme, 2006 (3.11.2006), the Government of Punjab, Department of Personnel has notified the **Punjab Civil Services (Assured Career Progression) Rules, 2011,** by the Notification dated **22.07.2011**, wherein, entitlement of three progression **on completion of regular service** of **4** years, **9** years and **14** years counted from Direct Entry Grade was announced as provided in Rule 5 of the said Rules, 2011. Thus, the grant of benefits was related to the date on which the required tenure was completed. The relevant rules under the Punjab Civil Services (Assured Career Progression) Rules, 2011 are reproduced as under:

> "***5. CONDITIONS OF ELIGIBILITY FOR GRANT OF PROGRESSION. –***
> ***(1) Subject to the provisions of this rules, a Government employee shall be entitled to three progressions on completion of regular service of four years, nine years and fourteen years respectively, counted from the directed entry grade.***
>
> ***X x x x "***

9. The Department of Personnel (Personnel Policies Branch) Government of Punjab issued letter dated 17.11.2011 **(P-7)** that the Government has **decided to re-implement** Assured Career Progression Scheme, 2006, instead of Punjab Civil Services (Assured Career Progression) Rules, 2011 from the date 01.12.2011.

10. Thereafter, the Department of Personnel, Government of Punjab gave a letter dated 20.12.2011 **(P-10)** wherein the older version of ACP Scheme dated 17.04.2000 applicable to the petitioner cadre was restored w.e.f. 01.12.2011. However, the Government remedied the anomaly wherein **Para 7 of the instructions dated 17.04.2000 was deleted to the**

effect that the benefits given under the Dynamic "ACP" Scheme was now ordered to be given on date of completion of 04, 09, 14 years of regular service, but the said remedy has been effectuated prospectively w.e.f. 01.12.2011 only.

The petitioner in his effort to know the basis of Para 7 of the instructions dated 17.04.2000 of Department of Personnel, Government of Punjab received a reply dated 18.07.2012 **(P-12)** from Department of Personnel, Government of Punjab to the effect that the file on the notings culminating into instructions dated 17.04.2000 Department of Personnel, Government of Punjab has been destroyed.

11. It is argued by the counsel for petitioner that the Government of Punjab vide Para 7 in the guidelines dated 17.04.2000 has laid that "*all placement in higher scales shall be given effect from the 1st day of the January of the year next to the year in which an employee completes the span of service required for placement in the higher scale*" whereas Punjab Civil Services (Revised Pay) (First Amendment) Rules 1998, notified on 19.05.1998 provided that the 'Veterinary Officer' (Rank held by the petitioner) in the Department of Animal Husbandry has been given the Pay Scale of 7880-13500/- (Entry Scale with a start of Rs. 8000/-), Rs. 10025-15100/- (after 4 years of the Regular Service in the Entry Scale), Rs. 12100-15500/- (after 9 years of Regular Service in the Entry Scale), Rs. 14300-18150/- (after 14 years of Regular Service in the Entry Scale). In the implementation of Guidelines issued without any justification or logic in Para 7 of the Guidelines dated 17.04.2000 that the accrual of the financial benefits have been deferred to the first of January of the next succeeding year thus deferring the benefit of higher pay scale completing 04 to 05 years of service, 09 years to 10 years of service and 14 years of service to 15 years of service against the spirit of the accepted recommendations of the 4th Pay Commission by the Government of Punjab.

12. Learned counsel for the petitioner has further argued by virtue of the Executive Instructions contained in Para 7 of the Guidelines dated 17.04.2000 **(P-1)** of Department of Personnel, Government of Punjab, the set of employees who are completing 04, 09 and 14 years in block of one year from 1st January to 31st December get the benefits commonly on 01st January of the succeeding year, contrary to statutory Rules providing for the benefits to be given on the completion of 04, 09 and 14 years of service. The said action is also creating an unreasonable classification and disparity by causing a great recurring loss to employees completing service of 04, 09, 14 years regular service in the months of January and thereafter, while being relatively advantageous to employees completing service on 31st or any other day of December vis-à-vis each other, as latter will suffer minimum and get the financial upgradation after minimum time of completion of their require tenure. The petitioner who has completed service of 04, 09 and 14 years of service on 27 January of year 1999, 2004 and 2009, respectively, waited for about one year every time till 1st January 2000, 2005, 2010 respectively for the grant of the benefits of 4, 9 and 14 years as the benefits upon such financial upgradation and consequential pay fixation is to flow in each months pay and allowances upon completion of said periodical service. It is submitted that there is no reasonable nexus for this classification or any nexus with the objective so required to be achieved and the action as such of the respondents is in teeth of Article 14 of the Constitution of India.

It is argued that in view of the various instructions and guidelines for the implementation of the "ACP" by grant of financial benefits, there are three set of employees viz. the set of employees who are covered by 17.04.2000 guidelines, the employees who are under the 2006 scheme and the officers of the All India Cadre working in relation to State of Punjab under the Government of Punjab. Out of three set of employees, the set of employees guided by instructions dated 17.04.2000 are the only one getting the financial upgradations on completion of 4, 9 and 14 years of service but effectuated from the first of January of the succeeding year by virtue of Para 7 of the instructions dated 17.04.2000 (as it existed upto 20.12.2011), while the other two set of employees are getting their periodical financial upgradations / benefits under their respective "ACP" Schemes from the date of completion of their regular service of that period.

Not only between the various cadres/ departments, the disparity is created within the same cadre viz. the cadre of Veterinary Officers wherein two set of employees (Veterinary Officers) in the same cadre have been made in view of the other instructions dated 20.12.2011 of Department of Personnel, Government of Punjab, wherein those completing 4, 9 and 14 years of service after 01.12.2011 are getting the financial upgradations on actual completion of 4, 9 and 14 years of service while those completing 4, 9 and 14 years of service before 01.12.2011 are being effectuated the said benefits on the deferred date i.e. 1st of January of the succeeding year creating an anomaly in the same set of employees.

Learned counsel for the petitioner has submitted that the State Government is fully conscious of the anomaly being created by virtue of Para 7 of the instructions dated 17.04.2000 **(P-1)** and its implications, and on the representation of the petitioner for relaxation in the given circumstances, the Department of Finance, Government of Punjab in its notings conceded the recurring and cumulative financial loss being suffered by the petitioner in the span of 36 years of his service every month which will have cumulative effect also in all pay revisions and ultimately in fixation of retirement and pensionary benefits, but for no rhyme and reasons the said relaxation was not granted to the petitioner. Furthermore, the Department of Personnel, Government of Punjab itself by its letter dated 20.12.2011 has deleted the provision of Para 7 of its own instructions dated 17.04.2000 with effect from 01.12.2011. So, now the "ACP" to the set of employees including the cadre of the petitioner, the financial upgradation on completion of 4, 9 and 14 years of service has to be granted from the date it is due. The action of the respondent authorities for providing the remedy to the employees from a particular date to resolve the anomaly cannot be sustained as it is the settled provision of law that the anomalies is to be set aside from the date it has crept in and it also creates unreasonable classification of two set of employees of nine (09) department of Government of Punjab – one for those who would complete their required tenure before 01.12.2011 and other who would complete their tenure after 01.12.2011.

13. Learned State Counsel has taken the stand that the petitioner is covered by the Instructions dated 17.04.2000 **(P-1)** which is uniformly applicable to all employees covered by said instructions and as per Para 7 of the instructions dated 17.04.2000 **(P-1)**, all placements in the higher scale shall be given effect from First day of January of the year next to the year in which the employee completes the span of service required for placement in higher scale. However, the counsel for the respondents-State conceded that in view of the hardship being faced by the employees, the Government of Punjab Department of Personnel has issued instructions dated 20.12.2011 in which w.e.f. 01.12.2011, the benefits under Dynamic "ACP" earlier payable on 1st of January after completion of 4, 9, 14 years of service will now be paid on completion of service of 4, 9, 14 years of service. The aforestated stand of the respondents-State is further reiterated through the additional affidavit dated 22.08.2016 filed by Geetika Singh, Deputy Secretary, Department of Personnel, Government of Punjab.

The respondents have relied on the affidavit dated 02.12.2015 filed by Sh Satya Prakash Gupta Deputy Secretary, Department of Personnel on behalf of respondent No. 1 justifying the circumstances under which the Executive Instructions dated 17.04.2000 with condition for deferment of the financial upgradation in the ACP Scheme were issued and explained that grant of ACP benefit is based on service record of employee requiring overall service record to be 'good' and last two ACRs to be "Good". It is stated that since the last date for the recording of ACR by the Accepting Authority is 30th September and after last ACR to be considered for deciding the benefit available, so time is required for examining the eligibility angle, therefore, the benefits of ACP Scheme are given its effect from 1st January of the ensuing year.

14. Based on the peculiar facts and the rival contentions, the question that arises for determination are:

> ***(i) Whether a Rule made under Article 309 of the Constitution of India can be set at naught by an executive fiat?***

(ii) Whether Para 7 of the Instructions dated 17.04.2000 (P-1) contrary to the provisions of Punjab Civil Services (Revised Pay) (First Amendment) Rules 1998 regarding deferred placement in higher scale on completion of 4. 9, 14 years of service for applicable employees is sustainable and valid in the eyes of law.

15. Based on the settled principles of law, the answer to aforestated both points for determination is in a negative.

It is a settled proposition of law that an Authority cannot issue orders / Office Memorandum / Executive Instructions in-contravention of the statutory Rules. However, instructions can be issued only to supplement the statutory rules but not to supplant it. Such instructions should be subservient to the statutory provisions. The above view has been consistently taken by the Hon'ble Supreme Court in case **B.N. Nagrajan versus State of Mysore, AIR 1966 SC 1942**; **Sant Ram Sharma versus State of Rajasthan and Ors.**, **AIR 1967 SC 1910**; **Union of India & Ors. versus Majji Jangammayya & Ors., AIR 1977 SC 757**; **B.N. Nagarajan and Ors. versus State of Karnataka and Ors., AIR 1979 SC 1676**; **P. D. Aggarwal & Ors. versus State of U.P. & Ors., AIR 1987 SC 1676**; **M/s. Beopar Sahayak (P) Ltd. and Ors. versus Vishwa Nath and Ors., AIR 1987 SC 2111**; **State of Maharashtra versus Jagannath Achyut Karandikar, AIR 1989 SC 1133**; **Paluru Ramkrishnaiah & Ors. versus Union of India & Anr., AIR 1990 SC 166**; **Comptroller and Auditor General of India and Ors. versus Mohan LalMalhotra and Ors., AIR.1991 SC 2288**; **State of Madhya Pradesh versus G.S. Dall and Flour Mills, AIR 1991 SC 772**; **C. Rangaswamaiah & Ors. versus Karnataka Lokayukta & Ors.**, **AIR 1998 SC 2496**; **JAC of Airlines**

Pilots Association of India & Ors. versus The Director General of Civil Aviation & Ors., AIR 2011 SC 2220.

The Constitution Bench of Hon'ble Supreme Court, in **Naga People's Movement of Human Rights** versus **Union of India, AIR 1998 SC 431**, held that the executive instructions have binding force provided the same have been issued to fill up the gap between the statutory provisions and are not inconsistent with the said provisions. Executive instructions cannot amend or supersede the statutory rules or add something therein, nor the orders be issued in contravention of the statutory rules

In **Union of India** versus **Sri Somasundaram Vishwanath, AIR 1988 SC 2255**, the Hon'ble Supreme Court observed that if there is a conflict between the executive instruction and the Rules framed under the proviso to Article 309 of the Constitution, the Rules will prevail.

Further in **Union of India** versus **Rakesh Kumar, AIR 2001 SC 1877**; **Swapan Kumar Pal and Ors.** versus **Samitabhar Chakraborty and Ors., AIR 2001 SC 2353**; **Khet Singh** versus **Union of India, (2002) 4 SCC 380**; **Laxminarayan R. Bhattad and Ors.** versus **State of Maharashtra and Anr., (2003) 5 SCC 413**; and **Delhi Development Authority** versus **Joginder S. Monga, (2004) 2 SCC 297**, it has been held that statutory rules create enforceable rights which cannot be taken away by issuing executive instructions.

16. It is required to be considered that the benefit of the placement in the higher pay scales on completion of 04, 09, 14 years of service flows from the recommendations of the Pay Commission appointed by the respondent-State for its employees. The Pay Commission is an expert body which is appointed by the Government as an administrative body for evaluating the relevant parameters viz. qualifications, mode of recruitment, degree of responsibility, job content etc. while recommending a particular pay scale / higher pay scale for a certain category of employees. However, such recommendations would not be binding upon the State Government. It would be open for the State Government to deviate from the recommendations made by the Commission but on a rational and cogent basis. The Hon'ble Supreme Court in ***K.S. Krishnaswamy Versus Union of India, (2006) 13 SCC 215***, in paragraph 17 held that:-

> *" ....It is well-settled principle of law that recommendations of the Pay Commission are subject to the acceptance / rejection with modifications of the appropriate Government. It is also well-settled principle of law that a policy decision of the Government can be reviewed / altered / modified by executive instructions......."*

But once the recommendations are accepted by the Government, then the same become binding on the Government for its implementation. In ***Mahatama Gandhi Mission Versus Bhartiya Kamgar Sena, (2017) 4 SCC 449 at Page-478 Para-61*** therein, the Hon'ble Supreme Court has held that:

> *61.Once the Government of India accepted the recommendations of the Pay Commission and issued orders signifying its acceptance, it became the decision of the Government of India. That decision of the Government of India created a right in favour of its employees to receive pay in terms of the recommendations of the Sixth Pay Commission and the Government of India is obliged to pay.*

In the instant case, upon accepting the recommendations of the Pay Commission, the Government of Punjab in exercise of the powers conferred by the Proviso to Article 309 read with Clause (3) of Article 187 of the Constitution of India, notified the **Punjab Civil Services (Revised Pay) (First Amendment) Rules, 1998**, notified on 19.05.1998 vide Notification No. 7/1/97-FPI/7370 by providing for "The Second Schedule" to the Rules wherein the existing and revised Pay Scales of various common categories of employees was notified including the post of **'Veterinary Officer'** held by the petitioner and in Schedule-II the pay scales for the Department of Animal Husbandry for the post of 'Veterinary Officer', **provided** that Pay Scale of ₹ 7880-13500/- **(Entry Scale with a start of ₹ 8000/-)**, ₹ 10025-15100/- **[after four (04) years of the Regular Service in the Entry Scale]**, ₹ 12100-15500/- **[after nine (09) years of Regular Service in the Entry Scale]**, ₹ 14300-18150/- **[after fourteen (14) years of Regular Service in the Entry Scale]**.

Once the recommendations of the Pay Commission were notified and framed in forms of Rules, the same were binding on the Government and created a right in favour of the employees including the petitioner in terms of the benefits provided in Schedule-II of the aforestated Rules and the Respondent-State had no authority to modify or deprive such right by issuance of executive instructions. In ***State of Maharashtra & Another <u>Versus</u> Chandrakant Anant Kulkarni & Others*** **reported in AIR 1981 SC 1990**, Hon'ble the Supreme Court had the occasion to consider the effect of modification of Rules framed under Proviso to Article 309. In that case the question arose whether the State Government by its resolution and memorandum could effect a change in the Recruitment Rules by an executive order. After considering all aspects, Hon'ble the Supreme Court observed that there can be no dispute with the proposition that a rule framed under the Proviso to Article 309 of the Constitution cannot be modified by an executive order.

17. The Instructions dated 17.04.2000 **(P-1)** towards the implementation of the benefits under Punjab Civil Services (Revised Pay) (First Amendment) Rules 1998 regarding "ACP" and in granting the placement in the higher pay scales on completion of 04, 09, 14 years of service have overridden the statutory provision contained Schedule–II, which results in deferring the placement of the set of concerned employees in higher pay scale contrary to and against the provision incorporated in the statute. The Notification dated 19.05.1998 has been framed under Article 309 of the Constitution of India is not in dispute and it is well settled that the statutory rules framed under Article 309 of the Constitution can be amended only by a Rule or Notification duly made under Article 309 and not otherwise. Whatever be the efficacy of the Executive Orders or circulars or instructions, statutory rules cannot be altered or amended by such executive orders or circulars or instructions nor can they replace the statutory rules.

But in the case in hand Para 7 of the Instructions dated 17.04.2000 **(P-1)** is running contrary to statutory provisions granting benefit of placement in higher pay scale under Punjab Civil Services (Revised Pay) (First Amendment) Rules 1998 and is also whittling down its effect. The enforceable right of the concerned set of employees including the Veterinary Officers to be placed in higher pay scale on completion of 04, 09, 14 years of service under the Rules has been taken away by the Executive

Instructions and such placement has been deferred by the Instructions to be granted on 1st January of the successive year thus cannot be sustained in the eyes of law and is hereby set aside.

18. The stand of the respondents-State justifying the circumstances under which Para –7 of the Executive Instructions dated 17.04.2000 **(P-1)** defers the placement in the higher pay scale based on fact that service record of employee is required to be overall 'Good' and last two ACRs to be "Good" are to be seen and since the last date for the recording of ACR by the Accepting Authority is 30th September and after last ACR to be considered for deciding benefit available, time is required for examining the eligibility angle, therefore, the benefits of ACP Scheme are given from 1st January of the ensuing year is totally irrational and arbitrary because in such a case even if such exercise is required to be conducted then the grant of the benefits can always flow back to the date of completion of 04, 09, 14 years of service. Furthermore, no such justification has been adopted in the case of other set of employees guided by other ACP Scheme under the State of Punjab itself where the benefits of placing in higher pay scales is given from the date the same is due upon completion of requisite service and there is no deferment.

19. Another relevant factor that merits consideration is the Department of Personnel, Government of Punjab has issued letter dated 20.12.2011 **(P-10)** wherein Para 7 of the instructions dated 17.04.2000 **(P-1)** has been deleted to the effect that the benefits of placement in higher pay scale are now ordered to be given on date of completion of 04, 09, 14 years of regular service without any deferment but the said remedy has been effectuated prospectively w.e.f. 01.12.2011 only. In the first instance, the respondent Authorities acted illegally to alter and modify the effect of the benefits provided under the Rules by way of Executive Instructions and in the second instance while removing the defect and anomaly (though by citing case of hardship) by not relating the rectification from the date same has erupted as is settled position on the issue. Once there is an anomaly in the pay scales and benefits thereon, then it requires to be removed from the date the anomaly has occurred and the consequential arrears of salary are also liable to be paid. In this regard reliance is placed on ratio of law laid down by the Hon'ble Apex Court in the case of **Purshottam Lal and others versus Union of India, AIR 1973 Supreme Court 1088; Prem Parkash Nayar and others versus Punjab State Electricity Board, 2003(2) SCT 550** and **State of Punjab and another versus Dr. Dharampaul and others**, **(C.A. No. 10549 of 1996, decided on 25.8.1998)**.

Towards the grant of benefits in such a situation, reliance is placed on the judgment of the Hon’ble Supreme Court in **State of U.P. v. Arvind Kumar Srivastava, (2015) 1 SCC 347**, towards the legal principles as under :

> ***22. The legal principles which emerge from the reading of the aforesaid judgments, cited both by the appellants as well as the respondents, can be summed up as under:***
>
> ***22.1. The normal rule is that when a particular set of employees is given relief by the court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to***

be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

22.2. However, this principle is subject to well-recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

22.3. However, this exception may not apply in those cases where the judgment pronounced by the court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated persons. Such a situation can occur when the subject-matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see K.C. Sharma versus Union of India [K.C. Sharma versus Union of India, (1997) 6 SCC 721 : 1998 SCC (L&S) 226]). On the other hand, if the judgment of the court was in personam holding that benefit of the said judgment shall accrue to the parties before the

> ***court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence.***

20. Thus, in view of the observations made above and the settled proposition of law on the issue in hand, the present petition is **"Allowed"** and Para-7 of the Guidelines issued vide Executive Instructions dated 17.04.2000 **(P-1)** of the Department of Personnel, Government of Punjab to extent it deferred the financial upgradation in the ACP on completion of 04, 09 and 14 years of regular service to First (1^{st}) January of the succeeding year for certain cadres of employees including the cadre of Veterinary Officers (that of the petitioner) from the date of its effectuation upto 30.11.2011 is set-aside being unreasonable, unjust, illegal and unlawful and is contrary and *ultra vires* to statutory provisions granting benefit of placement in higher pay scale under Punjab Civil Services (Revised Pay) (First Amendment) Rules 1998.

The respondents are **directed** to grant and revise the benefits alongwith arrears to the petitioner and other effected employees towards placement in higher pay scale **on completion of 04, 09, and 14 years of service** based on the provisions of Punjab Civil Services (Revised Pay) (First Amendment) Rules 1998 as applicable and read with Instructions dated 17.04.2000 **(P-1)** by deleting the offending clause of deferring the placement in higher pay scale in Para 7 of the Instructions dated 17.04.2000.

No costs.

The necessary relief shall be released to the petitioner within a period of four (04) months from the date of receipt of the certified copy of this order, failing which authorities concerned shall make themselves liable to be hauled up in contempt proceedings.

July 31, 2018 **(JASWANT SINGH)**
'dk kamra' **JUDGE**

Whether Speaking/reasoned	*Yes/No*
Whether Reportable	*Yes/No*