

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

CWP No. 26056 of 2012 (O&M)

Date of decision: 20.3.2018

Nihal Singh

.. Petitioner

vs

State of Haryana and others

.. Respondents

**Coram: Hon'ble Mr. Justice Rajesh Bindal
Hon'ble Mr. Justice B. S. Walia**

Present: Mr. Aditya Bhushan, Advocate, for the petitioner (s).
Mr. Samarth Sagar, Additional Advocate General, Haryana.

Rajesh Bindal, J.

This order will dispose of two writ petitions bearing CWP Nos. 26056 of 2012 and 11394 of 2013, as common questions of law and facts are involved therein.

The grievance raised by the petitioners is that their pay was sought to be re-fixed after withdrawing the ACP benefits on the ground that they had forgone promotion.

In CWP No. 26056 of 2012, vires of Rule 11 of the Haryana Civil Service (Assured Career Progression) Rules, 1998 (for short, 'the 1998 Rules') has also been challenged. Identical issue has been gone into by a Division Bench of this Court in CWP No. 14653 of 2008 – Rakesh Kumar vs State of Haryana and others, decided on 5.8.2009, wherein vires of Rule 11 of the 1998 Rules regarding re-fixation of pay of the petitioner therein as he had forgone his promotion, was upheld, however, the recovery of the amount already paid to him, was quashed, by referring Full Bench judgment

of this Court in CWP No. 2799 of 2008 Budh Ram and others vs State of Haryana and others, decided on 22.5.2009. Civil Appeal No. 467 of 2016 Rakesh Kumar vs State of Haryana and others, against the aforesaid judgment, was disposed of on 19.1.2016, by Hon'ble the Supreme Court without going into the correctness of the conclusion recorded by this Court regarding validity of Rule 11 of the 1998 Rules, observing that it was an isolated case in which the appellant had retired from service.

In the case in hand, the vires of the 1998 Rules are not in dispute. The petitioners had forgone their promotion, hence, they were not entitled to ACP.

For the detailed reasons recorded in judgment of this Court in Rakesh Kumar's case (supra), where the issue regarding re-fixation of pay was upheld, the present writ petitions stand disposed of in terms thereof. However, recovery of any amount, which has already been paid to the petitioners, will not be effected, as even after the Full Bench judgment of this Court in Budh Ram's case (supra) referred to in Rakesh Kumar's case (supra), and even in subsequent judgment - State of Punjab and others etc. vs Rafiq Masih (White Washer) etc. 2014 (4) SCC 334, Hon'ble the Supreme Court has dealt with the same issue.

(Rajesh Bindal)
Judge

20.3.2018
vs

(B. S. Walia)
Judge

Whether speaking/ reasoned

Yes/No

Whether Reportable

Yes/No