

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-21609-2014

Date of decision: 25.07.2018

Balwant Singh

...Petitioner

V/s.

State of Haryana and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI.

Present: Mr. Virender Kumar, Advocate for the petitioner.

Mr. Hitesh Pandit, Addl. A.G., Haryana.

RITU BAHRI, J. (Oral).

The petitioner is seeking writ of mandamus directing the respondents to grant 2nd ACP scale after rendering 20 years regular service w.e.f. 2006 by counting his previous service rendered by him in HSMITC (Haryana State Minor Irrigation Tubewells Corporation) prior to his transfer/absorption in the Excise & Taxation Department.

In the present case, decision given by this Court in ***CWP No. 15039 of 2013 titled as Hari Parkash V/s. State of Haryana decided on 02.08.2015*** (Annexure P-5) is being made basis for grant of above said benefit. In the case of Hari Parkash (Annexure P-5), the petitioners joined service in the Octroi Branch of the Municipal Committee, Panipat. They were later absorbed in the Education Department, Haryana. They were being denied benefit of ACP grade on the ground that they had not completed 10 years of service under the Education Department, Haryana. The Division Bench allowed the writ petition keeping in view that as per the letter of absorption they were entitled to get benefit of their earlier service except seniority in the subsequent employment and hence service rendered

by them in Municipal Committee was to be counted for the purpose of grant of ACP grade, and the SLP on the above said judgment was dismissed by the Supreme Court on 15.07.2008 (Annexure P-6) and also dismissed the SLP in *State of Haryana V/s. Ramesh Chander and others* (Annexure P-7). After dismissal of the SLP (Annexure P-6 and P-7), the Haryana Government issued general instructions dated 16.12.2010 (Annexure P-8) for counting the past service who have employed in local bodies etc. Thereafter letter dated 24.12.2010 was issued by the Engineer-in-Chief to all the Superintending Engineers and Executive Engineers to count previous service rendered by the employees who have been appointed in Public Health Engineering Department on transfer basis from HSMITC (Annexure P-9). The petitioner has referred in para 13 of the writ petition the case of Raj Rani Clerk and Ram Charan, who have been given the benefit of their past services in view of the general instructions dated 16.12.2010 (Annexure P-8).

The stand taken by the respondents in the written statement is that as per the service condition, he is not to get benefit of his past service and he is to be treated as new recruits in the Department and the seniority will be considered from the date of joining in the Department. They have referred to a case of *Ajmer Singh, Driver* who had filed *CWP No. 21633 of 2013* praying therein to count his service which he had rendered as a Junior Engineer (civil) in the Haryana State Minor Irrigation and Tubewell Corporation. He had been later on appointed in the Panchayat Department, Haryana. His writ petition was dismissed on 29.01.2014 on the ground that he had been appointed afresh, entitled to draw minimum pay and could not get the benefit of his past service or fixation of pay or ACP. It has further

been clarified that the petitioner was drawing the pay scale of Rs.1200-240 in HSMITC and he joined the Excise and Taxation Department on 16.01.2002 on the higher pay scale of Rs.4000-6000+100 special pay. It has been clarified in his appointment letter dated 04.01.2002 that he will not get benefit of his past service. However, he has been granted the benefit of first ACP w.e.f. 01.07.2011 keeping in view regular satisfactory service in Excise and Taxation Department. It is further stated that the petitioner cannot get benefit from the cases of employees of the Municipal Committee who had been retrenched on abolishment of the posts and the petitioner also cannot get benefit from the general instructions issued on 16.12.2010 (Annexure P-8) as this benefit of ACP scale is to be granted only to those employees who were adjusted on transfer basis in other government departments with certain terms and conditions after closure of Boards/Corporations. The relevant portion is as under:-

“After closure of some Boards/Corporations, it was decided to adjust the surplus staff of the said Boards/Corporations on transfer basis into the government departments with certain terms and conditions. Benefit of past service was given towards pay protection. Wherever, the previous service in Boards/Corporations/Municipal Committees was pensionable, the benefit of past service towards pension was also given. However, it was decided not to count the previous service towards seniority.”

Keeping in view the decisions given in the case of ***State of Haryana and another V/s. Deepak Sood and others, SLP © No. 14099 of 2006*** (Annexure P-6) and in the ***State of Haryana and others V/s. Ramesh Chander and others, SLP(C) 11224 of 2009*** (Annexure P-7), it was finally decided that they were surplus staff which was subsequently appointed in the other Departments. The benefit of pay protection had been given and

they were under the ACP scheme after completion of requisite length of service.

After hearing learned counsel for the parties and going through the contents of the writ petition, this writ petition deserves to be dismissed. In the facts of the present case, the petitioner was working in the HSMITC in the pay scale of 1200-240 prior to 01.01.2002 and he joined the Excise and Taxation Department on 16.01.2002 in the pay scale of 4000-6000+100 special pay. Even his past service was not on the same scale. Lower pay scale carries lower responsibilities. Hence, at the time of appointment in the Excise Department on 16.01.2002, he was already on higher pay scale and his pay was not be protected keeping in view the terms and conditions of his appointment. He has been rightly denied the benefit of ACP grade by not counting his past service in HSMITC. The case of the petitioner is identical to that of *Ajmer Singh* (supra).

The petitioner also cannot get the benefit from the general instructions dated 16.12.2010 (Annexure P-8) as the benefit of these instructions is only to those employees of the Boards/Corporation who have been rendered surplus and they have been absorbed in the other government departments on transfer basis. There is a specific condition in these instructions that at the time of absorption their pay has to be protected whereas no such condition has been imposed in the appointment letter of the petitioner (P-1). However, after being appointed in the Excise Department the petitioner has rightly been given first ACP after completing 10 years in the year 2011.

Dismissed accordingly.

25.07.2018

Divyanshi

(RITU BAHRI)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No