

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****Date of decision: 29.08.2018****CWP No.21894 of 2014**

Sarla Hooda

...Petitioner

Vs.

State of Haryana & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. R.K.Malik, Senior Advocate, with
Mr. S.K.Rana, Advocate, for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana.

RAJIV NARAIN RAINA, J. (ORAL)

1. Stagnation benefit of Assured Career Progression (ACP) and promotion to higher post cannot co-exist, one cuts into the other. On facts, the petitioner was promoted as Head Teacher on 09.08.2010, but for one reason or the other, she dilly dallied in joining the promotional post offered to her as per her turn on seniority by citing proposed marriage of her daughter and treatment in PGI.

2. 1st ACP scale was given to the petitioner w.e.f. 01.01.2006 after completion of 10 years of service. Initially, the petitioner made a representation to the District Elementary Education Officer, Yamuna Nagar on 23.08.2010 pleading that she was unable to join duties at the place of new assignment on provisional promotion due to domestic circumstances etc. She prayed for two months' time to be permitted to work at her new place of posting. She then addressed a letter dated 12.10.2010 to the Education Minister, Haryana with the same prayer stating that her daughter's marriage

was fixed for 08.12.2010. On 03.11.2010, the Education Minister, Haryana recorded on the top right margin of the original letter that “Relaxation may be allowed on medical grounds”.

3. It is admitted position in the written statement that no relaxation was granted to the petitioner. I find nothing wrong in adopting this course. In the case of a Head Teacher, absence from school for long period may start the process of posting someone else by giving officiating charge. This may result in inconvenience to other Teachers and to the students studying in the school. Such leverage cannot be claimed as a matter of right.

4. Mr. Rathee lays emphasis on Rule 11 of the Haryana Civil Service (Assured Career Progression) Rules, 1998 (for short ‘the ACP Rules’), which prescribe rule regarding ‘Ceasing of Entitlement of ACP scales’. The said Rule reads as follows:

“11. Ceasing of Entitlement of ACP Scales – In case the government servant chooses to forego any functional promotion on any ground whatsoever, while drawing his pay in any ACP scale with reference to him, he shall cease to be entitled to draw his pay in the ACP pay scales and shall draw his pay in the functional pay scales prescribed for the post on which he is substantively working from the date of such forego of promotion.”

5. A bare reading of Rule 11 reveals that a government servant, who has been placed in ACP scale, if chooses to forego any functional promotion on any ground whatsoever, while drawing the ACP scale, shall cease to be entitled to draw his pay in the ACP pay scale from the date of his/her refusal of promotion. The rationale is based on logic, besides being just and fair since placing employee in the ACP scale is itself made on

account of stagnation/non-availability of promotional avenues and in the event, though subsequently, the government servant willingly refuses to accept the offer of promotion, for whatever reason, then it can safely be presumed that the government servant considers there is no stagnation in his government service which needs/deserves to be compensated by award of ACP/promotional scale. Therefore, the State Government will be well within its right to withdraw placement of such an employee in ACP scale as the same was subject to certain conditions which are germane to the grant of the benefit.

6. As a result, I find nothing arbitrary or illegal in the impugned order dated April 12, 2012 re-fixing pay, pay scale, grade pay etc. of the petitioner.

7. As far as recovery is concerned, nothing has been brought on record to show whether any actual recovery has been made from the petitioner since the passing of the impugned order on April 12, 2012 and till the filing of the petition in October, 2014 or thereafter during the pendency of this case.

8. Nevertheless in case the petitioner did not accept promotion on 01.07.2011, regular pay scale has been given w.e.f. 01.07.2012 subject to recovery, if any pointed out at the later stage. No case of actual recovery has been pointed out and, therefore, no orders are required to be passed. The order in the calculations tabled is self-explanatory and requires no interpretation. In case, the petitioner has any remaining grouse, she can always approach the authorities in the department for redressing the same. It

is expected, that in case any error or mistake is pointed out in re-fixing pay, it will be considered and decided in accordance with law.

9. In view of the above, the instant petition is ordered to stand dismissed.

29.08.2018
Vimal

[RAJIV NARAIN RAINA]
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>No</i>