

...

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-238-2016

Date of Decision : November 13, 2018

Smt. Usha Rani

.... Petitioner.

Versus

State of Haryana and others.

.... Respondents.

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present Mr. R.K. Malik, Sr. Advocate
with Mr. Sandeep Kumar Rana, Advocate,
for the petitioner.

Mr. Pankaj Mulwani, DAG, Haryana
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 certiorari to quash order dated 25.07.2014 (Annexure P/2) whereby the petitioner has been denied the benefit of 2nd ACP. Petitioner has also sought a writ of Mandamus for grant of benefit of 2nd ACP with effect from 20.4.2010 alongwith all arrears and other retiral benefits w.e.f. 26.09.2014.

2. As per the petitioner, she was appointed as S.S. Mistress on regular basis and she joined the respondent-department on 20.04.1990. She was granted 1st ACP w.e.f. 1-5-2000. The petitioner completed 20

...

years of service on 20.04.2010 and she filed a representation dated 8.7.2014 (Annexure P/1) for the purpose which was rejected vide order dated 25.07.2014 (Annexure P/2). The petitioner sought voluntary retirement on 28.7.2014 (Annexure P/3), but there was no response. She again resigned by depositing three months' salary vide Annexure P/4 and the said resignation of the petitioner was accepted on 26.09.2014. The petitioner made a request on 7.11.2014 that since she had sought voluntary retirement on 28.7.2014 and the same was not finalized and she submitted resignation which was accepted on 26.09.2014, she be released her retiral benefits. On 25.09.2014, the petitioner had also completed 24 years of service and as per Rule 5.32 (B) of the Punjab Civil Services Rules, an employee can take voluntary retirement after 20 years of service. However, the petitioner is not being given the said benefit and other retiral benefits on the ground that she had tendered resignation and not submitted voluntary retirement notice and as such, the present writ petition.

3. In the reply, the respondent-State has taken the plea that the petitioner was granted 1st ACP after 10 years of service w.e.f. 1-5-2000 and she was granted the benefit of 2nd ACP on completion of 20 years of regular satisfactory service. The petitioner was promoted to the post of Elementary School Head Master (ESHM) vide order dated 14.03.2013 (Annexure R/1), but she had foregone the promotion to the post of ESHM and specific order was issued in this regard on 25.06.2013 (Annexure R/2). Resultantly, the ACP pay scale of the petitioner got ceased under Rule 14 of the Haryana Civil Services (ACP) Rules, 2008 (for short, "2008

...

ACP Rules”). Relevant Rule 14 of the 2008 Rules is extracted below :-

“14. **Ceasing of entitlement of ACP pay structure** :— In case the Government servant chooses to forego any functional promotion on any ground whatsoever, while drawing his pay in any ACP pay structure with reference to him, he shall cease to be entitled to draw his pay in the ACP pay structure last granted to him and shall draw his pay in the pay band and grade pay he was drawing before the grant of the last ACP grade pay from the date of such forgoing of promotion.”

As per the respondent, as the petitioner had already foregone her promotion, as such, her pay ceased in the ACP pay structure last granted to her and the claim has rightly been rejected.

4. Contention was also raised in the reply that on 25.09.2014, the petitioner had moved an application that she was contesting assembly elections of State Legislative Assembly of 2014 as a candidate of Indian National Lok Dal (INLD) and deposited the amount of Rs.1,63,299/- in lieu of three months' salary and respondents accepted the said resignation with effect from 26.09.2014. Resultantly, she voluntarily submitted her resignation and forfeited the benefits of past service under Rule 3.17(A)(d) of the Punjab Civil Services Rules, Volume II, which is extracted below:-

“Resignation from the public service or dismissal or removal from it for misconduct, insolvency, inefficiency, not due to age, or failure to pass a prescribed examination will entail forfeiture of past service in terms of Rule 4.19(a) of Punjab Civil Service Rules Volume II”.

5. It was also contended that the claim of the petitioner is debarred by Rule 4.19(a) of Punjab Civil Service Rules Volume II, which is

...

extracted below:-

“4.19 (a) Resignation from public service, dismissal or removal from it, either under proviso © to Article 311(2) of the Constitution for over anti-national activities such as sabotage, espionage etc. or for misconduct, insolvency, inefficiency not due to age or failure to pass a prescribed examination, entails forfeiture of past service and no person shall be granted in the aforesaid circumstances.

Provided that in the case of those Government employees whose removal or dismissal results from participation in other objectionable activities affecting or endangering the security of the State, such proportionate pension may be granted as may be recommended by the Committee of the Advisors constituted under the Haryana Civil Services (Safe-guarding of National Security) Rules, 1971”.

6. The said controversy has already been settled by Hon`ble Full Bench of this Court in **Kartar Singh Vs. State of Haryana and others (1998) 119 PLR 448**, **Rakesh Kumar Vs. State of Haryana and others, CWP No.14653 of 2008** and **Jagdev Kumar Vs. State of Haryana and others, CWP No. 139 of 2003, decided on 12.07.2004 (Annexure R/3)** and the respondents prayed that the present writ petition deserves dismissal.

7. Learned senior counsel for the petitioner contended that the facts are not disputed to the extent that the petitioner was granted the benefit of first ACP on 1.5.2000 and thereafter she had completed 20 years on 20.04.2010. The petitioner then submitted resignation on 25.07.2014.

...

The petitioner submitted a representation and the same was rejected on 25.07.2014 (Annexure P/2). The petitioner sought voluntary retirement on 28.7.2014 (Annexure P/3). There was no response to the said request of the petitioner and again she submitted her resignation letter on 25.09.2014 (Annexure P/4) which was accepted on 26.09.2014 (Annexure P/5). At that time, the petitioner also deposited three months' salary. Subsequently, the petitioner made request on 7.11.2014 to sanction her voluntary retirement and to release her retiral benefits and thereafter reminder was issued on 8.12.2014, but her retiral dues have not been released.

8. Learned senior counsel for the petitioner further contended that the petitioner had already completed 24 years of service and as per the Punjab Civil Service Rules, an employee can seek voluntary retirement after 20 years of service and the petitioner had simpliciter sought voluntary retirement under compelling circumstances which was accepted. As such, the petitioner is entitled to retiral benefits. On this point, reliance was placed upon judgment of this Court in CWP-10953-2006, **Om Parkash Vs. Financial Commissioner, Haryana and others**, decided on 29.1.2007 (Annexure P/8).

9. Learned senior counsel for the petitioner further submitted that second ACP was not granted to the petitioner with effect from 20.4.2010 on the ground that she had foregone promotion on 25.6.2013 and the same is liable to be set-aside because the second ACP had already become due on 20.4.2010 and the same cannot be denied on the ground that the petitioner had foregone the promotion on 25.06.2013.

...

10. To sum up, learned senior counsel for the petitioner contended that the claim of the petitioner is to the extent that her second ACP had become on 20.4.2010 and the same has not been sanctioned to her and consequential benefits have not been granted to her. The respondents cannot refuse the same simply on the ground that the petitioner had refused the promotion on a subsequent date, i.e. 25.6.2013. The second relief sought by the petitioner is that she had sought voluntary retirement only and not tendered resignation and the resignation submitted by her was under compelling circumstances only and on that account, her retiral benefits cannot be denied to her. To support his arguments, learned senior counsel has placed reliance on **Punjab National Bank and others vs. Virender Singh Siwach—LPA No.735 of 2012**, decided on 09.10.2015; **Om Parkash vs. Financial Commissioner and Principal Secretary to Govt. of Haryana and another**, 2007(2) S.C.T. 422; **Gulab Singh vs. The State of Haryana and another**, 2010(4) S.C.T. 145; **Haryana State through Collector, District Bhiwani, Bhiwani vs. Madan Pal Ahlawat**, 2003 (1) S.C.T. 327; **Ashwani Kumar Sharma vs. Oriental Bank of Commerce**, 2003(3) S.C.T. 764.

11. While arguing on these points, learned State counsel contended that law on the point is settled that if an employee refuses the promotion, he/she is not entitled to ACP under the 2008 ACP Rules. As regards to payment of retiral benefits, learned State counsel contended that the matter in controversy has already been set at rest as per decision of Hon`ble Division Bench of this Court in **Kartar Singh's case (supra)**,

...

wherein similar controversy was involved. The circumstances as explained by the petitioner for withdrawal of resignation are not covered under the definition of compelling circumstances as she had tendered resignation to contest the election and the controversy in **Ram Kumar Mann's** case was also the same wherein the employee had submitted resignation to contest the election in Haryana and as an employee was unsuccessful in the elections, he had made a request for withdrawal of resignation and the Hon`ble Division Bench held that the same was not permissible as per law.

12. Having heard learned counsel for the parties and appraisal of the facts of the case in hand, this Court is of the considered view that there is no dispute on the basic facts and the petitioner was released benefit of first ACP on 1.5.2000. Her second ACP was not released to her as she herself had foregone her promotion on 25.6.2013. Similar matter was before Hon`ble Division Bench of this Court in CWP-14653-2008, **Rakesh Kumar vs. State of Haryana and others**, decided on 05.08.2009. The Hon'ble Division Bench, while dealing with Rule 11 of the Haryana Civil Service (Assured Career Progression) Rules, 1998, held that if an employee chooses to forego any functional promotion on any ground whatsoever, he shall not be entitled to draw his pay in the ACP scale from the date of refusal of promotion. For ready reference, Rule 11 is extracted below:-

“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.”

13. While interpreting the said ACP Rule 11 of the 1998, the Hon'ble Division Bench observed as under:-

“A plain and bare reading of Rule 11 of ACP Rules, 1998 reveals that a Government servant who has been placed in the ACP scale, if chooses to forego his 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 refusal of promotion. It is thus clear that continuance of the grant of pay in the ACP scale is based on the condition that the Government employee shall not forego his promotion for whatever reason. The rationale is based on logic besides being just and fair as placing 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 Govt. Servant considers there is no stagnation in his Govt service, which needs/deserves to be compensated by ACP/promotional scale. Therefore, in our opinion, the State Government would be well within its right to withdraw placement of such an employee in ACP scale as the same was subject to certain condition which is germane to the grant of the same. Consequently, the provision of Rule 11 cannot be by any stretch of reasoning be held to be arbitrary. A reading of the clarification Annexure P/2 further reveals that for implementing

...

the provision of Rule 11 of the ACP Rules, the method and manner of refixing the pay scale of the Government servant covered under Rule 11 has been provided. No serious challenge has been laid to the clarification Annexure P/2. Therefore, no infirmity can also be found with Annexure P/2. We further find that the re-fixation of the pay of the petitioner vide Annexure P/6 in terms of Rule 11 cannot also be faulted. Therefore, challenge to Annexure P/6 also fails.”

14. The said matter had gone before Hon'ble Apex Court in SLP No.32555 of 2009 and the said SLP was dismissed on 19.01.2016. In the light of that, the petitioner herein is not entitled to second ACP as she herself had foregone her promotion.

15. Now coming to the next point involved in this case, whether the petitioner could withdraw her resignation, having been tendered to contest the election and after being unsuccessful in the election, was she within her rights to withdraw the resignation as per the Rules and can ask for retiral benefits to treat her retirement as voluntarily retirement.

16. Similar matter was before Hon'ble Apex Court in case **State of Haryana and others Vs. Ram Kumar Mann**, 1997 (2) RSJ 520. The State's appeal was filed against the judgment dated 10.08.1984 passed by Hon'ble Division Bench of this Court in CWP-1154 of 1984, where the matter in controversy was the same and said Ram Kumar Mann had tendered his resignation on April 23, 1982 to contest the election as a Member of the State Legislative Assembly. His resignation was accepted on May 18, 1982. He contested the election but remained unsuccessful. He

...

filed an application on May 21, 1982 withdrawing his allegation but the same was dismissed. Ram Kumar Mann had filed the writ petition in this Court on the ground that three other employees of the Haryana Government had also tendered their resignations to contest the assembly election, which were accepted, but they were allowed to withdraw their resignations and he was being discriminated again. Hon'ble Division Bench of this Court in Ram Kumar Mann's case (supra) held that resignation should be allowed to be withdrawn as the same was discriminatory and violative of Article 14 of the Constitution of India. However, Hon'ble Apex Court, while deciding the State's appeal in **Ram Kumar Mann's** case observed as under:-

"3. The question, therefore, is : whether the view taken by the High Court is correct in law? It is seen that the respondent had voluntarily resigned from the service and the resignation was accepted by the Government on May 18, 1982. On and from that date, the relationship of employer and the employee between the respondent and the State ceased and thereafter he had no right, whatsoever, either to claim the post or a right to withdraw his resignation which had already become effective by acceptance on May 18, 1982. It may be that the Government for their own reasons, given permission in similar case, to some of the employees mentioned earlier, to withdraw their resignations and had appointed them. The doctrine of discrimination is founded upon existence of an enforceable right. He was discriminated and denied equality as some similarly situated persons had been given the same relief. Article 14 would apply only when invidious discrimination is meted out to equals and similarly circumstanced without any rational basis or relationship in that behalf. The respondent

...

has no right, whatsoever and cannot be given the relief wrongly given to them i.e., benefit of withdrawal of resignation. The High Court was wholly wrong in reaching the conclusion that there was invidious discrimination. If we cannot allow a wrong to perpetrate, an employee, after committing misappropriation of money, is dismissed from service and subsequently that order is withdrawn and he is reinstated into the service. Can a similar circumstanced person claim equality under 14 for reinstatement Answer is obviously 'No'. In a converse case, in the first instance, one may be wrong but the wrong order cannot be the foundation for claiming equality for enforcement of the same order ..."

17. It was further observed that Ram Kumar Mann had no right whatsoever and could not be given the relief wrongly given to others i.e. the benefit of withdrawal of resignation. The Hon'ble Apex Court had gone to the extent that the Courts would not allow wrong to be perpetrated.

18. While relying upon the judgment of Hon'ble Apex Court, a Division Bench of this Court in **Kartar Singh's case (supra)** observed that if an employee resigns from service and the resignation is accepted, then from the date when resignation became effective, there is no relationship of master and servant between the incumbent and thereafter, such an incumbent has no right whatsoever either to claim the posts or a right to withdraw his resignation, which has already become effective by its acceptance. It was further observed that the doctrine of discrimination is founded upon existence of an enforceable right. The question of discrimination that some similarly situated persons had been given the

...

same relief would apply only when invidious discrimination is meted out to equals and similarly situated persons without any rational basis.

19. In view of the above, the petitioner is not entitled to withdraw her resignation or to ask for retiral benefits while seeking voluntary retirement in this case. The judgments referred to and relied upon by learned senior counsel for the petitioner are of no help to the petitioner.

20. Resultantly, there is no merit in the present writ petition and the same stands dismissed.

(SHEKHER DHAWAN)
JUDGE

November 13, 2018.
som

Whether speaking/reasoned?	:	Yes
Whether reportable?	:	Yes