

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

CWP No. 2565 of 2014.

Date of Decision: 22.11.2018.

Sudesh Bajaj

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM : Hon'ble Mr. Justice Jitendra Chauhan

Present : Mr. R.K. Arora, Advocate,
for the petitioner.

Ms. Bhawna Gupta, DAG Punjab.

JITENDRA CHAUHAN.J.

Through the instant civil writ petition, the petitioner seeks quashing of letter date 01.04.2013 (Annexure P-9) vide which the claim of the petitioner for grant of ACP under the ACP scheme has been kept pending.

The facts of the case are that the petitioner had joined the services of the Punjab Education Department as Science Mistress on 31.10.1977 on *ad hoc* basis. Her services were regularised on 01.10.1980. She was promoted to the post of Head Mistress on 06.11.1989. She was further promoted in PES-II cadre on 03.07.1997.

It is contended that after her promotion in PES-II cadre on 03.07.1997, she was entitled to benefit of ACP on completion of 8 years of service in one cadre in terms of govt. instructions dated 25.09.1998 (Annexure P-1) but her claim was not considered despite number of representations. Thereafter, the ACP scheme was amended

to that of ACP on completion of 4, 9, & 14 years of service with effect from 01.11.2006. The petitioner had opted for ACP scheme dated 03.11.2006 but despite that her claim was not accepted. It is further contended that in the due year i.e. 2005, no departmental inquiry was pending against the petitioner. The charge-sheets on the basis of which her claim has been kept pending were issued after the year 2009.

On the other hand, the stand of the respondent is that the petitioner had remained negligent throughout, therefore, various charge-sheets (Annexure P-10, P-12, P-14 and P-16) for dereliction of duty and non-implementing the order of the department properly from time to time were issued against her. She was awarded major punishment of stoppage of two increments with cumulative effect vide order dated 25.03.2014 and was suspended vide order dated 12.12.1997 (Annexure R-1). It has been further contended that the petitioner was entitled to the benefit of one additional increment under the ACP scheme after completing 8 years of service in a cadre i.e. in July 2005 but she had submitted her case on 20.10.2011 i.e. after gap of 6 years for the reasons known to her and due to pendency of inquiries, her case was kept pending till the finalization of inquiries.

Heard.

It is to be seen that the claim of the petitioner during the relevant period has been admitted by the respondents in paragraph No.3 of the written statement which reads as under:-

“3. That in reply to this para No.3 of the petition, it is submitted that the petitioner was entitled to this

benefit of one additional increment under the ACP Scheme after completing 8 years of service in one cadre i.e. her benefit of ACP was due in July 2005 but she submitted her case for the benefit of an increment under ACP on 20.10.2011 after inordinate delay of 6 years for the reasons best known to her. At that time inquiries or charge sheets were pending against the petitioner and her case for the benefit of ACP was kept pending till the finalization of inquiries etc. regarding which she was informed vide letter dated 01.04.2013. It is wrong that her case for ACP was not considered. Moreover the position has already been explained in the preliminary submissions”.

However, to deny the claim, a flimsy ground has been taken that the petitioner did not submit application for grant of ACP. This Court is of the opinion that the ACP is to be granted by the department on its own. No application by the employee is required in this regard. The department slept over the file of the petitioner. No doubt, when the matter came up for consideration, inquiries were pending against her. However, pendency of such inquiries which are beyond the relevant period cannot be taken into consideration for declining/withholding the benefit of ACP scheme. Consequently, the present civil writ petition is allowed. The respondents are directed to grant the benefit of ACP 8/9 years of service to the petitioner. The necessary exercise be done within a period of two months from the date of receipt of certified copy of the judgment.

22.11.2018.

SN

(JITENDRA CHAUHAN)

JUDGE

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