

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

CWP No.25633 of 2015 (O&M)

Date of Decision: 30.11.2018

Dinesh Kumar

... Petitioner

Versus

State of Haryana and another

... Respondents

CORAM:- HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Raman B. Garg, Advocate with
Ms. Gitanjali Chhabra, Advocate,
for the petitioner.

Ms. Safia Gupta, AAG, Haryana.

Mr. V.K.Kaushal, Advocate,
for respondent No.2.

ARUN MONGA, J.

1. Present petition has been filed seeking issuance of a writ in the nature of certiorari quashing the impugned order dated 11.09.2015 (Annexure P-7). A further prayer has been made for issuing a writ in the nature of mandamus directing the respondents to step up the pay of the petitioner at par with his junior w.e.f. 01.12.2000 with all consequential benefits and arrears with interest @18% per annum.

2. The petitioner was appointed as Sub Divisional Officer (Civil) on regular basis w.e.f. 01.02.1989 in the Agricultural Board by promotion. Whereas, his junior Sh. Laxman Dass joined on 08.11.1989 on the same very post by direct recruitment. After

implementation of the pay scales vide Haryana Civil Services (Assured Career Progression) Rules, 1998 w.e.f. 01.01.1996, Sh. Laxman Dass, was granted the benefit of 2nd ACP scale of Rs.12,000-16,500/- w.e.f. 01.12.2000 on completion of his 11 years service with all arrears of salary vide order dated 11.11.2013 (Annexure P-2). However, petitioner was not given the said benefit on the ground that he was not appointed by direct recruitment rather appointed by way of promotion.

3. Being aggrieved by non grant of benefit of 2nd ACP, petitioner submitted a representation on 09.12.2013 (Annexure P-3) followed by another representation dated 28.02.2014 (Annexure P-4). The petitioner relied on the Instructions dated 02.06.2008 (Annexure P-5) issued by Principal Secretary, Finance but the department did not respond to the same. The said policy/Instructions envisage that salary of senior employee shall be stepped up in the event of a junior employee is getting more salary owing to the ACP.

4. The petitioner then approached this Court by way of Civil Writ Petition No.18926 of 2014 which was disposed of vide order dated 11.09.2014. A direction was given to the respondents to decide the representation of the petitioner within a period of two months. Pursuant thereto, respondent No.2 rejected the claim of the petitioner vide impugned order dated 11.09.2015 (Annexure P-7). Benefit of 2nd ACP has been denied on the ground that the ACP scale granted only to directly recruited SDE/Engineers by the Government and petitioner is a promottee officer. Per impugned

order, the Instructions dated 02.06.2008 are not applicable on Group 'A' post, so the case of the petitioner is not covered by these Instructions. Contention of the petitioner regarding stepping up of his salary in view of the judgment passed by this Court in CWP No.7435 of 2010 titled as R.K.Aggarwal Vs. State of Haryana was turned down on the ground that the case pertained to Home Department and the duties and responsibilities of the Home Department are different. The two departments are not identical and therefore the said judgment was held to be not applicable.

5. Learned counsel for the petitioner contended that the petitioner is entitled for grant of ACP pay scales w.e.f. 01.02.2000 on completion of 11 years of service. Worst case, w.e.f. 01.12.2000, when his junior was granted the benefit of ACP scales but the same has been declined by the respondent on flimsy grounds.

6. Per contra, learned counsel for the respondents contends that the petitioner being a promotee officer is not entitled to the ACP benefit sought by him ACP scales are permissible to only member of the cadre who are direct recruits/fresh entrants. The case of the petitioner is not covered by the ACP Rules and therefore, he is not entitled to grant of ACP Scale. Accordingly, the Department has rightly rejected the claim of the petitioner. As regards stepping up of pay of the petitioner at par with his junior, the instructions dated 02.06.2008 (Annexure P-5) are applicable to those who are promoted from Group 'D' to Group 'C' and/or Group 'C' to Group 'B' from the date when the juniors were given benefit of ACP scale. It was to be allowed to a senior employee who is

getting lesser pay than his junior in the same cadre/post. In such a case, his pay shall be stepped up at par with the junior employee. In the present case, petitioner is holding Group 'A' post and he is not entitled to the benefit of ACP in view of the instructions *ibid*.

7. Learned counsel for the respondents further contended that the decision rendered in Ram Kumar Aggarwal's case Supra, is not applicable as petitioner is an employee of the Board of State of Haryana and not State of Haryana. Further contended that applicability of said judgment has not been generalized by State by issuing any instructions to apply the same in all departments/boards of the State, therefore, petitioner is not entitled for stepping up at par with his junior.

8. I have heard counsel for the parties at length and have gone through the relevant record.

9. For ready reference Rule 5 (1) of 1996 Rules, on which heavy reliance has been placed by respondents is extracted hereinbelow:-

"5. Eligibility for Grant of ACP Scales:-

(1) Every Government servant who, after a regular satisfactory service for a minimum period of 10 years, if the minimum period is not otherwise prescribed to be different than 10 years either in these rules or by the Government for any class or categories of Government Servant from time to time, has not got any financial upgradation in terms of grant of a pay scale higher than the functional pay scale prescribed for the post as on 31.12.1995, on which he was recruited as a direct recruited fresh entrant:-

a) either as a consequence of his functional

promotion in the hierarchy, or
b) as a consequence of the revision of pay scale for the same post, or
c) as a consequence of any other event through which the functional pay scale of the post has been upgraded, with respect to the functional pay scale prescribed for the post as on 31.12.1995,
shall for the purpose of drawal of pay, be eligible for placement into the First ACP scale with reference to him.
 Definition of “**direct recruited fresh entrant**” is given in

Rule 3 (b) which is extracted hereinbelow:-

*3 (b). “**Direct recruited fresh entrant**” with reference to a post or a Government servant means the post on which such Government servant was recruited as a regular and direct recruit in the Government service and is in continuous employment of Government since such recruitment.”*

10. On a query posed by this Court, learned counsel for the respondents admitted that case of **Ram Kumar Aggarwal (supra)** has not been challenged by the respondents. But states that duties and responsibilities of the petitioner are different from the case of **Ram Kumar Aggarwal (supra)**. Therefore, case of the petitioner is not covered by the above said judgment. He has also argued that it is a clear case that there is no provision under the Rules, 1996 for grant of ACP scales to the persons promoted to a cadre however only direct recruit are entitled for ACP scales on the completion of required length of service in the cadre.

11. Further argued that ACP Rules, 1996 Section 2(1) is applicable to the persons appointed to civil services and posts in connection with the affairs of Government of Haryana and who are

under the administrative control of the Government of Haryana and whose pay is debitable to the consolidated Fund of the State of Haryana and it is applicable on the petitioner. The benefit of ACP Scale was granted to the similarly situated person/officer w.e.f. 01.12.2000 but the petitioner is not entitled for the same because he is a promotee officer and under the Rules there is no provision for grant of ACP scales to the promotee officer.

12. Learned counsel for respondents contends that petitioner is not entitled for ACP scales w.e.f. 01.02.2000 as there is no provision in the Rules and even the petitioner also did not challenge the vires of the Rules in this petition.

13. This Court is of the considered view that the petitioner is entitled for stepping up of pay at par with his junior in view of the judgment passed in **Ram Kumar Aggarwal's case (supra)**. The relevant extract is reproduced hereinbelow:-

“With the hope that the State would now take a decision on this aspect as well and issue appropriate directions/instructions so that there is no further litigation on this aspect from any quarter on the judgment of the Supreme Court and the principles laid down therein, this writ petition is allowed. Petitioner is held entitled to stepping up of his salary at par with the salary of his junior Kuldeep Singh with effect from 08.08.1999 the date on which the 2n ACP scale of Rs.12,000-16,500 was granted to him. Direction is issued to the respondents that the arrears of pay and other consequential benefits such as fixation of pension and other retiral benefits along with arrears thereof shall be calculated and finalized with a period of two months from the date of

receipt of certified copy of the order and released to the petitioner within a further period of one month thereafter.”

14. I am of the opinion that the case of the petitioner herein is similar to Ram Kumar's case (supra). The petitioner concededly belongs to the cadre of Group 'A'. The judgment in Ram Kumar's case is not under challenge and has since attained finality. Similar matter was also decided by the ***Hon'ble Apex Court in Civil Appeal No.65-67 of 2009 dated 09.01.2009 and in case titled as Commissioner and Secretary to Government of Haryana and others Vs. Ram Sarup Ganda and others 2011 (15) SCC 772. The relevant paras are reproduced hereunder:-***

7. Rule 9 reads thus:-

“9 Non-admissibility of stepping up in certain cases.-If the service provides or circumstances warrant direct recruitment at the level of promotional post, in addition to the filling up of such posts through promotion, no benefit of pay upgradation to the Senior Government servant who happens to be a direct recruit to a post other than the post on which the junior government servant is a direct recruitee, on the plea that the junior promotee is drawing more salary based on the benefit of ACP upgradation shall be admissible.”
(emphasis supplied)

8. Rule 9 quoted above only says that the senior Government servants, who are direct recruits, are not entitled to get any stepping up in case any anomaly arises regarding the receipt of lesser pay by them. However, the same is not applicable to

the respondents herein who joined the service as Group "D" employees and later got promotion to Group "C" post by selection. If there is any anomaly to the effect that the senior Government servants are receiving lesser pay than their juniors, who entered the service from a different source of recruitment, certainly such senior Government servants are entitled to stepping up of their pay in order to bring them on par with the salary which is being received by their juniors. There is no clause in the scheme which prohibits such stepping up of salary which is a common practice applicable to all Government employees in case there is anomaly in the pay structure of the employees. By the impugned judgment, the High Court has held that the respondents are entitled to get the ACP scales that are applicable to Group "C" post, but the Rules, as such, do not provide for that. The Rules say, that if there are already two upgradations, then the concerned employees are not entitled to the benefit of ACP scales. Nevertheless, if ACP scales are higher, they are certainly entitled to the ACP scales at the starting point. The date of giving such ACP scales is the date of entry into the service and though these respondents are entitled to get ACP scales and get fixation of the ACP scales as applicable to Group "D" employees and in case there are anomalies to the effect that they receive lesser pay than their juniors working in the same cadre/post, such senior Government servants are entitled to step up of their salary to get it on par with the salary which is being received by their juniors. In the result, all the appeals are partly allowed. The appellants shall revise the pay scales of the respondents. In case of any anomaly, if the

employees who, on fixation of ACP scales, are in receipt of lesser salary than their juniors in the same cadre/post, then their salary shall be stepped up accordingly. Revised orders shall be passed within a period of two months of the receipt of the copy of this order by the Government.

9. *However, if upon revision of the pay-scales, any employee is liable to refund any amount, the Government shall not insist on refund of such amount. If any employee is entitled to get any amount by way of pay revision, the said amount shall be made available to him within a period of six months from the date of receipt of the copy of this order by the Government.*

In above judgment same Rule 5(2) and same argument was under consideration and the same is directly applicable in the present case.

15. Be that as it may, it is settled principle of general rule of service jurisprudence that equals cannot be treated unequal, whatever be the source of their recruitment/induction to the same post held by two equals. It is irrelevant that if current position of an employee is held by virtue of his promotion or he is a direct recruitee. Rule of seniority list is that a junior cannot be getting better pay than the seniors and therefore, senior is entitled for stepping up to correct the anomaly. Article 14 of Constitution of India has to prevail over any Rule/Regulation that treats equals as unequals.

16. In view of the above, petitioner is entitled for stepping up of pay at par with his junior Sh. Laxman Dass w.e.f. 01.12.2000

when his junior was extended the benefit of ACP scale. Petition is partly allowed. Respondent No.2 is directed to calculate the arrears and disburse the same to the petitioner within a period of 03 months along with interest @ 9% from the date his junior was given the same benefit.

30.11.2018
vandana

(ARUN MONGA)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No