

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

CWP No. 26284 of 2016

Date of decision : 27.07.2018

Radhe Shyam Sharma

..Petitioner

versus

State of Haryana and ors.

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Aman Chaudhary, Advocate
for the petitioner.

Ms. Nidhi Garg, AAG, Haryana

RITU BAHRI, J.

In the present civil writ petition, the petitioner has sought quashing of order dated 29.02.2016 (Annexure P-9) whereby the pay of the petitioner has been wrongly fixed w.e.f 01.01.2006.

Petitioner was appointed as Industrial Promotion Officer on 07.02.1986 and the post held by the petitioner was re-designated as Assistant Director (IP), vide order dated 19.06.2008. But since junior to the petitioner was promoted to the post of Deputy Director, he filed CWP No. 22203-2014, which was dismissed on 27.01.2017 and respondents framed Haryana Civil Services (Revised Pay) Rules 2008, which came into force w.e.f 01.01.2006. Accordingly, the pay of the petitioner was revised on 18.01.2009 in the pay scale of Rs.7450-11500 with grade pay of Rs.4600/-. Thereafter, petitioner submitted representation for grant of 1st ACP w.e.f 01.01.2006 and 2nd ACP. Vide order dated 18.08.2009, petitioner was

granted 2nd ACP in the grade pay of Rs.5400/- w.e.f 01.03.2006 but was not granted 1st ACP. The petitioner again represented for grant of 1st ACP, which was granted to him w.e.f 01.01.2006 in the grade pay of Rs.4800/- vide order dated 13.07.2012 . Thereafter, petitioner gave representation dated 25.07.2014 for grant of 3rd ACP as per Government letter dated 04.03.2014, vide which the Government have decided to modify the General ACP scheme from then then of 10-20 and 30 years of service of grant of 1st, 2nd and 3rd ACP respectively has been changed to 8, 16 and 24 years which is applicable w.e.f 04.03.2014 but instead of granting 3rd ACP, respondent No. 3 vide order dated 29.02.2016 re-fixed the pay of the petitioner right from 01.01.2006 in the lower scale and recovery was ordered to be effected from the petitioner w.e.f 01.01.2006. The petitioner submitted representation to respondent No. 3 on 30.03.2016 but no action has been taken till date.

On notice, a written statement has been filed on 22.02.2018 admitting the fact stated in the petition filed by the petitioner. However, it has been stated that when the request of the petitioner for 3rd ACP was examined, it was found that the petitioner was working as Industrial Promotion Officer on 31.12.2005 in the pay scale of 6500-9900 and during Resctructuring/Rightsizing of department issued vide Government letter dated 19.06.2008 the post of IPO was re-designated as Assistant Director (IP) in the scale of Rs.6500-10500 and these orders were effective from the date of issuance. Accordingly the case of the petitioner was sent to Government for rectification and the Government vide memo dated 15.10.2015 (R-1) observed that facts/circumstance of the post are in contradiction with the provisions of HCS (Revised Pay) Rules, 2008 i.e pre

revised scale of the post of IP as mentioned under Sr. No. 12 (iv) of Part-B, Section 1 of the Rules. Therefore, the incumbents may be considered for their pay fixation w.e.f 01.01.2006 in the revised pay structure corresponding to pay scale of the post as on 31.12.2005 i.e 6500-9900 . Accordingly, vide impugned order dated 29.02.2016, the pay of the petitioner was re-fixed. The petitioner stood retired on 31.03.2017, after attaining the age of superannuation.

Thereafter, petitioner filed replication to the written statement filed by respondent Nos. 1 to 4 to deny that there was any stipulation in the order dated 19.06.2008 whereby restructuring and resizing of Industries and Commerce Department was carried out, to the effect that orders of restructuring were effective from the date of issue. Reference has been further made to Section II of Part B of the Revised Pay Rules, 2008 which specifies certain categories of staff along with their revised pay scales. The post of IPO held by the petitioner before restructuring and the upgraded post of Asstt. Director (IP) was specifically mentioned at Sr. 12 (iv) of Section II of Part B of wherein the existing as well as revised/modified pay scale was mentioned along with grade pay of Rs.4600/-.In the said section, it has been mentioned that the initial fixation as on 01.01.2006 will be done in accordance with Note 2 below Rule 7 of this notification, which reads as under:-

Note 2:- Where a post has been upgraded as indicated in Part B of the First Schedule to these Rules, the fixation of the pay in the applicable pay band will be done in the manner prescribed in accordance with clause (A) (i) and (ii) of Rule 7 by multiplying the existing pay as on 01.01.2006

by a factor of 1.86 and rounding the resultant figure to the next multiple of 10. The Grade pay corresponding to the upgrade scale as indicated in column No. 6 of the Part B of the First Schedule will be payable in addition. Illustration 4 in this regard is Explanatory Memorandum to these Rules.”

Reference has been made to RTI information dated 13.01.2017 (P-16) whereby the petitioner has been informed that similarly situated employees namely Chhater Singh, Ram Parkash, Hoshier Singh and Dalip Singh who were all working on the post of IPO/Asstt. Director have been retired and were granted pay scale of Rs.4600/-, first up-gradation as Rs.4800/-, second up gradation Rs.5400 and have been granted the retiral benefits also as per the aforesaid fixation. In their case, neither recovery nor re-fixation has been done.

Reference has further been made to instructions dated 23.02.2016 issued by State of Haryana wherein the recovery of excess amount could not be made in cases where employees were due to retire within one year, of the order of recovery and when the excess payment has been made for the period of five years before the order of recovery is issued. As on date of issue, the petitioner had 13 months to retire and recovery of excess payment was sought to be for a period in excess of five years as it was w.e.f 01.01.2006.

Reference at this stage can further be made to Rule 15 of ACP Rules, which reads as under:-

15. Scale of pay of posts:— *The pay scale for the purpose of these rules for the Government servant shall be as under:—*

(a) The revised ACP pay structure in case of cadre specific

ACP schemes shall be as mentioned in Part I of Schedule I :

(b) The revised pay structure in case of General ACP scheme shall be as specified in Part II of Schedule I :

Provided that in case of the posts for which the functional pay scales have been revised before pay revision through the Haryana Civil Services (Revised Pay) Rules, 2008, the so revised scales shall be considered as the functional scales of those posts for the purpose of this rule.

In view of the above Rule, the petitioner was rightly granted the grade pay of Rs.4800 and 5400 as first and second financial up-gradation and was accordingly entitled to grade of Rs.6000/- as third financial upgradation. The above said Rule further fortifies the fact that the functional pay scale for grant of up-gradation has rightly been taken as 74500-11500 which was also taken for fixing the grade pay of Rs.4600/- mentioned in part B of Section II of the said revised pay Rules, 2008.

Keeping in view Rule 15 (b) of ACP Rules, 2008, the information received by the petitioner under RTI Act to the effect that neither recovery nor re-fixation has been done in the case of similarly situated employees namely Chhater Singh, Ram Parkash, Hoshiar Singh and Dalip Singh who were all working on the post of IPO/Asstt. Director and the instructions dated 23.02.2016 issued by State of Haryana wherein the recovery of excess amount could not be made in cases where employees were due to retire within one year, of the order of recovery and when the excess payment has been made for the period of five years before the order of recovery is issued, the present petition is allowed and order dated

29.02.2016 (Annexure P-9) is set aside. The respondents shall fix the pay of the petitioner after granting the 3rd ACP on completion of 24 years of service w.e.f 04.03.2014 and thereafter, release the pension of the petitioner. The petitioner is also entitled to 6% interest on the delayed payment. A cost of Rs.25,000 is also imposed upon the State, which shall be given to the petitioner for passing impugned order, which was against Rule 15 (b) of ACP Rules, 2008.

27.07.2018
G Arora

(RITU BAHRI)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>No</i>