

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.826 of 2016
Date of Decision: 20.09.2018

RajmalPetitioner
Vs.
State of Haryana and othersRespondents

CWP No.3978 of 2016
Date of Decision: 20.09.2018

Bhim SinghPetitioner
Vs.
State of Haryana and othersRespondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr.C.P.Tiwana, Advocate, for the petitioner(s).

Mr.Karam Pal Singh, AAG, Haryana.

RITU BAHRI, J. (ORAL)

This common judgment shall dispose of above mentioned two writ petitions which are arising out of the same set of facts. However, the facts are being taken from CWP No.826 of 2016.

Petitioner is seeking quashing of the letter dated 01.04.2015 (Annexure P-4) whereby, grant of third ACP has been declined and ordered for recovery of the earlier ACP benefits granted to him w.e.f. 01.09.2000 and further quashing of show cause notice dated 15.10.2015 (Annexure P-5) for re-fixation of the pay of the petitioner w.e.f. 01.09.2000 as well as recovery of excess payment w.e.f. 21.08.2009 amounting to Rs.119364/- on account of withdrawal of benefit of 1st ACP granted to him.

of Rs.750-12-870-EB-14-940 by the Civil Surgeon Jind and posted at Community Health Centre, Kalayat, vide appointment Order No.Esstt-2-90/1332 dated 29.08.1990 and resumed his duties w.e.f. 31.08.1990. He was regularized w.e.f. 31.08.1990 vide order dated 12.08.1992.

The petitioner in other writ petition was initially appointed as Class-IV in the pay scale of Rs.750-12-870-EB-14-940 by the Civil Surgeon Kaithal vide appointment Order No.Esstt-II-90/39 dated 06.12.1990 and resumed his duties w.e.f. 13.12.1990. He was regularized w.e.f. 13.12.1990 vide order dated 12.08.1992.

The pay scale of Rs.750-940 of Class-IV was revised to Rs.2550-3200 w.e.f. 01.01.1996 in view implementation of the recommendation of the pay commission. Thereafter, the Haryana Government framed Haryana Civil Services (ACP) Rules, 1998 whereby provision was made for grant of Assured Career Progression in lieu of promotion to persons appointed to civil services and posts of group A, B, C and D in connection with the affairs of the Government of Haryana and those who are under the administrative control of the Government of Haryana. Since the petitioner was not granted any promotion, therefore, in view of the ACP Rules, 1998, he was granted first ACP in the pay scale of Rs.2650-65-3300-EB-70-4000 from the existing pay scale of Rs.2550-55-2660-60-3200 w.e.f. 01.09.2000 vide Office Order No.E-II-2k/634 dated 29.11.2000 (Annexure P-1) issued by Civil Surgeon Kaithal as on formation of Kaithal as new District, Community Health Centre, Kalayat was brought under District Kaithal from District Jind. However, the pay scales of employees in the State of Haryana were further revised w.e.f. 01.01.2006 and the Government of Haryana,

Rules called the Haryana Civil Services (Assured Career Progression) Rules, 2008. According to these Rules an employee became entitled to 2nd Financial upgradation after completion of 20 years of service. The petitioner was promoted as Dental Mechanic by the respondent No.2 vide order dated 21.08.2009. However, due to his family circumstances, petitioner submitted representation expressing his inability to accept the promotion and promotion order was withdrawn vide order dated 17.12.2009 (Annexure P-2).

Petitioner vide order dated 17.03.2011 (Annexure P-3) was granted second ACP w.e.f. 01.09.2010 in the pay band of Rs.4440-7440 + Grade pay of Rs.1800/- in place of Grade Pay of Rs.1650 vide order dated 17.03.2011 (Annexure P-3). When the matter was taken up for grant of 3rd ACP scale, it was observed that petitioner had forgone his promotion and his earlier ACP was withdrawn under Rule 14 of Haryana Civil Services (ACP) Rules, 2008 and thereafter, notice was given to the petitioner vide order dated 01.04.2015 (P-4) and his pay was refixed.

On notice, reply has been filed on behalf of Dr.Balwinder Garg, Senior Medical Officer, Community Health Centre, Kalayat, District Kaithal, Haryana, respondent No.4 stating therein that vide order dated 03.10.2016 (Annexure R-1) it has been intimated that the recovery of Rs.119364/- excess amount given to the petitioner on account of taking back the benefit of ACP to due foregoing promotion shall not be recovered from the petitioner in view of stay orders in the present writ petitions. It has been further referred that Rule 14 of ACP Rules, 2008 which is reproduced as follows:

“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 aforesaid rules, if a Government employee chooses to forego his promotion he shall be ceased to be entitled to draw his pay in the ACP pay structure last granted. In the present case petitioner was promoted as Dental Mechanic by the respondent No.2 vide order dated 21.08.2009. However, due to his family circumstances, petitioner submitted representation expressing his inability to accept the promotion and this promotion order was withdrawn vide order dated 17.12.2009 (Annexure P-2). Hence, after the order of promotion was withdrawn as per Rule 14, the petitioner ceases to be entitled to draw his pay in the ACP pay structure last granted to him. After withdrawing the benefit subsequent ACP, the pay of the petitioner has been refixed at the stage of Rs.8660+1300-9960 as on 01.07.2015.

Learned counsel for the appellant has argued that no personal hearing was given to the petitioner while refixing his pay. He has referred to the judgment of Supreme Court in **Rakesh Kumar Vs. State of Haryana and others passed in Civil Appeal No.467 of 2016** whereby a direction has been issued to the respondent to restore the scales which the appellant

order dated 29th February, 2008.

In the present case, the benefit of Ist and 2nd ACP was granted by the office of respondent No.3 vide orders dated 29.11.2000 (Annexure P-1) and 17.03.2011 (Annexure P-3) respectively. Petitioner was promoted as Dental Mechanic by the respondent No.2 vide orders dated 21.08.2009 and posted at Primary Health Centre, Sanwar (Bhiwani). Admittedly, the petitioner submitted the written request dated 18.11.2009 that he did not want promotion from the post of Class-IV to the post of Dental Mechanic. The respondent No.2 after considering the request of petitioner cancelled the promotion orders to the post of Dental Mechanic and he was allowed to work on the post of Class-IV vide office orders dated 17.12.2009 (Annexure P-2). In the written statement, it has been made clear that no recovery has been made from the petitioner but pay has been re-fixed in view of the Rule 14 of ACP Rules. In the present case, petitioner had forgone promotion to the post of Dental Mechanic as such, his re-fixation of pay has been rightly done and in view of the Rule 14 of the ACP pay structure, the impugned order passed by the authorities is not required to be interfered.

Hence, both the writ petitions are dismissed being devoid of merits.

(RITU BAHRI)
JUDGE

20.09.2018
anil

Whether speaking/reasoned Yes/No

Whether reportable Yes/No