

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

CWP No. 8584 of 2017

Date of Decision:-09.10.2018

Harkirat Singh and another

...Petitioners

Versus

State of Haryana and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Paramjit Singh Jammu, Advocate
for the petitioners.

Mr. Siddharth Sanwaria, DAG Haryana.

RITU BAHRI J.(Oral)

The petitioner is seeking quashing of letter dated 21.11.2013 (Annexure P-8) whereby 2nd ACP granted to petitioner No.1 was withdrawn w.e.f. 07.10.2013 and order dated 10.8.2016 (Annexure P-9) whereby 1st ACP granted to petitioner No.2 was withdrawn w.e.f. 27.11.2013 as well as order dated 03.1.2017 (Annexure P-11) whereby application for reconsideration moved by the petitioners has been rejected.

The facts not in dispute between the parties are that petitioner No.1 appointed as Clerk on 05.9.1984 in the office of Deputy Commissioner, Mahendergarh and after completing 10 years satisfactory service, he got 1st ACP Scale of 1200-2040 on 01.01.1994 and thereafter after completing 10 years of service, the office of the Commissioner, Hisar

has granted 2nd ACP w.e.f. 10.10.2004 vide order dated 18.7.2008. Petitioner No.2 was posted as Peon on 22.5.1983. He was promoted to the post of Clerk on 17.6.2002 and after completing 10 years satisfactory service, petitioner No.2 was granted 1st ACP vide order dated 12.11.2012 (Annexure P-2). Respondent No.3-Deputy Commissioner, Sirsa has circulated a letter dated 07.10.2010 that the posts of Assistant Wasal Baki Navees (AWBN) were lying vacant. Petitioner No.1 made an application for the above said post and selected vide letter dated 05.8.2011. Pursuant to letter dated 09.10.2012, petitioner No.2 applied and was appointed vide order dated 19.12.2012 (Annexure P-5). Copy of appointment letter of petitioner No.1 is Annexure P-4 and of petitioner No.2 is Annexure P-5. Subsequently, they were reverted vide Annexures P-6 and P-7 as they withdrew their option to work on the post of AWBN.

The short ground for consideration is whether 2nd ACP of petitioner No.1 and 1st ACP of petitioner No.2 can be withdrawn if they had withdrew their option to work on the post of AWBN.

This question has come up for consideration before this Court in CWP No.16673 of 2010, case titled 'Ranbir Singh vs. State of Haryana and others', decided on 15.12.2011, in which it has been held that once benefit of ACP after completing 10 years and 20 years regular satisfactory service has been granted on a post which subsequently option of promotion has not been exercised by the employee, this benefit cannot be withdrawn from him. The judgment passed in the case of Ranbir Singh (supra) has attained finality as no LPA against that judgment has yet been filed.

In the case of **Vijay Singh vs. State of Haryana and others 2011(4) SLR 64** this Court was examining the case under Rule 11 of the Haryana Civil Service (Assured Career Progression) Rules, 1998. The petitioner in that case was appointed as Assistant Draftsman in the office of Executive Engineer, Fatehabad on 10.11.1981 with a qualification of I.T.I. And was allowed second ACP on completion of 20 years of service as per ACP Rules. The writ petition was allowed and as per Haryana Government instructions dated 08.2.1994 the petitioner was granted higher standard pay scale after completing 10 years of service w.e.f. 01.1.1994 and thereafter as per the ACP Rules of 1998 he was granted second ACP after 20 years of service in November 2001. Thereafter, the petitioner became due for promotion to the post of Head Draftsman w.e.f. 25.09.2007 and on account of his family circumstances he was not keen to join on the promoted post as it could lead to transfer him to another place and he made a representation to forego promotion for one year. When his request was accepted, his second ACP was withdrawn as he foregone his promotion.

Learned Single Judge has allowed the writ petition while referring to the Division Bench of this Court in the case of **CWP No.15839 of 2007**, titled as '**Nirmal Kanta and another vs. State of Haryana and others**'; **Shashi Kiran and others vs. State of Punjab and others 2003(1) SCT 340** and further observing that Review filed against Nirmal Kanta's case (supra) was dismissed on 23.2.2010 and SLP filed against this order was also dismissed on 12.7.2010 by the Apex Court. In CWP No.6650 of 2010 titled '**Kailash Devi and others vs. State of Haryana and others**' a

bunch of petitions were allowed in terms of the judgment passed in the case of Nirmal Kant and Shashi Kiran (supra). In this case, reference has further been made to a judgment passed by Division Bench in CWP No.5786 of 2007, case titled 'Anita Sharma vs. State of Haryana', allowed on 11.8.2008 has followed the judgment in the case of Vijay Singh vs. State of Haryana and others, in CWP No.9755 of 2009, decided on 25.11.2010.

The ratio of the above said judgment is directly applicable in the facts of the present case. The petitioner after being promoted as Clerk on 05.09.1994 has been initially granted 1st ACP after completing of 10 years of service w.e.f. 01.01.1994 and thereafter second ACP was granted on 10.10.2004. After the second ACP he was appointed to the post of AWBN and thereafter he was reverted. Petitioners were appointed as AWBN vide appointment letter (Annexure P-4) of petitioner No.1 and (Annexure P-5) of petitioner No.2. Subsequently they were reverted vide order dated 04.10.2013 (Annexure P-6) and dated 21.11.2013 (Annexure P-7). Applying the ratio of the above said judgments after reversion the second ACP granted to them could not be withdrawn.

This petition is being allowed accordingly and letter dated 10.8.2016 (Annexure P-9) and dated 03.1.2017 (Annexure P-11) are set aside with all consequential benefits.

October 09, 2018
Vijay Asija

(RITU BAHRI)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes / No
Yes / No