

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

212

CWP No.10438 of 2016
Date of decision: 27.09.2019

Naresh Kumar Kansra

..... Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. Anil Kumar Sharma, Advocate for the petitioner.

Ms. Safia Gupta, AAG, Haryana.

HARSIMRAN SINGH SETHI, J.(ORAL)

In the present writ petition, the grievance which is raised by the petitioner is that the petitioner has not been given the benefit of 1st and 2nd ACP after completing 10 and 20 years of service without any valid justification, though, the petitioner was fully eligible for grant of the same.

The facts in the writ petition are that the petitioner joined the the respondent-Department as Junior Engineer initially on ad hoc basis on 29.09.1983 and his services were regularized w.e.f. 31.12.1990. Petitioner remained working on the said post till 30.11.2013, when he retired from service on attaining the age of supernannuation. Before the petitioner retired, on 08.11.2013, the petitioner suffered a paralysis attack and became bed ridden and the present writ petition has also been filed through his wife. The grievance of the petitioner is that one day before his retirement, he was issued a charge-sheet and after issuance of the charge-sheet, though the petitioner retired but all the pensionary benefits of the petitioner were not

paid and the benefits, which were paid to the petitioner, were delayed by the respondents. Counsel for the petitioner states that during the pendency of the writ petition, the petitioner has already been granted the benefit of 1st ACP after 10 years of service and 2nd ACP after 20 years of service vide order dated 10.10.2016 but the petitioner has not been given the benefit of interest on the arrears, which have been calculated by the respondents while granting the said benefit of 1st ACP w.e.f. 01.01.2001 and 2nd ACP w.e.f. 01.01.2009. Counsel for the petitioner claims that as benefits have been released to the petitioner only in the year 2016 whereas, the same should have been released by the respondents in the year 2001 and 2009 respectively, the petitioner is entitled for interest on the arrears, which have been calculated and released by the respondents upon the grant of the benefit of 1st ACP w.e.f. 01.01.2001 and the 2nd ACP w.e.f. 01.01.2009.

Learned counsel for the petitioner further argues that upon the grant of the benefit of 1st ACP w.e.f. 01.01.2001 and the 2nd ACP w.e.f. 01.01.2009, the pensionary benefits of the petitioner have been revised by the respondents and even on the arrears on the revised pensionary benefits, the petitioner will be entitled for interest.

Upon, notice of motion, the respondents have filed the reply.

In the reply, the respondents with regard to the claim of the petitioner for the grant of 1st and 2nd ACP have stated that the ACR record of the petitioner was not available and further, there were some proceedings pending against the petitioner and the petitioner remained under suspension from 27.06.1994 till 17.02.1995 and thereafter again on 18.04.2002 till 20.12.2002, therefore, the benefit of 1st and 2nd ACP could not be extended to the petitioner but upon re-consideration of his case, the benefit has been

granted to the petitioner releasing 1st ACP w.e.f. 01.01.2001 and the 2nd ACP w.e.f. 01.01.2009 vide order dated 10.10.2016 and the revised pensionary benefits have also been paid to the petitioner on 22.03.2017/April, 2017. The relevant paragraph of the reply of the respondents is as under:-

“That as far as claim of 1st and 2nd ACP pay scale of the petition is concerned, it is submitted that due to non-availability of his ACRs record and pendency of disciplinary proceedings qua his suspension period from 27.06.1994 to 17.02.1995 and 18.04.2002 to 20.12.2002, these could not be granted to him at that time. On finalization of disciplinary proceedings on 04.09.2014 and submissions of ACRs including integrity certificates in lieu of ACRs by the Executive Engineer (Panchayati Raj) Ambala on 17.08.2016, his case of ACP was considered and granted vide order dated 10.10.2016 (Annexure-RI). It is further submitted that the payment of revised pensionary benefits i.e. DCRG and commutation of the pension (sic) has been paid by Accountant General, Haryana on 22.03.2017. The payment of revised leave encashment has been made on 25.04.2017 by Executive Engineer, Ambala. The bill of arrear of ACP scale has already been sent to treasury office for payment which will be made to the petitioner shortly. The payment of arrear of subsistence allowance for the period 18.04.2002 to 20.12.2002 amounting to Rs.42,438/- has also been made to the petitioner.

Thus, the claims of the petitioner have been settled at the administrative level rendering the petition infructuous to this extent.”

Learned counsel for the petitioner does not dispute the receipt of the arrears, which have been calculated in pursuance of the grant of the benefit of 1st and 2nd ACP to the petitioner. The only grievance of the petitioner remains is that as the benefit of 1st ACP and 2nd ACP should have

been extended to the petitioner in the year 2001 and 2009 respectively and the delay was only due to an act of the respondents, for which the petitioner cannot be caused prejudice and therefore, the petitioner should be compensated by the grant of interest on these delayed payments.

Learned counsel for the respondents objects to the prayer being made by learned counsel for the petitioner for the grant of interest on the ground that the record of the petitioner at the relevant time was not available and the period of suspension, as noticed above, was yet to be regularized, therefore, after regularizing the period of suspension, the benefit has already been extended to the petitioner from the due dates along with arrears and therefore, as delay was not intentional, the petitioner is not entitled for the grant of interest.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

It is admitted by the respondents that the petitioner was entitled for the grant of 1st ACP w.e.f. 01.01.2001 and the 2nd ACP w.e.f. 01.01.2009. No ground has been mentioned, on account of which the benefit of 1st and 2nd ACP could not be extended to the petitioner except that the ACR of the petitioner was unavailable and further the suspension period of the petitioner was yet to be regularized. The ACRs are in the possession of the departments and the regularization of the suspension period was also to be done by the respondents. In case, the respondents were at fault, due to which the benefit of the petitioner were withheld, the petitioner needs to be compensated as the benefit which the petitioner would have got ordinarily in the year 2001 i.e. 1st ACP and in 2009 i.e. 2nd ACP, were only granted to him after his retirement in the year 2017. The petitioner could not reap the

fruit of success while in service and the said act is only attributable to the respondents and no fault can be found with the petitioner in this regard. Once, the petitioner is not at fault, for not extending the benefit of 1st and 2nd ACP on the due dates, he needs to be compensated as the prejudice, which has been caused to the petitioner for non-grant of the said benefit, the responsibility is entirely on the respondents. The petitioner can be compensated by the grant of interest on the delayed payments as the benefit has already been extended by the respondents themselves, though after delay in the year 2017. The petitioner will be entitled for interest @ 9% per annum from the dates the benefit of 1st and 2nd ACP became due till it has been released to the petitioner. The petitioner will also be entitled for interest @ 9% on the revised pensionary benefits, which have been revised on account of grant of 1st and 2nd ACP.

Let the respondents calculate the interest for which the petitioner became entitled under this order within a period of 2 months from the receipt of copy of this order and the amount so calculated by the respondents will be released to the petitioner within a period of one month thereafter.

The writ petition is allowed in above terms.

(HARSIMRAN SINGH SETHI)
JUDGE

27.09.2019
D.Bansal

Whether speaking/reasoned	Yes
Whether Reportable	Yes