

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 11715 of 2015
Date of Decision : 04.02.2019

Pakhar Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: *HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI*

Present: Mr. V.K. Shukla, Advocate for the petitioner.

Mr. Mehardeep Singh, Additional Advocate General, Punjab.

Harsimran Singh Sethi, J.(Oral)

In the present writ petition, the grievance which has been raised by the petitioner is that the respondents vide impugned order dated 18.07.2014 (Annexure P-7) rejected his request for opting the Assured Career Progression Scheme (ACP) after 4, 9 and 14 years of service.

As per the pleaded facts in the writ petition, the petitioner joined as a Clerk on 11.01.1974 in the Department of Education, Punjab. He kept on working as such when he was promoted as a Senior Assistant on 15.04.2005 and ultimately retired as such on 31.12.2006.

Petitioner filed a writ petition bearing CWP No. 5231 of 2009 seeking promotion as a Senior Assistant with retrospective effect. This Court disposed of the said writ petition on 10.01.2011 directing the respondents to decide the legal notice served by the petitioner within a period of three months by passing a speaking order. In pursuance to the

direction given by this Court, the respondents passed an order on 15.11.2011(Annexure P-1), whereby the petitioner was granted promotion as a Senior Assistant w.e.f. 10.10.2001 i.e. the date from which the personnel junior to the petitioner were granted the same.

Before proceeding further, it is noticed here that Government of Punjab vide Notification dated 03.11.2006 (Annexure P-3) invited options from the employees as to whether they want to continue under the existing ACP Scheme, according to which, the personnel were entitled for the benefit after rendering 8, 16, 24, 32 years of service. The new option was given to them for opting the ACP Scheme after rendering 4, 9 and 14 years of service. The last date for submitting option was 02.05.2010.

After the order dated 15.11.2011 (Annexure P-1) passed in favour of the petitioner granting him promotion as a Senior Assistant w.e.f. 10.10.2001, the petitioner made a representation on 17.01.2012 (Annexure P-4) for changing the option to the ACP Scheme with 4, 9 and 14 years of service. The said request of the petitioner was declined by the respondents vide order dated 18.07.2014 (Annexure P-7) on the ground that the last date for the option was 02.05.2010, which had already expired and, therefore, no further chance to submit the option can be given to the petitioner. This order dated 18.07.2014 (Annexure P-7) is under challenge in the present writ petition.

Upon notice of motion, the respondents have filed the reply and in the reply, the same objection has been taken that though the ACP Scheme on completion of 4, 9, 14 years of service in a Cadre was introduced on 03.11.2006 but as the same was optional, employee was required to submit the option within the time frame granted for the same and as the petitioner

did not submit the option by 02.05.2010 i.e. the last date for submission of the option, no further time can be extended in case of the petitioner and, therefore, the prayer of the petitioner was rightly rejected.

I have heard learned counsel for the parties and have gone through the record.

In the present case, it is an admitted fact that the petitioner did not opt for the ACP Scheme on completion of 4, 9 and 14 years of service in a Cadre as notified on 03.11.2006 by the last date i.e. 02.05.2010. It is also a matter of record that by the said date, the change of the option would not have benefited the petitioner as his date of promotion as a Senior Assistant was 15.04.2005 and the petitioner was to retire within a period of one and half years from that and, therefore, the petitioner could not have been materially effected by opting for the ACP Scheme after rendering 4, 9 and 14 years of service in the cadre. After the date of promotion of the petitioner as a Senior Assistant was changed by the respondents themselves after his retirement and granted him the benefit of promotion as a Senior Assistant retrospectively w.e.f. 10.10.2001, the petitioner became entitled for the submission of the revised option for the reason that now the petitioner would have been benefited for opting for the new ACP Scheme after rendering 4, 9 and 14 years of service in the cadre. The change in option was necessitated on account of grant of promotion by the respondents themselves with retrospective effect. The said promotion was granted to the petitioner on 15.11.2011 and, therefore, the respondents were under obligation to see that even though the petitioner is granted the retrospective promotion but still no prejudice is caused to him on account of non-grant of the same at the appropriate time when he was eligible i.e. when

his juniors were promoted on 10.10.2001.

Keeping in view the facts and circumstances of the case mentioned above, as the revised option was necessitated of the action of the respondents by granting him retrospective promotion as Senior Assistant from 10.10.2001 vide order dated 15.11.2011, which was after the last date for exercising option for the new ACP Scheme, the petitioner is entitled for the exercise of fresh option to be given in this regard.

The writ petition is allowed. Order dated 18.07.2014 (Annexure P-7) is set-aside. The respondents are directed to consider the option of the petitioner for the ACP Scheme after rendering 4, 9 and 14 years of service in the cadre as requested vide letter dated 17.01.2012 (Annexure P-4) and pass appropriate orders in view of the order within two months from the date of receipt of copy of this order. In case after the decision taken in this regard, the petitioner is found entitled for any benefit, the same should also be extended to him. However, the petitioner will only be entitled for arrears for three years and two months from the date of filing of the present writ petition.

February 04, 2019
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned? *Yes*
Whether reportable? *Yes*