

**Sr. No.214  
IN THE HIGH COURT OF PUNJAB & HARYANA  
AT CHANDIGARH**

**CWP No.17683 of 2014 (O&M)**

**Date of Decision: 14.05.2019**

Bajinder Singh Malik since deceased through his legal  
representatives and another

... Petitioners

Versus

State of Punjab and others

... Respondents

**CWP No.9885 of 2016 (O&M)**

Abhey Kumar Mehta and others

... Petitioners

Versus

State of Punjab and others

... Respondents

**CORAM:- HON'BLE MR. JUSTICE ARUN MONGA**

Present:- Ms. Puja Chopra, Advocate,  
for the petitioners.

Mr. R.S.Khosla, Senior Advocate with  
Ms. Ishrat Phulka, Advocate,  
for the petitioner(s) in CWP No.9885 of 2016.

Ms. Ambika Sood, DAG, Punjab.

Mr. G.S.Bal, Senior Advocate with  
Mr. M.K.Madohar, Advocate,  
for respondent No.3-PFC.

**ARUN MONGA, J.(ORAL)**

Contention herein is regarding admissibility of revised  
pay scales vis-a-vis grant of ACP benefits to the petitioners as per  
Proviso 2 to the Rule 5 of Punjab Civil Services (Revised Pay)  
Rules, 2009 dated 27.05.2009. For better appreciation, the relevant  
of the same is extracted hereinbelow:-

***“Drawl of pay in the revised pay structure:- Save as***

*otherwise provided in these rules, a Government employee shall draw pay in the revised pay structure applicable to the post to which he is appointed:*

*Provided that a Government employee may opt to continue to draw pay in the existing scale, until the date on which he earns his next or any subsequent increment in the existing scale or until he vacates his post or ceases to draw pay in that scale;*

*Provided further that in cases where a Government employee has been placed in higher pay scale between 01.01.2006 and the date of notification of these Rules on account of promotion, upgradation of pay scale under the Assured Career Progression Scheme or otherwise, the Government employee may elect to switch over to the revised pay structure from the date of such promotion, upgradation etc.*

*Provided further that in case where a Government employee has been placed in higher pay scale under the unrevised pay scales between 01.01.2006 and the date of notification of these rules on account of promotion or progression under the Assured Career Progression Scheme, the pay of the government employee on the date of grant of such higher scale shall be regulated in such a manner that his corresponding revised pay in the revised pay structure is not lower than that shown in the Fitment Table, applicable to such pre-revised higher scale.*

XX      XX      XX      XX

2.      Mr. R.S.Khosla, learned Senior counsel appearing in CWP No.9885 of 2016 and Ms. Puja Chopra, learned counsel appearing in CWP No.17683 of 2014, particularly lay emphasis on the Second Proviso of the Rule 5 (***supra***) relevant herein. They

point out that Rule 12 envisages that illustrations No.1 to 5 appended to the Rules, shall be the guiding factors while grant of the ACP vis-a-vis revised pay structure to be given as per the recommendation of 5<sup>th</sup> Punjab Pay Commission. The relevant illustration No.5 as per Rule 12, *ibid* is as below:-

**Illustration No.5**  
*(See rule 3(b) read with rule 7)*  
*Fixation of initial pay in the revised pay structure when higher scale granted on account of ACP(s)*

|    |                                                              |                     |
|----|--------------------------------------------------------------|---------------------|
| 1. | Post held                                                    | Senior Assistant    |
| 2  | Pre-revised Scale:                                           | 5800-9200           |
| 3. | Higher scale granted on account of ACP on or before 1.1.2006 | 6400-10640          |
| 4. | Pay Band applicable                                          | PB-3 Rs.10300-34800 |
| 5. | Existing basic pay as on 01.01.2006:                         | Rs.10300/-          |
| 6  | Fitment Table applicable                                     | Fitment Table-13    |
| 7. | Pay in the Pay Band PB-3 as per Fitment table 13             | 19160               |
| 8. | Grade pay as per Fitment Table-13                            | 4200                |
| 9. | Revised Basic Pay-total of pay in the pay band and grade pay | 23360               |

3. In the return filed by respondents No. 1 and 2, following stand has been taken:

*“The answering respondent cannot comment as to what date the petitioners opted for the fixation of their pay in the revised pay structure in terms of Annexure P-4 and what they were granted in response thereto by the respondent No.3. However, if it is presumed to be correct that the petitioners did opt for the revised pay structure with effect from 01.11.2006 then their pay in terms of 5<sup>th</sup> Punjab Pay Commission/Rules (Annexure P-4) should have been fixed by granting them new Pay Scales in the revised pay structure after granting*

*the benefit of the Assured Career Progression Scheme on 01.11.2006 corresponding to their unrevised pay scales under proviso 2 to the rule 5 of Punjab Civil Services (Revised Pay) Rules 2009 dated 27.05.2009.”*

4. A perusal of the above leaves no manner of doubt that it is a conceded position that the petitioners are entitled to the grant of pay scales in the revised pay structure after granting the benefit of ACP as on 01.11.2006 corresponding to their unrevised pay scales under Proviso 2 to the Rule 5 of the applicable Rules, *ibid*.

5. However, the learned Senior counsel as also learned counsel Ms. Puja Chopra point out that the benefit as well as the pay fixation was rightly conferred on the petitioners vide order dated 10.02.2010 (Annexure P-3) but was wrongly withdrawn vide impugned order dated 07.04.2010 (Annexure P-8) in CWP No.17683 of 2014.

6. The petitioners thereafter represented to the respondents to correct the anomaly. However, the said representation was rejected vide impugned order dated 30.07.2014 Annexure P-23 (CWP No.17683 of 2014) and Annexure P-22 (CWP No.9885 of 2016). Hence, the present writ petitions.

7. Having heard learned Senior counsel and learned counsel for the petitioner(s) and having gone through the pleadings, I am of the view that the admitted position is that the petitioners are entitled to the benefit of illustration No.5 as per Rule 12 *ibid* and any denial of the same vide impugned orders does not stand judicial scrutiny and, therefore, are not tenable.

8. Accordingly, the impugned orders dated 07.04.2010

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(Annexure P-8) and 30.07.2014 (Annexure P-23) in CWP No.17683 of 2014 and Annexure P-22 in CWP No.9885 of 2016 are set aside.

9. Respondents are directed to grant the benefit of ACP to the petitioners w.e.f. 01.11.2006 i.e. prior to the fixation of their revised pay scale as per the recommendations of 5<sup>th</sup> Punjab Pay Commission.

10. Petitioners shall be entitled to the arrears of salary owing to the re-fixation of their pay scales in terms of my observations above along with interest @ 6% per annum with effect from the date of their entitlement until the actual date of disbursement. Let the needful be done within a period of 3 months from the date of receipt of a certified copy of this order.

11. Petitions are allowed in the aforesaid terms.

**(ARUN MONGA)**  
**JUDGE**

**14.05.2019**  
vandana

Whether speaking/reasoned  
Whether Reportable

Yes/No  
Yes/No