

**231 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CWP No.25236 of 2014 (O&M).

Date of Decision: 02.07.2019

Rachhpal Singh and another

.....Petitioners

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present:- Mr. R.K. Arora, Advocate,
for the petitioners.

Ms. Anju Sharma Kaushik, DAG Punjab.

JITENDRA CHAUHAN J.

This petition under Articles 226/227 of the Constitution of India has been filed for quashing of order dated 28.04.2012 (Annexure P-19), order dated 01.11.2012 (Annexure P-22) and letter dated 18.06.2014 (Annexure P-26), vide which the claim of the petitioners for grant of ACP on completion of 4/9/14 years of service under ACP Scheme dated 03.11.2006 was declined.

The petitioners also pray for quashing of Clause 9 of the clarification dated 01.09.1989 (Annexure P-8) vide which an employee who forgoes promotion was declared to be ineligible for proficiency step up.

The petitioners had joined the services of respondent-Department as Auditor on 01.01.1985 and 01.06.1983 respectively.

While working as Auditor they were offered promotion to the posts of

Senior Assistant with effect from 15.05.2001 and 20.12.2001 respectively in the pay scale of Rs.5800-9200, which they had been already drawing while working as Auditor. The petitioners did not join the promotional posts and they were, consequently, ordered to be debarred for promotion for two years.

It is contended that the petitioners had completed their 4/9/14 years of service before the date of their promotions and consequently, they requested the authorities for grant of benefit under the above ACP Scheme. Their cases were returned with reference to the Government Instructions dated 01.09.1989 (Annexure P-8). Respondent No.4 again recommended their claim for grant of ACP benefit vide memo dated 06.09.2010 (Annexure P-4 and P-5).

The petitioners filed CWP No.207 of 2012 before this Court seeking direction to the respondents to consider and grant them benefit of ACP on completion of their 4/9/14 years service. The said writ petition was disposed of on 04.01.2012. The operative part of the judgment dated 04.01.2012 (Annexure P-18) reads as under:-

“The petitioners who are retired Auditors from the Finance Department, Government of Punjab, seek a mandamus to direct the respondents to grant them the benefit of ACP Scheme on completion of 4/9/14 years of service under the Instructions dated 3.11.2006. During the course of hearing learned counsel for the parties are ad-idem that the controversy involved in this case stands settled by the judgments of this Court in CWP No.7642 of 2001

(Shashi Kiran and others versus State of Punjab and others, decided on 28.11.2002 and CWP No.6135 of 2003 (Varinder Pal versus The State of Punjab and others, decided on 5.7.2005.

The present writ petition is accordingly disposed of in terms of the decisions of this Court in Shashi Kiran's and Varinder Pal's cases (supra) and the respondents are directed to consider the claim of the petitioners in the light of Shashi Kiran's and Varinder Pal's cases (supra). In case the petitioners' claim is found covered under the aforesaid decisions, the consequential benefits shall be given. However, if the respondents find that the claim of the petitioners is distinguishable, they shall dispose of it by passing a speaking order within a period of two months from the date of receiving a certified copy of this order.

Ordered accordingly.

Dasti.”

Thereafter, the claim of the petitioners was rejected. The petitioners then filed a representation dated 20.07.2012 (Annexure P-21). Respondent No.1 passed order dated 01.11.2012 (Annexure P-22) on the same lines with same reasons as assigned in the previous order dated 28.04.2012 (Annexure P-19). The petitioner again made representations dated 18.12.2012, 05.06.2013 and 17.06.2013 (Annexure P-23 to P-25 respectively) along with various documents for reviewing the orders dated 28.04.2012 and 01.11.2012 (Annexure P-19 and P-22 respectively) but the same were also declined vide order

dated 18.06.2014 (Annexure P-26).

On the other hand, on behalf of the respondents, it is contended that the judgment referred to in the decision in C.W.P. No.207 of 2012 disposed of on 04.01.2012 are distinguishable. It is further contended that those petitions relate to Education Department and Local Bodies Department and those Departments have not been made party to the writ petitions.

I have heard counsel for both the parties and perused the judgment rendered in C.W.P. No.7642 of 2001-Shashi Kiran & others Vs. State of Punjab & others C.W.P. No.6135 of 2003 titled Varinder Pal Singh Vs. State of Punjab & others and Government Instructions dated 01.09.1989 (Annexure P-8).

In Varinder Pal's case(supra), Hon'ble Division Bench of this Court after relying upon the judgments in Tipan Chand Sharma's and Shashi Kiran 's case, has held as under:-

“Having heard the learned counsel for the parties, we are of the view that the controversy raised in the instant petition is covered by the Division Bench judgment of this Court rendered in CWP No. 6049 of 1997 “Tipan Chand Sharma and another Vs. State of Punjab and others decided on 6.5.1998. This judgment has also been followed by another Division Bench of this Court in Shashi Kiran and others vs. State of Punjab and others 2003 (1) SCT 340. The view taken by this Court is that merely because an employee has fore gone his promotion would not be sufficient to deny him the benefit of proficiency step up after completion of 24/32 years of service. The facts of

present case are also similar as in the impugned order the same reason for declining the benefit of proficiency step on completion of 24/32 years of service has been stated. Therefore, in our view the matter is squarely covered by the ratio of the judgments cited above. It is also pertinent to notice that the learned State Counsel has not been able to successfully dispute the aforementioned conclusion drawn by us.

In view of the above, the writ petition is allowed. The order Annexure P-7 dated 7.11.2002 is quashed and the directions are issued to the respondents to release the increments of proficiency step up after completion of 24/32 years of service to the petitioner under the Assured Careers Progression Scheme with all consequential benefits and also to refund recovered amount of Rs. 21,110/-.

The writ petition stands disposed of.”

Learned counsel for the petitioners also refers to the order dated 08.04.2015 (Annexure P-28), whereby the Nagar Council, Lehragagga had filed Civil Appeal No.5890 of 2008 against the judgment passed in C.W.P. No.6135 of 2003 and the same was dismissed by Hon'ble the Supreme Court on 08.04.2015.

As per **Tipan Chand Sharma's case (supra)**, this Court has taken a view that merely because an employee has foregone his promotion would not be sufficient to deny him the benefit of proficiency step up. Further, the reliance has also been placed upon another decision dated 26.11.2007 (Annexure P-11) of a Division Bench of this Court in C.W.P. No.2817 of 2006, which was also

disposed of in terms of decision rendered in *Shashi Kiran's case and Varinder Pal Singh's case (Supra)*. Against the said decision, the State of Punjab had also preferred an SLP No.10712 of 2008, which was dismissed by Hon'ble the Supreme Court vide order dated 21.07.2008. Accordingly, the decision in C.W.P. No.2817 of 2006 was implemented by the State vide affidavit filed in COCP No.498 of 2008 (Annexure P-12). Another similar C.W.P. No.5120 of 2003 titled Tara Chand & Ors. Vs. State of Punjab was also disposed by a Coordinate Bench of this Court on 09.09.2008 which was implemented by the State as per affidavit filed in COCP No.875 of 2005 (Annexure P-14).

Learned counsel for the petitioners further refers to another decision of this Court dated 26.08.2009 rendered in C.W.P. No.8292 of 2008 in which the Instructions dated 01.09.1989 had also been considered and this Court had allowed the petition on the basis of decision in *Varinder Pal Singh's case (supra)*. The said judgment has also been implemented by the State of Punjab vide order dated 26.10.2009 (Annexure P-27) whereby the benefit of ACP Scheme was allowed despite the employee having foregone his promotion.

Further, in C.W.P. No.19614 of 2009 titled Promila Aggarwal Vs. State of Punjab & Ors, decided on 20.01.2011 (Annexure P-16), the same issue was considered and decided in favour of the petitioner. In C.W.P. No.21287 of 2010 decided on 20.01.2011 (Annexure P-17) titled as "Ram Kumar Kapoor Vs. State of Punjab & others, this Court had considered an identical controversy with

reference to Instructions dated 03.11.2006 and the said petition was also disposed of with direction to the respondents to release the increments of the proficiency step up on completion of 24/32 years of service to the petitioner under ACP Scheme with all consequential benefits.

Still further, the learned counsel for the petitioner refers to another judgment dated 05.08.2016 in C.W.P. No.2938 of 2014 titled Amar Ashok Pathak Vs. State of Punjab wherein, the petitioner joined as Law Officer on 17.03.1977. In the year 1983, he was promoted as Deputy District Attorney and subsequently promoted as District Attorney. Further, he was again promoted to the post of Joint Director in the year 2005 but the petitioner refused the promotion. He was allowed benefit of ACP in spite of refusal of his promotion. After retirement, the Principal Secretary, Department of Home Affairs passed an order dated 21.11.2013, whereby the orders granting him ACP benefit on completion of 04/9/14 years of services, were cancelled and recovery was ordered. A Coordinate Bench of this Court had considered the same question as to whether on account of refusal for promotion, the ACP benefit on completion of 4/9/14 years of service can be withdrawn or not. The said question was answered in the following manner:-

“Similar view was taken by the Division Bench of this Court in CWP No. 6135 of 2003 titled as Varinder Pal Vs. State of Punjab and others decided on 05.07.2005. Therefore, I am of the view that the

ACP granted after completion of 4/9 years of service could not be withdrawn after the retirement of the petitioner stating that it was wrongly granted, merely on the ground that at one stage the petitioner had refused the promotion since this was not stipulated in the policy (Annexure P-4).

It being so, the impugned orders Annexure P-12 to Annexure P-15 are hereby set aside. The respondents are directed to accordingly re-fix the pay of the petitioner and grant the consequential benefit in the matter of pay, pension and any other benefits.

The recovery, so made on the basis of order dated 10.12.2013 (Annexure P-13), shall also be refunded to the petitioner alongwith interest @ 9 % per annum.

The compliance of this order be made within three months from the date of the receipt of this order.

The petition is accordingly, allowed.”

The State of Punjab filed LPA No.373 of 2017 in C.W.P. No.2938 of 2014. During the course of hearing, it was stated before Hon'ble Division Bench that the judgment in C.W.P. No.2938 of 2014 has been implemented rendering the appeal as infructuous.

In view of the above, this Court feels that the matter is squarely covered by the ratio of the judgments cited above.

Consequently, the writ petition is allowed. The impugned order dated 28.04.2012 (Annexure P-19), order dated 01.11.2012 (Annexure P-22) and letter dated 18.06.2014 (Annexure P-26) are quashed and a direction is issued to the respondents to release the

petitioners' benefit of ACP on completion of 4/9/14 years of service under ACP Scheme dated 03.11.2006 from the due dates along with all consequential benefits. The necessary exercise be completed within two months from the date of receipt of certified copy of the judgment.

02.07.2019.

SN

(JITENDRA CHAUHAN)

JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No