

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 2043 of 2017

Date of Decision : 21.02.2019

Smt. Murti Devi and others

...Petitioners

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. S.K. Malik, Advocate for the petitioners.

Harsimran Singh Sethi, J.(Oral)

In the present writ petition, the challenge is to the order dated 04.03.2014 (Annexure P-3), vide which modification to the Assured Career Progression Scheme grade pay were revised. The said revision, which was effected on 04.03.2014, was prospective in nature and was only applicable in respect of the employees, who were in service.

The petitioners in the present writ petition are the employees, who already stood retire from service much prior to the issuance of Notification dated 04.03.2014. Prior to Notification dated 04.03.2014, the benefit of ACP Scheme was given after a period of 10, 20, 30 years of service. The said Scheme was modified on 04.03.2014 and from the date of the Notification, the ACP scales were to be given after rendering 8, 16, 24 years of service. The said Scheme was prospective in nature, which is clear from the Notification dated 04.03.2014. The relevant portion of the Scheme is as under :-

“5. These orders shall be applicable with immediate effect i.e. with effect from issuance of these orders. In such cases

where ACP has already been granted, the existing ACP Grade Pay shall be replaced with modified ACP Grade pay without the benefit of increment. Other terms and conditions for grant of ACP Grade Pay and fixation of pay therein shall remain unchanged.”

The petitioners are challenging the above reproduced Clause 5 of the Notification dated 04.03.2014 to contend that once the ACP Rules came into being in the year 1998, the amendment done vide Notification dated 04.03.2014 should also relate back to the same date and should not be made prospective.

The said Clause 5 was challenged before this Court in CWP No. 17496 of 2014 and other connected cases, which was decided by the Co-ordinate Bench of this Court on 18.03.2017. The Co-ordinate Bench keeping in view the various provisions of the Rules held that the employees who have already retired prior to 04.03.2014 are not entitled for the grant of benefit under the Instructions dated 04.03.2014. The relevant paragraphs of judgment passed in CWP No. 17496 of 2014 are as under :-

“8) Crux of the matter is whether the benefit of order dated 4.3.2014 arising out of ACP Rules, 2008 could be extended to those who have retired prior to 4.3.2014 and to those who are in service as on 4.3.2014 or not. The order dated 4.3.2014 vide Annexure P-3 while invoking under Rule 26 and 28 of the Haryana Civil Services (Assured Career Progression) Rules, 2008 dated 30.12.2008 is not applicable to such of those retired employees who have retired prior to 4.3.2014 for the reasons that having regard to the applicability of Clause Rule 2 of the Haryana Civil Services (Assured Career Progression) Rules, 2008 cited supra is concerned is not applicable to the retired employees. Therefore, whatever the rules made under Haryana Civil Service (Assured Career Progression) Rules,

2008 read other connected cases with the order dated 4.3.2014 is not applicable to those who have retired from service. Accordingly, insofar as petitioners who have retired from service prior to 4.3.2014, the present petition stands dismissed.

*9.) Learned counsel for the petitioners those who have retired from service relied on decision of this Court passed in LPA No.352 of 2014 (**State of Punjab and others Vs. A.P. Sharma and others**) has considered the effect of retro active. Therefore, in terms of the said decision even for the retired employees are entitled for benefit of ACP from retrospective date. Perusal of the facts of the case in LPA read with the present matter, it is entirely different. There the question is relating to pension whereas in the present case relates to ACP when the ACP Rules, 2008 is very specific to the extent of application of ACP Rules, 2008 those who are in service and not for the retired employees. Therefore, the cited decision by the petitioners counsel is distinguishable. The same is not applicable to the retired persons like petitioners in these bunch of petitions.”*

Once the validity of the Notification and Clause 5 reproduced above, has already been upheld by this Court and the writ petition filed by the similarly situated persons have already been dismissed, there is no ground to entertain the present writ petition in respect of the same prayer, which already stands rejected.

The present writ petition is dismissed.

February 21, 2019
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned? Yes
Whether reportable? Yes