

CWP-752-2015 (O&M)

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP-752-2015 (O&M)

Date of Decision: February 27, 2019

Suraj Pal Yadav

... Petitioner

vs.

State of Haryana and another

.. Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Deepak Sonak, Advocate, for the petitioner.

Mr. Sunil Kumar Vashisth, Deputy Advocate General, Haryana.

Mr. Hitesh Pandit, Advocate, for respondent No.2-HUDA.

ARUN MONGA, J

The present petition has been filed for issuance of a writ in the nature of *certiorari* to quash the impugned order dated 25.04.2014 (Annexure P5), whereby, the claim of the petitioner for grant of benefit of 1st and 2nd ACP scale has been rejected by respondent No.2-HUDA.

2. Succinctly, the factual backdrop is that the petitioner was originally appointed as a Clerk by HUDA on 05.01.1978. Thereafter, he was promoted to the post of Assistant on 30.12.1983. Petitioner retired as Accounts Officer on 31.05.2011 on attaining the age of superannuation. While serving in HUDA, the petitioner successfully cleared Subordinate Accounts Service (SAS) examination conducted by State of Haryana. In ordinary course, upon being selected in Subordinate Accounts Service, the petitioner could have been absorbed by the Department of Finance, Government of Haryana. However, vide letter dated 20.08.1987 (Annexure P7) written by the Chief Administrator, HUDA, to the Commissioner and Secretary, Department of Finance,

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Government of Haryana, a request was made that instead of absorbing the petitioner in the Finance Department, he may be deputed/absorbed in HUDA. It was further stated that there were a number of SAS cadre posts in HUDA and, therefore, absorption of the petitioner in HUDA would not cause any problem. Accordingly, the petitioner joined the services as an Accountant on 13.10.1987 in HUDA. Later on, the petitioner was promoted as Account Officer on 20.12.2010 after a period of 23 years. During the span of 23 years in the SAS Cadre, the petitioner did not get any promotion or financial up-gradation. Accordingly, contends that the petitioner became entitled for grant of benefit of 1st and 2nd ACP, as per Assured Career Progression Rules, 2008.

3. In the reply filed by respondent No.2-HUDA, the stand has been that upon selection of the petitioner in SAS cadre, he was not absorbed in HUDA but he was promoted as Accountant, vide order dated 10.10.1987

4. I have gone through the respective pleadings and also heard learned counsels for both the sides.

5. At the outset, learned counsel for the petitioner has placed strong vehemence on a judgment rendered by this Court in RSA No. 3413 of 2010 titled as **State of Haryana and others vs. Balbir Singh**, decided on 10.08.2011 (Annexure P6). Placing reliance thereon, learned counsel for the petitioner contends that it is no more res-integra that joining in the service of SAS cadre, after qualifying the examination, is a direct appointment on the post and the same is not a promotional post. It would be educative to reproduce the relevant part of the judgment, ibid :-

“The First Appellate Court has rightly observed that plaintiff was appointed as Clerk and in the hierarchy, his promotion could be that of Assistant and thereafter Deputy Superintendent and Superintendent etc. To join the service

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as Section Officer on SAS cadre, one has to clear the exams. So, it is the requirement of that post that employee must be Government servant. So, for all intents and purposes, the joining of plaintiff is as on direct post and not promotional post.”

6. Without going further in the details of the matter, suffice to say that I am respectful agreement with the position in law as expressed by this Court in the aforesaid judgment.

7. As far as the contention of learned counsel for the respondent(s) is concerned that the petitioner was not appointed in the department of Finance, pursuant to his having qualified the SAS examination but he was promoted, the same is devoid of any merit. The respondent(s) itself induced the petitioner to give up his entitlement of going to the department of Finance pursuant to his selection in the SAS Cadre, by writing a letter to the department of Finance saying that, there was requirement to man the SAS Cadre posts in HUDA and, therefore, the petitioner should be allowed to continue in HUDA, and that it (the respondent) was willing to absorb the petitioner on one of the SAS Cadre posts.

8. It is conceded position that services of its SAS Cadre officers are placed by the Department of Finance at the disposal of HUDA depending upon the requirement of HUDA from time to time. Order dated 10.10.1987 issued to the petitioner, wherein, it has been stated that consequent upon passing of SAS Part-II examination conducted by Finance Department, Government of Haryana, the petitioner was promoted as Accountant in SAS Cadre, cannot be read as a promotion.

9. The petitioner did not earn any promotion by virtue of his seniority but his appointment as Accountant in SAS Cadre was by dint of his

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having qualified special examination meant for SAS Cadre posts. Meaning that, it as a direct appointment into a different cadre and, therefore, it was a fresh appointment. The said position has already been explained by this Court in the case of State of Haryana and others vs. Balbir Singh, *ibid*.

10. Learned counsel for the petitioner points out that even otherwise on the ground of discrimination, the petitioner is entitled to grant of benefit of ACP as similarly situated person i.e. Lajpat Rai, who was appointed as Accountant in SAS Cadre to serve for HUDA, has been granted the benefit after having rendered 10 years of service.

11. Per contra, learned counsel for the respondent(s) states that prior to the appointment as Accountant, Lajpat Rai, had only been given one promotion and, therefore, he was granted the benefit of ACP. The said arguments also lacks any substance as the promotion in the previous cadre or previous service rendered by a person directly recruited in SAS is of no significance for the purpose of conferring the benefit of ACP. What is to be seen is number of years put in the cadre in which the petitioner/employee has been directly appointed. If we see from that angle, the denial of the benefit of ACP to the petitioner is also hit by the vice of discrimination.

12. In view of my discussion above and the reasoning aforesaid, the present petition is allowed. The impugned order dated 25.04.2014 (Annexure P5), vide which the benefit of ACP was declined to the petitioner, is set aside. The respondent(s) is directed to grant benefit of 1st and 2nd ACP scale, as per ACP Rules, 2008 as per his entitlement, on completion of 10 and 20 years of service respectively in SAS Cadre, alongwith interest @ 6% w.e.f. the date his entitlement until the actual date of payment.

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13. Let needful be done within a period of four months from the date of receipt of certified copy of this order.

February 27, 2019
smriti

(ARUN MONGA)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No