

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-30144-2018

Date of decision: 10.01.2019

Punam Kakkar

...Petitioner

V/s.

State of Haryana and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI.

Present: Mr. Baldev Singh Badhran, Advocate for the petitioner.

RITU BAHRI, J. (Oral).

The petitioner is seeking direction to the respondents to fix the pay of the petitioner under 7th Pay Commission by adding the benefit of 3rd ACP which was granted to her vide letter dated 10.01.2015 (Annexure P-1) issued by the Director General Elementary Education, Haryana after completing 24 years of satisfactory regular service and further to quash the impugned order/reply dated 26.02.2018 (Annexure P-13) whereby her legal notice dated 23.01.2018 (Annexure P-12) regarding fixation of pay after adding the benefit of 3rd ACP has been rejected.

In the present case, the petitioner was appointed as Math Mistress on adhoc basis on 26.10.1985 and thereafter regularized on 20.09.1998. As per the ACP Rules, the petitioner was granted benefit of 1st ACP after 8 years of service, 2nd ACP after 18 years of service and 3rd ACP after 24 years of service vide order dated 10.01.2015 (Annexure P-1) and this benefit was granted w.e.f. 01.04.2014. In the year 2013, the petitioner was promoted to the post of E.H.M. of a Middle School but she refused to work on the promoted post of Head Mistress and also gave an affidavit dated 21.01.2013 duly attested by a Notary Public.

The 3rd ACP was granted inadvertently vide impugned order dated 10.01.2015 (Annexure P-1). As per the clarification given by the Director Elementary Education, Haryana on 12.10.2017, the 3rd ACP has been withdrawn keeping in view that after declining promotion in the year 2013, the petitioner was not entitled for grant of 3rd ACP. The relevant clarification is as under:-

“As per HCS ACP Rules 14 of RPR 2008”- In case the government servant chooses to forego any functional promotion on any ground whatsoever while drawing his/her pay in any ACP Pay Structure with reference to him, he shall be ceased to be entitled to draw his pay in ACP Pay Structure last granted to him and shall draw his pay in the pay band and grade pay he was drawing before the grant of last ACP grade pay from the date of such foregoing of promotion.”

Learned counsel for the petitioner is not denying that the petitioner had given an affidavit on 21.01.2013 that she does not want to get promoted to the post of Head Mistress. He has further referred to the judgment passed by this Court in ***CWP-19689-2012 Raj Dahiya V/s. State of Haryana and others*** to contend that once the benefit has been extended to the petitioner, it cannot be withdrawn and that too without notice.

A perusal of this judgment shows that in that case the benefit of 2nd ACP has been granted to the petitioner on completion of 20 years of service on 25.01.2004 and after granting this benefit she had foregone her promotion and in this backdrop the writ petition has been allowed that once the benefit has been granted and thereafter she foregoes her promotion, the benefit cannot be withdrawn. However this judgment is not applicable to the facts of the present case as the petitioner refused the promotion as Head

Mistress on 21.01.2013 by giving an affidavit and the benefit of 3rd ACP has been granted to her w.e.f. 01.04.2014 vide order dated 10.01.2015 (Annexure P-1) and regarding giving notice before withdrawing the 3rd ACP benefit, the respondents have replied to her legal notice dated 23.01.2018 and rejected her claim by giving valid reasons (Annexure P-13).

Hence, no case for interference is made out.

Dismissed.

10.01.2019
Divyanshi

(RITU BAHRI)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No