

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

(115)

CWP-23415-2019 (O&M)

Date of Decision: September 19, 2019

Surain Singh Bhatti and others

.. Petitioners

Versus

State of Punjab and another

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. D.S. Patwalia, Senior Advocate, with
Mr. Gaurav Rana, Advocate, for the petitioner.

Ms. Sunint Kaur, Assistant Advocate General, Punjab.

HARSIMRAN SINGH SETHI, J.(ORAL)

CM-12696-CWP-2019

Present application has been filed to place on record the
Assured Career Progression Scheme dated 03.11.2006 as Annexure P-13.

The application is allowed and the Assured Career Progression
Scheme dated 03.11.2006 as Annexure P-13 is permitted to be taken on
record.

CWP-23415-2019

On the last date of hearing, the following order was passed:

*“The grievance raised in the present writ petition is that
without giving any opportunity to present their case with
regard to the legality of benefit of ACP granted to the
petitioners, respondents have passed the orders, which have
been collectively attached as Annexure P-11, withdrawing
those benefits and re-fixing their salaries.*

*Learned Senior counsel appearing on behalf of the
petitioners argues that while considering the case of some
other persons, namely, Sh.Harbans Lal, Sh.Sohan Lal and
Sh.Alla Ram for the grant of benefit of ACP after a period of 4,*

9, and 14 years of service, vide order dated 04.06.2019 (Annexure P-10), certain observations were made against the present petitioners with regard to their entitlement of ACP after rendering 4, 9 and 14 years of service and the orders dated 02.07.2019 and 03.07.2019 (Annexure P-11 Colly.), withdrawing the benefit, are the direct consequence of the said order dated 04.06.2019 (P-10).

Prima facie, the interpretation of the orders dated 02.07.2019 and 03.07.2019 (Annexure P-11 Colly.), as being advanced by learned Senior Counsel that they are the orders refixing the salary of the petitioners, is not correct.

Though, in the said orders dated 02.07.2019 and 03.07.2019 (Annexure P-11 Colly.), the proposed refixation has been stated, but from the subject of those letters/orders, it is clear that they are the notices seeking the reply of the petitioners and the same are only proposals and not final orders of withdrawing the benefit of ACP. In the last paragraph of the said letters/orders, it has been mentioned that the petitioners are given chance to submit their clarification, if any, before the said proposal is implemented.

To further show as to whether the orders dated 02.07.2019 and 03.07.2019 (Annexure P-11 Colly.), are the notices or the orders withdrawing the benefit of ACP, the State counsel is directed to clarify the same.

Let the paper-book of the present writ petition be supplied to learned State counsel.

Let the respondents file an affidavit as to whether letters/orders (Annexure P-11 Colly.) are the show-cause notices proposing refixation of the salaries of the petitioners or are the orders refixing the salary of the petitioners after withdrawing the benefit of ACP.

Adjourned to 19.09.2019.”

In pursuance to the said order, an affidavit of the Chief

Engineer (H.Q.) P.W.D. (B&R) i.e respondent No.2 has been filed in the

Court today and the same is taken on record, which reads as under:-

“ 1. That the above said Writ Petition is pending before this Hon'ble Court for hearing on 19.09.2019.

2. That during the course of hearing on 05.09.2019 this Hon'ble Court posed a specific query as to whether Annexure P-11 purported to be passed/issued on 02.07.2019 and 03.07.2019 respectively are merely show cause notices or the orders for recovery.

3. That the Office of deponent vide letters dated 02.07.2019 and 03.07.2019 addressed to the petitioners intimated that the Govt. vide letter dated 04.06.2019 has ordered to withdraw the benefit of fixation of pay under 4-9-14 years ACP Scheme, which was earlier granted to the petitioners by counting adhoc service rendered as Sub Divisional Engineer. In compliance with that order of the Govt. the pay of the petitioners was required to be re-fixed. However, the petitioners were intimated through Show Cause Notice that if they want any clarification then the same should be submitted within 15 days from receiving of this letter and if not done so, then it will be presumed that they do not agree with the re-fixation of pay and do not want to say anything regarding this.

4. That the deponent further submits that on receipt of letters dated 02.07.2019 and 03.07.2019, the petitioners sought further time for submitting reply to the show cause notice/clarification vide letters 12.07.2019, 09.07.2019 and 10.07.2019. The requests of the petitioners were accepted and they were given another 10 days time vide office Memo No.1573/GAC dated 01.08.2019. Thereafter the petitioners submitted their respective replies on 17.08.2019.

5. That while replies submitted by the petitioners were under consideration, in the meanwhile the petitioners filed the present Writ Petition on 24.08.2019 before this Hon'ble Court.

6. That the deponent respectfully submits that Annexure P-11 is only Show Cause Notice to the petitioners regarding

re-fixation of their pay due to withdrawal of benefit of ACP Scheme by way of counting their adhoc service rendered as Sub Divisional Engineer.”

A bare perusal of the averment made in paragraph 6 of the affidavit makes it clear that Annexure P-11, which is being challenged by the petitioners is being treated as a show cause notice by the respondents themselves and not the order of re-fixation of the pay, as being contended before this Court by learned senior counsel appearing on behalf of the petitioners.

As per the facts recorded above, it is clear that the Annexure P-11 is only a show cause notice against which petitioners have already filed the reply bringing out their defence against the proposed re-fixation and matter is under consideration of the respondents and final order is yet to be passed by the respondents.

Once no final order has been passed by the respondents, the present writ petition is pre-mature. In case any adverse order is passed, the petitioners will have liberty to have their remedy in accordance with law.

The writ petition is disposed of being pre-mature at this stage.

(HARSIMRAN SINGH SETHI)
JUDGE

September 19, 2019
harsha

Whether speaking/reasoned: Yes
Whether reportable: Yes