

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-15700-2016

Date of decision: 28.02.2020

Shiv Charan Rawal

...Petitioner(s)

V/s.

State of Haryana and another

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI.

Present: Mr. Ram Niwas Sharma, Advocate
for the petitioner.

Mr. Randhir Singh, Advocate for
State of Haryana.

RITU BAHRI, J.

The petitioner is seeking direction to the respondents to allow him the 2nd ACP scale by counting his service rendered in Haryana Dairy Development Cooperative Federation as the respondents have allowed only 1st ACP scale pursuant to instructions dated 16.12.2010 (Annexure P-9) vide order dated 02.11.2015 (Annexure P-10).

The petitioner was appointed as Veterinary Officer vide order dated 05.03.1985 (Annexure P-1) on adhoc basis and he was made regular vide order dated 23.08.1985 (Annexure P-2). The services of the petitioner were absorbed as District Dairy Development Officer in the Dairy Development Department Haryana vide order dated 30.04.1996 (Annexure P-3) keeping in view Haryana Dairy Development Cooperative Federation declared Veterinary Surgeons as surplus. Vide order dated 14.05.2003 Haryana Dairy Development Department was merged with Animal Husbandry Department (Annexure P-4). As per condition (ii) of order dated

14.05.2003, those District Dairy Development Officers who fulfill the qualification of Veterinary Surgeon may be given an option to join as Veterinary Surgeon in the Department and their inter-se seniority will be fixed from the date of joining in the erstwhile Department. As per the seniority list dated 06.01.1998, the petitioner was placed at seniority No. 4. The relevant part of gradation list is Annexure P-5.

Vide order dated 10.01.1996 issued by Financial Commissioner & Secretary to Govt. of Haryana, Finance Department (Annexure P-6) pay scale of District Dairy Development Officers was revised which is as under:-

Existing Pay Scale	Further revised scales of Pay
Rs. 2000-3500	i) 2200-4000 (T.S.) ii) Selection Grade of Rs.3000-4500 on completion of five years of regular satisfactory service. iii) 4100-5300 (SG) limited to 20% of the Cadre post provided they have put in 12 years or more of regular satisfactory service.

The District Dairy Development Officers (Degree holders) were allowed the pay scale of Rs.2200-4000 (T.S.), Rs.3000-4500 selection grade on completion of five years of regular satisfactory service and Rs.4100-5300 (SG) limited to 20% of the Cadre posts provided they have put in 12 years or more of regular satisfactory service as per order dated 10.01.1996 (Annexure P-6). Vide notification dated 07.01.1998 (Annexure P-12), Haryana Government revised the pay scale of its employees w.e.f. 01.01.1996 as per the letter dated 23.01.1998 (Annexure P-7). The District Dairy Development Officers (Degree holder) were allowed Rs.8000-13500 (TS) and Rs.10000-13900 after five years of regular satisfactory service (ACP) and Rs.12000-16500 after 11 years of regular satisfactory service.

The petitioner has been allowed 1st ACP scale of 3000-4500 w.e.f. 15.01.1998 in the pre revised pay scale. The petitioner made a request to allow him the said pay scale w.e.f. 01.01.1996 as per the letter dated 10.01.1996 (Annexure P-6).

The case of the petitioner is that initially he was declared surplus and absorbed in the Dairy Development Department vide order dated 30.04.1996 (Annexure P-3). Thereafter this Department was merged with Animal Husbandry Department Haryana as per order dated 14.05.2003 (Annexure P-4). The controversy in the present case is that whether the services of the petitioner from 23.08.1985 till 30.04.1996 which he served in Haryana Dairy Development Cooperative Federation can be counted for ACP scale or not?

Learned counsel for the petitioner has argued that the strength of the cadre was 14 as per gradation list as on 06.01.1998 (Annexure P-5). The petitioner now being at Sr. No. 4 has a right to be given benefit of 2nd ACP scale of Rs.4100-5300 (SG) by counting his service in the Haryana Dairy Development Department, as it is to be given to 20% of the cadre posts. He has further argued that as per the notification dated 07.01.1998 (Annexure P-12), the Veterinary Surgeons in the Department of Animal Husbandry are entitled for 1st ACP scale i.e. 10000-325-13900 after completion of five years regular satisfactory service and 2nd ACP scale i.e. 12000-375-16500 after 11 years of regular satisfactory service in the cadre. However vide impugned order dated 02.11.2015 (Annexure P-10), petitioner has been wrongly allowed only 1st ACP.

That the Supreme Court in the ***Civil Appeal No. 4446 of 2008*** titled as ***State of Haryana and others vs. Deepak Sood and others*** resolved

this issue and held that employees initially appointed in Boards/Corporations/Committees and declared surplus and subsequently appointed on transfer basis in other departments, they have rights of pay protection and other benefits introduced under the schemes after completion of requisite length of service by counting their past service rendered by them in such Boards/Corporations/Municipal Committees. Annexure P-8 is the copy of order dated 15.07.2008. In compliance of this order, the Finance Department Haryana issued office memorandum dated 16.12.2010 (Annexure P-9) clarifying that ACP scale is to be given after counting past service in their original Boards/Corporations/Municipal Committees etc. Pursuant to direction (Annexure P-9), the Department passed an order dated 02.11.2015 (Annexure P-10) and allowed 1st ACP scale of Rs.3000-4500(pre-revised) to the petitioner w.e.f. 01.01.1996. The petitioner made a representation dated 28.04.2016 (Annexure P-11) to grant him 2nd ACP and that is also in the revised pay scale applicable w.e.f. 01.01.1996 as well as 01.01.2006.

On notice of this petition, written statement on behalf of respondents No. 1 and 2 has been filed. The stand taken by the respondents in the written statement is that they are not disputing the initial appointment of the petitioner on 05.03.1985 on adhoc basis and on regular basis on 23.08.1985 as Veterinary Officer. It is further stated that petitioner alongwith 6 officers were sent on deputation in Haryana Dairy Department w.e.f 15.01.1993 and after they were declared surplus by the Haryana Dairy Development Cooperative Federation, they were absorbed permanently in the Haryana Dairy Development Department w.e.f. 15.01.1993. At the time of absorption of Veterinary Surgeons as District Dairy Development

Officers vide order dated 30.04.1996 (Annexure P-3) it was clearly mentioned that the seniority will be fixed at the tail of the Officers (District Dairy Development Officers) who were appointed in the Department prior to 15.01.1993 and all the past liabilities will be borne by the Federation itself. It is further stated that in compliance of the order dated 12.07.1999 passed by this Court in amended **CWP-933-1987** filed by District Dairy Development Officers working in Dairy Development Department, they were allowed revised pay scale of Rs.8000-13500 (T.S.), Rs.10000-13900 after five years of regular satisfactory service and Rs.12000-16500 after 12 years of regular satisfactory service limited to 20% of the cadre post. The petitioner completed five years of service on 14.01.1998 and he was granted 1st selection grade of Rs.3000-4500 w.e.f. 15.01.1998. He was granted 1st ACP of Rs.3000-4500 w.e.f. 01.01.1996 instead of 15.01.1998 vide order dated 02.11.2015 (Annexure P-10). However it is clarified that petitioner was not entitled to 2nd ACP (SG) w.e.f. 01.01.1996 as there were only 12 posts of District Dairy Development Officers sanctioned in the Dairy Development Department and 20% of the cadre posts would be only 2 posts. Thereafter pursuant to direction given by this Court in **CWP-933-1997** on 12.07.1999, the District Dairy Development Officers were held entitled to revised scale of Rs.2200-4000 and 3000-4500 on completion of five years of regular satisfactory service and Rs.4100-5300 limited to only 20% of the cadre posts after completion of 12 years of regular satisfactory service. As per the seniority, the name of the petitioner was at Sr. No. 3 and hence he was not entitled to selection grade of Rs.4100-5300. On 22.08.2012, the petitioner came within the ambit of 20% of the cadre posts and he was granted 2nd ACP w.e.f. 22.08.2012 vide order dated 07.08.2014 (Annexure

R-1) and 3rd ACP on 01.12.2014 vide order dated 18.09.2015 (Annexure R-2). The Department could not give benefit of selection grade without the turn of petitioner and when the turn of petitioner came for 2nd ACP in the year 2012 the benefit was given to him vide order dated 07.08.2014 (Annexure R-1). The clarification with regard to cadre strength of 12 posts has been given in para Nos. 6 and 7 of the written statement.

The petitioner has filed replication to the written statement and the contents of para No. 6 that there were only 12 posts of District Dairy Development Officers in the Dairy Development Department, have not been denied.

On 20.01.2020 when this case was taken up, learned counsel for the petitioner referred to the instructions dated 07.01.1998/ACP Rules, 1998 (Annexure P-12) to contend that as per the category No. 6 of Schedule I, the Veterinary Surgeons were to given grade pay of 10000-325-13900 after five years of regular satisfactory service and no. 6 reproduce:-

6.	Veterinary Surgeons in the Department of Animal Husbandry	10000-325-13900 (After 5 years of regular satisfactory service in the cadre)	12000-375-16500 (After 11 years of regular satisfactory service in the cadre)
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These instructions did not specify that the benefit had to be given restricting to 20% of the cadre posts and the same cannot be withheld keeping in view letter dated 23.01.1998 (Annexure P-7).

A perusal of letter dated 23.01.1998 (Annexure P-7) shows that the Milk Commissioner-cum-Director, Dairy Development Department had written a letter to the Financial Commissioner & Secretary to Govt. Haryana, Dairy Development Department, Chandigarh with regard to implementation of the revised pay scale and in this letter a proposal for the

revised scale was sent and there was no provision that the benefit of Rs.12000-16500 will be given after 11 years of regular satisfactory service only to 20% of the cadre posts.

On 20.01.2020, learned counsel for the State was to get assistance whether there was any clarification issued after instructions dated 07.01.1998 (Annexure P-12). Today when the case was taken up, learned counsel for the State did not place any clarification which has been issued by the Finance Department. Hence after perusal of the letter dated 23.01.1998 (Annexure P-7) read with ACP Rules, 1998 (Annexure P-12), this Court is of the view that the benefit of Assured Career Progression Scheme is to be given after five years and after 11 years of regular satisfactory service in the cadre and there was no provision that benefit of 2nd ACP after 11 years was to be given only to 20% of the cadre posts. Hence, petitioner had a right to be given benefit of 2nd ACP after 11 years of regular satisfactory service without insisting upon 20% of the cadre posts. With respect to the service period rendered by the petitioner with the Haryana Dairy Development Cooperative Federation, notification dated 16.12.2010 (Annexure P-9) issued by the Finance Department is very clear which has been issued after the judgment of *Deepak Sood's case (supra)* and the relevant portion is as under:-

“Accordingly, all the employees initially appointed in Boards/Corporations/Municipal Committees and declared surplus and subsequently appointed on transfer basis in other departments and the benefit of pay protection has been given are entitled to the benefits of incentives introduced under the schemes mentioned at (c) to (f) after completion of requisite length of service, as the case may be, after counting their past

service rendered by them in Boards/Corporations/Municipal Committees.”

Keeping in view above observations, writ petition is allowed and respondents are directed to recalculate the 2nd ACP after taking into account the past service of the petitioner rendered in the Haryana Dairy Development Cooperative Federation prior to his absorption and payment be made with 6% interest from the date of filing petition. This exercise be completed within three months from the date of receipt of certified copy of this petition.

(RITU BAHRI)
JUDGE

28.02.2020
Divyanshi

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