

CWP-24266-2014

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-24266-2014

Date of Decision: 12th February, 2020

Sukhwinder Singh

...Petitioner

Versus

State of Punjab & others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. R.K.Arora, Advocate,
for the petitioner.

Ms. Devaki Anand Sullar, Asstt. A.G., Punjab.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Petitioner has approached this Court challenging the order dated 08.09.2013 (Annexure P-16), whereby the claim of the petitioner for grant of benefit under Assured Career Progression Scheme (hereinafter referred to as 'ACP') grade on completion of 14 years of service has been declined on the ground that he did not avail of his promotion and proceeded to withdraw the benefit of 8/9 years of service vide memo dated 11.07.2014 (Annexure P-18) being contrary to the law laid down by this Court in CWP No.7642 of 2001, titled as 'Shashi Kiran & others Vs. State of Punjab & others', decided on 28.11.2002 (Annexure P-6) as also in CWP No.6135 of 2003, titled as 'Varinder Pal Vs. State of Punjab & others', decided on 05.07.2005 (Annexure P-7).

2. It is the contention of the learned counsel for the petitioner that the petitioner was appointed as Basic Health Worker on 06.07.1982, which

was re-designated as Multipurpose Health Worker. Petitioner was promoted as Block Extension Educator on 17.08.1990. On 17.11.1999, department called for cases for promotion to the post of Deputy Mass Media Officer. Petitioner refused promotion for the reason that he belongs to a family which was terrorist effected and they were apprehensive of shifting out of his station. Petitioner was debarred for two years as per rules. But even after the expiry of the period of two years, the claim of the petitioner for either grant of promotion or for grant of ACP grade was not considered. It is asserted that the petitioner was entitled to the grant of ACP grade on completion of 14 years of service w.e.f. 01.01.2009 but was denied the said benefit in the light of the fact that petitioner had not opted for consideration for promotion to the post of Deputy Mass Media Officer, when the cases were called for promotion on 17.11.1999. Petitioner submitted a representation to the respondents for the grant of the said benefit but when the said claim of the petitioner was not decided, he further represented with the respondents. Ultimately, petitioner filed CWP No.6940 of 2013, which was disposed of vide order dated 02.04.2013 (Annexure P-15) directing the respondents to consider the claim of the petitioner for the grant of benefit of ACP on completion of 14 years of service.

3. In compliance with the said order, the claim of the petitioner was considered and rejected vide the impugned order dated dated 08.09.2013 (Annexure P-16). The petitioner has, therefore, challenged the said order of rejection on his representation, which he had claimed in the light of the various judgments referred to in the said representation

including the ones which have been mentioned above.

4. In the meanwhile, another communication came to the notice of the petitioner, wherein the Assistant Civil Surgeon, Sangrur, on 11.07.2014, had addressed a letter to the Director, Health Services & Family Welfare, Punjab, for withdrawal of even the benefit of ACP on completion of 08/09 years' service, which was granted to him and for effecting the recovery from the petitioner. This communication dated 11.07.2014 (Annexure P-18) has also been assailed by the petitioner.

5. Learned counsel for the petitioner has argued his case in the line of the above submissions by asserting that the claim of the petitioner is covered by the Division Bench judgments passed by this Court, which have been referred to above and has attained finality upto the Hon'ble Supreme Court and have also been implemented.

6. Learned counsel for the respondents, on the other hand, contends that the petitioner having been given an opportunity of promotion and having failed to avail of the same would not be entitled to the grant of the ACP grade as has been prayed by him. Assertion has also been made that the petitioner was charge-sheeted by the Department, which has been dropped on 03.02.2011. It is also asserted that an FIR was registered against the petitioner on 16.01.2006 but nothing more in this regard has been said. The absence of the petitioner from 10.01.2006 to 02.03.2006 has also been highlighted but in the same breath, it has been said that he was permitted to join. Petitioner has ultimately been promoted vide order dated 03.09.2012 as Deputy Mass Media Officer. On this basis, counsel for the

State has prayed for dismissal of the writ petition.

7. I have considered the submissions made by the learned counsel for the parties and with their assistance have gone through the records of the case.

8. The only ground because of which the petitioner has not been granted the benefit of ACP grade on completion of 14 years of service, which became due w.e.f. 01.01.2009 is that the petitioner, in the year 1999, had refused to opt for promotion to the post of Deputy Mass Media Officer. Even if that be the reason, the debarring, if any, was only for a period of two years and therefore, it would have been effective upto the year 2001. The grant of ACP grade, therefore, had to be given to the petitioner with effect from the day it became due specially in the light of the law which has been laid down by this Court in CWP No.7642 of 2001, titled as 'Shashi Kiran & others Vs. State of Punjab & others', decided on 28.11.2002 (Annexure P-6) as also in CWP No.6135 of 2003, titled as 'Varinder Pal Vs. State of Punjab & others', decided on 05.07.2005 (Annexure P-7) as the facts in those cases and the reasons for denying the petitioners therein the grant of ACP grade on completion of 14 years of service are the same as in the present case.

9. In the light of the order which has been passed above and keeping in view the law which has been laid down as referred to above, the communication dated 11.07.2014 (Annexure P-18) appears to be without any basis and thus, cannot be acted upon.

CWP-24266-2014

10. In the light of the above, the present writ petition is allowed. Petitioner is held entitled to the grant of ACP grade on completion of 14 years of service w.e.f. 01.01.2009, the day he became eligible. The arrears, if any, to the petitioner shall be restricted to 38 months prior to the date of order of rejection of his claim.

12th February, 2020
Harish

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No