

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CM-1080-CWP-2020 in/and
CWP-24063-2016
Date of decision: 27.01.2020

Jagdish Yadav and another

...Petitioner(s)

V/s.

State of Haryana and another

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE RITU BAHRI.

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

Mr. Randhir Singh, Advocate,
State of Haryana.

RITU BAHRI, J. (Oral).

CM-1080-CWP-2020

Application for placing on record replication is allowed and the
same is taken on record.

CWP-24063-2016

The petitioners were appointed as Steno Typist vide order dated 23.08.1993 (Annexure P-1) and 14.01.1991 (Annexure P-2) after their names were recommended by Subordinate Service Selection Board, Haryana. The payscales were revised vide notification dated 07.01.1998. The employees of Group C and Group D were allowed ACP Scales under the Haryana Civil Services (Assured Career Progression) Rules, 1998. After completing 10 years of regular satisfactory service, they have been allowed 1st ACP and on completion of 20 years regular satisfactory service,

they have been allowed 2nd ACP. The petitioner No. 1 was allowed 1st ACP vide order dated 18.11.2003 (Annexure P-4) on completion of 10 years service. Petitioner No. 2 got promotion vide order dated 04.06.1993 (Annexure P-3) and as such availed one promotion within 10 years of regular service. However respondent No. 2 issued show cause notice to the petitioners vide order dated 18.11.2011 (Annexure P-5) that they were wrongly granted 1st ACP scale as they had not passed type test for promotion to the post of Assistant.

Learned counsel for the petitioners has referred to decision passed in *CWP-22137-2011 titled as Kuldip Singh and others V/s. State of Haryana and others*, with respect to employees of Social Justice & Empowerment Department (Annexure P-6) and states that pursuant to direction given by this Court in aforesaid writ petition, employees of the same department were allowed benefit of ACP without passing type test vide order dated 13.08.2015 (Annexure P-7) and para 3 of this order reads as under:-

“That it has been found that the petitioners had joined the service on the post of Clerk-cum-Typist. They had passed the typing test at the time of entrance into service conducted by the department itself as per type test criteria of the Government. Keeping in view this fact, I am of the considered view that once the petitioners have passed the type test they are not required to pass the type test again. Hence the show cause notice issued to the petitioners vide No. 22017/EA-3/SJE/2011, No.22019/EA-3/SJE/2011, No. 22021/EA-3/SJE/201 and No.22023/EA-3/SJE/2011 all dated 11.11.2011 by respondent No.2 is unwarranted and stand withdrawn.”

The case of the petitioners is that at the time of initial appointment they were recommended by Subordinate Service Selection Board, Haryana as they have qualified for appointment to the post of Steno Typist and hence they could not be denied ACP after serving for more than 10 years.

Learned counsel for the petitioners also refers to the order dated 16.03.2012 (Annexure P-8) and 06.07.2015 (Annexure P-9) whereby persons junior to the petitioner have been promoted to the post of Assistant/Accountant/Cashier. Annexure P-10 is the notification dated 04.03.2014 whereby upgradation of ACP has been given. A detailed legal notice dated 07.06.2016 (Annexure P-11) has also been served upon the respondents in this regard.

On notice of this petition, affidavit dated 11.12.2017 has been filed by the Joint Director, Social Justice and Empowerment Department. Alongwith the affidavit, respondents have placed on record Annexures R-1 and R-2. As per the affidavit filed, the claim of 1st ACP has been granted to the petitioner No. 1 w.e.f. 01.09.2003 and petitioner No. 2 has been granted 1st ACP w.e.f. 01.01.2006 as per the order dated 23.05.2017 (Annexure R-1). Further vide order dated 14.02.2017 (Annexure R-2), benefit of promotion to the post of Assistant has been granted to the petitioner No. 1 w.e.f. 04.05.2012 and the 1st ACP of Rs.4000-6000 which was withdrawn vide order dated 13.12.2011 has been restored w.e.f. 01.09.2003 and with respect to petitioner No. 2, the 1st ACP Rs.4000-6000 which was withdrawn vide order dated 13.12.2011 is restored w.e.f. 01.01.2006 and the benefit of promotion to the post of Assistant has been granted w.e.f. 31.03.2012.

However their claim for 38 months pay arrears and interest has been denied keeping in view the judgment passed by this Court in Tilak Raj case.

Heard learned counsel for the parties.

It is not the case of the petitioners that petitioners were facing disciplinary proceedings and on this ground the juniors have been promoted. The Department had accepted that juniors were promoted and petitioners were wrongly ignored. Principle of 'No Work No Pay' cannot be applied in the case of the petitioners since petitioners are senior and they have been wrongly ignored by the Department itself.

Keeping in view above, this writ petition is allowed and the petitioners will be granted all consequential benefits of arrears from the date they have been promoted vide order dated 14.02.2017 (Annexure R-2).

**(RITU BAHRI)
JUDGE**

27.01.2020
Divyanshi

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