

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-27128-2015
Date of decision: 05.03.2020

Yudhister Raj Sharma

...Petitioner(s)

V/s.

State of Haryana and others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE RITU BAHRI.

Present: Mr. B.K. Bagri, Advocate
for the petitioner.

Mr. Apoorv Garg, DAG, Haryana.

Mr. Deepak Manchanda, Advocate
for respondent No. 3.

RITU BAHRI, J. (Oral).

By this petition, the petitioner is seeking quashing of order dated 21.09.2011 (Annexure P-1) passed by respondent No.4 whereby the 2nd ACP was granted to the petitioner w.e.f. 01.01.2006 instead of 23.10.2001 on completion of 20 years service on the post of Clerk due to which he is deprived of 3rd ACP on completion of 30 years service.

The petitioner joined his services as Safai Daroga (Class IV employee) in Municipal Committee, Ambala Sadar on 18.06.1977. Thereafter he was promoted as Office Incharge Barrier (OIB) on 21.10.1981 in the pay scale of Rs.400-660 which is class III post. Thereafter he worked till 31.12.1999. He was transferred in the Education Department as Clerk on 15.05.2002 and retired on 31.10.2013 on the post of Clerk. The Government of Haryana introduced the HCS (ACP) Rules, 1998 to be implemented w.e.f. 01.01.1996. He was granted the benefit of 2nd ACP

w.e.f. 01.01.2006 vide order dated 21.09.2011 (Annexure P-1). As per Rule 5 of the HCS (ACP) Rules, 1998, the petitioner was entitled to 1st ACP on completion of 10 years regular satisfactory service and 2nd ACP on completion of 20 years regular satisfactory service. However the respondents did not grant 1st ACP pay scale w.e.f. 21.10.1991 and 2nd ACP w.e.f. 21.10.2001 on the ground that due to promotion of the petitioner, he was already granted three financial upgradation and he is not entitled for more than three upgradation.

Learned counsel for the petitioner refers to a Division Bench judgment passed in **CWP-3528-2005** titled as ***Ramesh Dahiya V/s. Uttar Haryana Bijli Vitran Nigam Limited*** (Annexure P-7) wherein case for granting benefit of 1st and 2nd ACP was considered. In this case, the petitioner Ramesh Dahiya was initially appointed as Junior Draftsman on 07.11.1980. Thereafter he was promoted to the post of Draftsman on 13.04.1983. The case of the petitioner was considered for grant of ACP as per ACP Rules 1998. By counting his service from the date of promotion i.e. 13.04.1983, he was held entitled for 1st ACP after 10 years of regular satisfactory service on the post of Draftsman w.e.f. 01.01.1996 (since the ACP Rules, 1998 came into force w.e.f. 01.01.1996) and 2nd ACP w.e.f. 01.04.2003 after completing 20 years regular satisfactory service. The writ petition was allowed by giving direction to the respondents to give him benefit of 1st and 2nd ACP from the date he was promoted as Draftsman in 1983. The period which he had remained on the post of Junior Draftsman before 1983 was not be taken into account for considering the case to grant ACP as per ACP Rules 1998.

The ratio of this judgment is directly applicable to the facts of the present case. In the present case, the petitioner joined his services as Class IV employee in the Municipal Committee, Ambala on 18.06.1977. Thereafter he was promoted as OIB (Class III) on 21.10.1981. He retired from the post of Clerk (which is also Class III post) on 31.10.2013. For the purpose of granting 2nd ACP as per Rule 5 of the ACP Rules 1998, the period to be calculated is the date when he was promoted as OIB (Class III) post i.e. 21.10.1981. He completed 10 years of service on 21.10.1991 and 20 years on 21.10.2001. The petitioner retired in 2013 and hence he is not eligible for grant of 3rd ACP. Vide impugned order dated 21.09.2011 (Annexure P-1), he has been allowed benefit of 2nd ACP in the pay band and grade pay of Rs.5200-20200+3200 w.e.f. 01.01.2006 on completion of 20 years of service. The Department has wrongly considered promotion from class IV to OIB as first upgradation as per the aforesaid judgment.

Hence, writ petition is allowed. Order dated 21.09.2011 (Annexure P-1) is quashed. The respondents are directed to give benefit of 1st and 2nd ACP by taking the date of promotion as OIB i.e. 21.10.1981 keeping in view ACP Rules 2008 (Annexure P-6) and pass fresh order within a period of three months from the date of receipt of certified copy of this order. It is being clarified that after being given benefit of 2nd ACP which accrues on 21.10.2001, he will not be entitled for 3rd ACP keeping in view ACP Rules, 2008 (Annexure P-6) since he has already availed three financial upgradation in his entire career as the first upgradation is when the petitioner was promoted from Class IV to OIB.

(RITU BAHRI)
JUDGE

05.03.2020

Divyanshi

Whether speaking/reasoned

:

Yes/No

Whether reportable

:

Yes/No