

IN THE HIGH COURT OF PUNJAB ANDHARYANAAT
CHANDIGARH

CWP No. 9638-2016
Date of decision:-12.03.2020

Darshan Kumar Garg

.....Petitioner

vs.

State of Haryana and ors.

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. S.S. Sahu, Advocate
for the petitioner.

Mr. Randhir Singh, Addl.A.G, Haryana

RITU BAHRI, J.(Oral)

Petitioner is seeking quashing of order dated 17.08.2016 (P-5)
and 24.07.2015 (P-4).

Petitioner joined as Junior Engineer on 10.09.1984 in the Punjab State Irrigation Department and remained posted there till 14.09.1992. He was then mutually transferred to Haryana State Irrigation Department vice Sh. Makhan Singh, JE who had joined PSID. In column No. 4 of the letter, it has specifically mentioned that he will get the pay scale of Junior Engineer as enforced in the department and his pay will be fixed in the present pay scale under the normal Rules. Accordingly, the pay of the petitioner was protected as per terms and conditions of the transfer order dated 17.01.1994. Thereafter, he was given 1st and 2nd ACP. Then his case was sent for 3rd ACP. Respondent No. 2 sent the case to CAO wing for necessary advise in the matter who stated that the additional increment given on 01.07.1992 was against the policy dated 07.08.1992. The additional increment is only to be granted by reckoning service rendered in Haryana Government. Further ACP scales are also only to be granted on the

service count towards seniority. It was advised that 1st and 2nd ACP granted

to the petitioner be reviewed and his pay be protected from the date he joined the Irrigation Department. He was held to be not entitled for 3rd ACP as he has not completed the required length of service in Haryana Government. Vide letter dated 24.07.2015 (P-4), respondent No. 2 directed to review 1st and 2nd ACP granted to the petitioner and get the pay fixed from the date he joined the irrigation department in Haryana. Vide order dated 17.08.2016 (P-5) the pay of the petitioner was re-fixed on the ground that additional increment granted on 01.07.1992 was against policy dated 07.08.1992 because the additional increment was only to be granted by reckoning service rendered in the Haryana Government and ACP scale are also only to be granted on the service counted towards seniority. Earlier the petitioner was granted two annual increments on account of higher education but the benefit of two increments was withdrawn by respondent vide order dated 22.10.2002 (P-6). But when the petitioner approached the higher authorities, the benefit of two increments withdrawn by the respondent, was restored and the pay of the petitioner was re-fixed vide order dated 02.12.2002 (P-7).

Learned counsel for the petitioner at the very outset has relied upon judgment of this Court in a case of Smt. Sudesh Kumari vs. State of Haryana and others, passed in CWP No. 13885-1993, decided on where the pay of the petitioner was protected from Punjab to Haryana by way of transfer but subsequently in the same manner as has been done in this case her pay was re-fixed on the ground that her past service was wrongly counted and her pay was re-fixed. She challenged the re-fixation order before this Court and the same was set aside and upheld by the Division Bench in LPA No. 31/2008 titled as State of Haryana and others vs. Smt. Sudesh Kumari, decided on 08.02.2008.

On the other hand, learned State counsel has not been able to dispute the judgment cited by learned counsel for the petitioner. Learned State counsel has made an attempt to justify the impugned order by referring to instructions dated 07.08.1992. He has argued that the additional increment has to be granted only with respect to regular satisfactory service under Haryana Government. By referring to ACP Rule No. 5 (2) (Note), he has argued that the ACP scale could only be granted on the completion of regular satisfactory service. Since the service of the petitioner with the Punjab Government could not be counted for the purpose of seniority, therefore the petitioner was not entitled to be granted 1st and 2nd ACP scale.

Heard learned counsel for the parties.

The argument of learned State counsel is liable to be rejected as this issue has already been decided in detail in Sudesh Kumari's case (supra) and the operative part of the judgment reads as under:-

“....To my mind the order is explicit. The approval of her appointment was by way of transfer as there is a provision for appointment by transfer from other States. By way of abundant caution the Haryana Government had further sought clarification from the Punjab Government to pay leave salary and pension contribution for the period of service rendered by the employee in the Punjab State. The fact that the appointment was by way of Transfer is further made clear by the order of posting Annexure P-6. The same also says that she is being posted in Faridabad upon her transfer from Ropar. Since the appointment was by way of transfer, it was required that she would be placed at the bottom of the seniority. Still further since the transfer was at the request of the petitioner it was further stated that she would not claim seniority and TADA. It was, therefore, that an affidavit was

required from the petitioner stating the aforementioned facts. If it was a fresh appointment, then there was no requirement of such an affidavit. The aforementioned facts have no room for doubt that appointment of the petitioner was by way of transfer. I, therefore, cannot agree with the contention of the respondents that it was a fresh appointment. Thus, the claim of the petitioner would be covered under Rule 4.4 (a) (ii) of the Punjab Civil Services Rules. As per the said rule, the salary of the petitioner as a result of her joining in the State of Haryana on transfer was required to be protected”.

Applying the ratio of the above judgment, the service rendered by the petitioner in State of Punjab has to be counted for grant of ACP scale as well. The department had rightly granted the benefit earlier, which were later on withdrawn vide impugned orders. The claim of the petitioner would be covered under Rule 4.4 (a) (ii) of the Punjab Civil Services Rules.

The writ petition is allowed and order dated 17.08.2016 (P-5) and 24.07.2015 (P-4) are set aside. The petitioner be granted 1st ACP and 2nd ACP and his case be now considered for 3rd ACP. This exercise shall be completed within a period of three months from the date of receipt of certified copy of this order.

12.03.2020

G Arora

(RITU BAHRI)
JUDGE

Whether speaking/reasoned	:	Yes
Whether reportable	:	No