

**107+234 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CM-3948-CWP-2020 in/and
CWP No.30250 of 2018
Date of Decision: 5.3.2020

Deepak Jindal and anotherPetitioners

Versus

State of Haryana and others
.....Respondents

CORAM: HON'BLE MS. JUSTICE NIRMALJIT KAUR

Present: Mr. Satyavir Singh Yadav, Advocate, for the petitioners.
Mr. Pankaj Mulwani, Deputy Advocate General, Haryana.
Ms. Namirata Shergill, Advocate, for respondents No.2 to 4.

NIRMALJIT KAUR, J. (Oral)

CM-3948-CWP-2020

Information dated 12.2.2020 and 14.2.2020 is taken on record.

CM stands disposed of.

CWP-30250-2018

The present writ petition is filed for quashing of the orders dated 12.10.2018 of respondent No.4 conveyed vide letter dated 16.10.2018 (Annexure P-8 [colly]) passed by the Civil Judge (Sr. Divn.), Panipat, whereby, request of the petitioners to change their option in accordance with Haryana Government Letter dated 16.6.2017 (Annexure P-2) has been declined, and the opinion of the Accounts Officer of the office of Deputy Commissioner, Panipat dated 24.4.2018 (Annexures P-6 and P-7) declining the request of the petitioners without considering the fact that the letter dated 16.6.2017 was received in the office of respondents No.3 and 4 on 19.9.2017 i.e. after a period of three months with a further prayer to direct

the respondents to allow the petitioner to exercise their options as per the letter of Haryana Government dated 16.6.2017 (Annexure P-2) and accordingly to release the arrears alongwith interest.

Written statement has been filed on behalf of respondents No.2, to 4. As per para No.2 of the preliminary objection justifying the impugned orders, it is stated therein that since the applications were filed after a period of three months, which was prerequisite, therefore, the very option having been exercised beyond the period of limitation could not be accepted. Para Nos.2 and 3 of the said written statement is reproduced as under:-

“2. That the Government of Haryana had issued notification No.1/20/2016-5PR (FD) dated 16.5.2017 (Annexure R-1), whereby the explanation-3 below Rule-16 of Haryana Civil Services (ACP) Rules, 2016 was deleted. A clarification was subsequently issued vide letter No.1/20/2016-5PR (FD) dated 16.6.2017 (Annexure R-2) whereby it was clarified that the employees who had been granted Ist ACP between 01.01.2016 to 28.10.2016, could re-exercise their option from the date of grant of Ist ACP within three months from the date of issue of this letter. Copy of the clarification with regard to notification dated 16.6.2017 was received in the office of answering respondent No.3 on 19.9.2017 (Annexure R-3). The copy thereof had been sent to the office of respondent No.4 for intimation and necessary action. The petitioner Shri Deepak Jindal had moved an application for re-fixation of his pay on 29.11.2017 (Annexure R-4) and petitioner Shri Abhishek had moved similar application on 27.11.2017 (Annexure R-5). The opinion of Accounts Officer, office of Deputy Commissioner Panipat had been sought by the office of respondent No.4 and as per the opinion given by him, no re-fixation of pay of the concerned officials was required as they had moved applications for re-exercising their option after

passing of the period of six months from the date of issuing of clarification letter dated 16.6.2017. The notification dated 16.5.2017 was published in the Haryana Gazette and the same was easily available on the website of Finance Department, Government of Haryana i.e. www.finhry.gov.in, under Public Information tab>Instructions. However, the petitioners did not move the application for re-fixation of their pay within the period of three months and therefore, the applications moved by them were rightly declined by respondent NO.4 on 12.10.2018. Copies of opinions of Accounts Officer are annexed herewith as Annexure R-6 and Annexure R-7. As the applications by both the petitioners had been filed after the period of three months, which was a prerequisite as mentioned in letter dated 16.6.2017, therefore, the same were barred by limitation.

3. That after receiving the applications of both the petitioners shown as Annexure R-4 and R-5, the respondent no.4 had obtained the opinion of the Account Officer of the office of the Deputy Commissioner, Panipat through letter No.137 dated 14.2.2018 and letter no.145 dated 15.2.2018. Copies of the letters are enclosed as Annexure R-8 and R-9 respectively. After going through the opinion of Account officer of the Deputy Commissioner, Panipat, it was decided by the competent authority i.e. respondent No.4 vide letter No.1238 dated 16.10.2018 and letter no.1239 dated 16.10.2018 that the petitioners were not entitled for grant of ACP Scale and accordingly their applications were decided and the copies of both the letters are attached herewith as Annexure R-10 and R-11, respectively.”

However, respondent No.1 vide memo dated 16.6.2017 had issued clarification regarding exercise of the option under the Haryana Civil Services (ACP) Rules, 2016. It was clarified that all those who were granted

1st ACP between 1.1.2016 to 28.10.2016 may re-exercise their option from the date of grant of 1st ACP within three months from the date of the issue of the letter. However, the office of respondent No.2 forwarded the letter dated 16.6.2017 to all the District and Sessions Judges in the State of Haryana for information and necessary action only after the expiry of three months. The said letter was received in the office of respondent No.3 as late as on 19.9.2017, which was forwarded only thereafter to the Accounts Branch and office of Civil Judge (Sr. Divn.), Panipat for information and necessary action accordingly. It is therefore evident that the very letter dated 16.6.2017 was forwarded by respondent No.2 after the expiry of three months period. Hence, no fault can be found with the petitioner in re-exercising their option on 27.11.2017/29.11.2017 i.e. within the three months of the receipt of the letter dated 16.6.2017. The three months period having expired before the receipt of the letter makes it only fair and appropriate that the petitioners should be granted the requisite period of three months in the interest of justice to give them sufficient time to exercise their option after the receipt of the letter.

Moreover, a perusal of the Annexures A-1 and A-2 which the petitioners obtained under the Right to Information Act, 2005 shows that the employees of the offices of the District and Sessions Judge, Rohtak as well as Karnal were granted the benefit even though the option was exercised after the stipulated period of three months granted in the letter dated 16.6.2017 for the same reason that the said letter was in any case received in the office after the expiry of three months.

In view of the above, the impugned orders dated 12.10.2018

and 24.4.2018 are set aside. The respondents are directed to accept the request of the petitioners regarding re-exercising of the option after the expiry of the period of three months. Their pay shall be accordingly re-fixed and the arrears shall be released alongwith interest @ 6% per annum.

Allowed as above.

(NIRMALJIT KAUR)
JUDGE

5.3.2020
sharmila

Whether Speaking/Reasoned :	Yes/No
Whether Reportable :	Yes/No