

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

201

**CWP No.15125 of 2017 (O&M)
Decided on : 15.09.2021**

Vijay Pal and another

... Petitioners

Versus

State of Haryana and others

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present: Mr. Naveen Daryal, Advocate for the petitioners.

Mr. RKS Brar, Addl. AG, Haryana.

G.S. Sandhawalia, J. (Oral)

CM-13116-CWP-2018

Application to place on record Annexure P-13 is allowed. The same is taken on record. Office to append the same at the relevant place.

CM stands disposed of.

Main case (O&M)

In the present writ petition filed under Articles 226/227 of the Constitution of India, the petitioners seek quashing of the impugned orders dated 23.12.2016 (Annexures P-4 & P-5), whereby the ACP scales had been withdrawn illegally and arbitrarily. Resultantly, directions are sought for restoring the ACP scales with all consequential benefits.

A perusal of the impugned orders would go on to show that the petitioners on account of having chosen to forego the promotion to the post of Junior Lecturer Assistant in the year 2006/2008 was the reason as such to the respondents to take that drastic step but belatedly. Further perusal of the impugned orders goes on to show that the petitioners had been granted the benefit of first ACP on 17.08.1999 and the second ACP on 13.01.2006 to

petitioner no.1-Vijay Pal, whereas in the case of petitioner no.2-Jai Bhagwan on 21.06.2011. The third ACP was granted to petitioner no.1 on 09.05.2014, whereas to petitioner no.2 on 28.04.2014. Thus, it would be clear from year 2006/2008 onwards when they had foregone the promotion as such they had been getting the said benefits.

Though this Court in the case of **'Surinder Kumari and others Vs. State of Haryana and another'** 2018 (1) SCT 120 while relying upon the judgment of the Division Bench passed in **'Swaran Lata Vs. State of Haryana'**, 1997 (1) SCT 516, has held that employee who foregoes promotion at his own request would render himself ineligible for the benefit of higher pay scales. However, the issue of recovery was decided in favour of the employees keeping in view the law laid down by the Apex Court in **'State of Punjab Vs. Rafiq Masih (White Washer)'** 2015 (1) SCT 195.

It is not disputed that the respondents themselves had chosen to give promotion to the petitioners on 02.12.2016 (Annexure P-6), which fact also stands admitted by the State in its reply. Rather the petitioners now are stated to have retired which would be clear from Annexure P-13, which has now been placed on record to the extent that petitioner no.2's pension case has been processed and he has also been granted the benefit of 7th Pay Commission. This Court had also granted interim protection on 14.07.2017 to the petitioners.

In such circumstances, once the relief as such against recovery would necessarily have to be granted and it would not be

appropriate for the State to recover the benefits, which they have granted to the petitioners and now sought to recover at a belated stage after almost 8 years. It has also been pointed out that petitioner no.1 also has retired on 30.08.2020.

Accordingly, this Court is of the opinion that action of the State as such seeking refix the pay by withdrawing the ACP benefits at a belated stage is arbitrarily and uncalled for and in view of the settled principle of law that on account of no concealment as such the State cannot recover the amount at a belated stage. Resultantly, the impugned orders are not sustainable and accordingly quashed. The petitioners are also held entitled for all consequential benefits on account of the orders being set aside.

The writ petition stands allowed.

September 15, 2021
Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No