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

CWP NO. 5371 OF 1997

DATE OF DECISION: 25.04.2022

Dr. V. K. Sharma and others

...Petitioners

Versus

State of Haryana and others

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. R. K. Malik, Senior Advocate with
Mr. Sandeep Dhull, Advocate,
for the petitioners.

Mr. Deepak Bhardwaj, DAG, Haryana.

ARUN MONGA, J. (ORAL)

Petitioners, working as veterinary officers, were initially appointed in Haryana Dairy Development Federation Department. On being declared as surplus they were later on absorbed in the department of Animal Husbandry and Dairy Development vide an office order dated 13.01.1993 (Annexure P-1).

2. Grievance of the petitioners is qua impugned order dated 02.01.1997 (Annexure P-5) vide which they have been denied the benefit of previous service rendered by them for the purpose of calculating 05 years and 12 years to be entitled for higher pay scale under the Assured Career Progression Scheme (hereinafter referred to as "ACP"). Hence, the writ petition.

3. It would be apposite first to have a look at the duly accepted terms and conditions conveyed to the petitioners at the time of absorption with State government, as below:-

“xxx

2. *Their above appointment is subject to the condition that they will not be given any service benefits towards seniority etc. except present pay-protection. They will be considered at the tail and junior-most of the departmental District Dairy Officers, if and when considered for absorption, in the Department.*

3. *Their appointment will be subject to the approval of Chief Secretary/Finance Department, Haryana.*

4. *On their permanent absorption, if and when considered and ordered, they will be given the then existing pay scale of the department which they join/where they are posted.”*

“2. *The above absorption is subject to the following conditions :*

- i) That their inter-se seniority shall not be disturbed and will remain the same, such as was in the HDDCF.*
- ii) That their seniority in Dairy Development Department will be fixed at the tail of the officers (Dist. Dairy Development Officers) appointed in the Department prior to 15.01.1993.*
- iii) That their pay shall be strictly in accordance with the pay scale as are approved by the State government from time to time.*
- iv) That their absorption and service conditions will be governed by the Rules as are applicable to the officers of the Dairy Development Department.*
- v) **That their last pay being drawn will be protected.***
- vi) That all the past liabilities in respect of these officers, if any, will be borne by Federation itself and these officers will not be entitled to claim any past benefit from the department.*
- vii) That these officers will be entitled for the pensionary benefit/gratuity, leave etc. from the date of their absorption in the department. (emphasis supplied).*

4. Taking support of the Apex Court judgment dated 15.07.2008 rendered in Civil Appeal No. 4446 of 2008 titled “***State of Haryana and another v. Deepak Sood and others***” learned senior counsel strenuously argues that all the petitioners are to be accorded pay protection.

5. In the return filed by the respondents, the claim of the petitioners has been resisted essentially on the ground that as per terms and conditions vide absorption orders dated 19.04.1996 (Annexure P-2), but for pay protection no other benefit of their past service had been given

to the petitioners. Their entitlement, even for pension, gratuity, leave encashment is to be worked out from the date of being absorbed/joining the department as said period of past service cannot be counted for grant of the then pay scale of Rs.3,000-4,500/- and the same has been rightly not accorded to them. Learned State counsel also argues on the same lines of defense taken in the return as aforesaid.

6. Reliance has also been placed by learned State counsel on a Division Bench judgment dated 09.04.1996 passed in CWP No.10061 of 1995 titled as **“Dr. R. S. Jhas v. State of Haryana and others”** (Annexure R-1) to seek dismissal of the writ petition.

7. I have heard rival contentions of learned senior counsel representing the petitioners and those of learned State counsel.

8. For the reasons stated herein after, I am of the opinion that the writ petition merits dismissal.

9. First and foremost, let us see whether the Division Bench judgment relied upon by learned State counsel is applicable to the case of the petitioners. Division Bench case pertains to another veterinary officer who was absorbed from federation to the department in question. For ready reference, the relevant extract thereof is reproduced herein below:

“xxxxxxx

In this letter of option, the petitioner has categorically admitted that “his seniority will be fixed from the date of joining in the Govt. service” and that “he will become eligible for pension from the date of joining into the Govt. service”. It is not disputed that the petitioner’s seniority has been fixed in accordance with the stipulation in the order dated March 31,1994 and the option exercised by him. He now submits that he is entitled to the fixation of the seniority with effect from the date of his initial appointment on September, 18, 1981, when he had joined as Farm Manager in the Corporation.

This contention cannot be accepted. The service rendered by the petitioner in the Corporation was not service in

the department of the Govt. The petitioner had exercised his option. Having done so, he is estopped from claiming this relief.
xxxxx xxxxx.”

10. A perusal of the above shows that the Division Bench judgment has been rendered in context of seeking pension with effect from original date of joining the federation and not from the date when the petitioners had joined government service/department of Animal Husbandry. No doubt, as per the ratio rendered therein, the petitioners are not entitled to seek any relief for pension and thus there is no quibble about it. Neither it has been so pleaded in the petition nor it is the argument of learned senior counsel representing the petitioners.

11. Accordingly, I am of the view that aforesaid Division Bench judgment is not applicable for the purpose of according of ACP and/ or denial thereof.

12. Coming to the controversy in hand, what is to be seen is that once pay protection has been granted to the petitioners, as has been argued by learned senior counsel, the department can now turn around and say that protection of pay does not include the benefit of ACP.

13. I have perused **Deepak Sood's** judgment *ibid* and am unable to persuade myself with the argument of learned senior counsel that in the present case petitioners were accorded pay protection in the same terms as was the case before the Supreme Court, wherein State of Haryana had gone in appeal challenging the Division Bench judgment vide which Single Bench opinion was upheld. In coming to the conclusion, so as far as surplus staff which was absorbed as per government decision, they were entitled to all monetary benefits including pay protection etc. except seniority.

14. In order to better appreciate the Apex Court judgment, it is, therefore, relevant to see as to what were the terms of absorption of employees qua whom ACP benefits were denied by the State, but Division Bench of this Court came to the conclusion that same were wrongly denied to them. For ready reference, relevant Clause qua the pay protection of those employees is reproduced herein below:

“The Government has decided that the surplus employees of Group ‘C’ of the abolished municipalities will be absorbed in your Department against the existing vacancies as per their bio data at Annexure A. It has also been decided to relax the provision of qualifications to absorb such employees if necessary.

*These officials have to be appointed on transfer basis and shall joint as the junior most employees in their categories on the date of appointment. **These employees shall be eligible fro pay and pensionary benefits of their past service.** However, no benefit of past service in seniority matters shall be given, when being adjusted in your department. The Government has granted various relaxations required for these adjustments as per the following letters :*

- (i) The posts against which these employees have to be adjusted have been taken out of purview of the Staff Selection Commission vide government notification No.G.S.R 19/Const/Art.309/2000 dated 07.04.2000.*
- (ii) Relaxation in the instructions issued by the Finance Department letter No.5/6/92/B&C dated 02.04.1999 vide Finance Department’s concurrence issued vide their U.O No. 5/14/2000-I dated 07.03.2000.*
- (iii) Relaxation in the minimum qualifications as laid down in the Service Rules of the concerned Departments/ Boards/Corporations for the Group C and D employees for absorption of employees rendered surplus issued vide Chief Secretary’s letter No.42/183/99-5GSI, dated 15.03.2000.”*

15. A perusal of the above leaves no manner of doubt that very absorption of the employees working for the municipalities made it amply clear that *“they shall be eligible for pay and pensionary benefits of their past service, though no benefit of past service in seniority matter was to be given to them”*.

16. It was in the light of the aforesaid condition that employees were aggrieved for non-grant of ACP to them which led to rendering of following ratio by Supreme Court :

“10. A perusal of these terms and conditions makes it clear that what is being lost by these surplus staff is their seniority. They will have to get zero seniority in the new department but their past service has been counted for fixation of pay as well as pensionary benefits. The scheme of ACP grade came subsequently. On that basis the respondents made a grievance that they were being denied the benefit of ACP and the services rendered by them in the Municipal Committee has not been counted for the purposes of calculating 10/20 years of service in the department. It is a misfortune that the respondents have been declared surplus in the Municipal Committee, Panipat but the government has been benevolent to that and absorbed them in the State government but denied them the benefit of past service for the purpose of seniority. However, at the same time they have counted their past service for the purpose of pay and pensionary benefits. Once the government considered them eligible for fixation of pay and pensionary benefits and counted their past service then there is no reason why ACP grade should be denied to them. Having lost, at one hand their seniority in the new department it would be unfair to deny them the benefit of ACP grade. When the government counts their past service for grant of the benefit of pay fixation and pension, there is no reason why their past service should not be given the benefit of ACP grade.”

17. Terms of absorption vis-à-vis ratio rendered by Supreme Court do not make out a case for the petitioners to seek parity. Reference may also be had to, in this context, to a Single Bench judgment (Annexure P-6) which has been though relied upon by learned senior counsel. It appears that shoe is, in fact, on the other foot, inasmuch as, Clause 6 qua absorption of the employees therein makes it amply clear that they were to be given benefit of previous service rendered by them in the HSMIT. For ready reference, Clause 6 is reproduced herein below:

“Clause 6 fixing the terms and conditions of absorption is as follows :

“They will be given the benefit of previous service rendered in the HSMIT in the matter of fixation of pay and

leave only and will not be permitted any benefit towards seniority.”

18. Once again, the beneficial condition was under interpretation and relying on the same, learned Single Bench allowed the claim of the petitioner therein as already noted herein above. As against the same, the terms of absorption of petitioners make it clear to the contrary of what they were entitled to last pay drawn by them. The words that they shall be given the benefit of previous service rendered in erstwhile Federation for the purpose of granting future pay are amiss. In the absence thereof, they cannot claim parity either of the judgments rendered by Division Bench or Single Bench.

19. What is over emphasis of learned senior counsel on the words “*That their last pay being drawn will be protected*” is totally misplaced. Point he is missing is that the petitioners were merely to be accorded present pay protection at the time of absorption. What he canvasses if accepted, would amount to granting them future pay protection by counting their past service rendered in the federation, which was not the import of the terms and conditions. Terms are amply clear, what they were to get was only the present pay protection. It is nowhere stated that they would be entitled to ACP by counting the previous service rendered by them for counting future benefits.

20. In view of the above, no grounds to interfere and the present petition is dismissed.

APRIL 25, 2022
Shalini

(ARUN MONGA)
JUDGE

Whether speaking/reasoned :
Whether reportable :

Yes/No
Yes/No