

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

CWP-16530-2013 (O&M)

Date of Decision: 01.12.2022

Balwan Singh

.....Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

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

Mr. Saurabh Mohunta, D.A.G., Haryana.

ARUN MONGA, J. (ORAL)

Petition herein, *inter alia*, is for issuance of a writ in the nature of Mandamus directing the respondents to grant 2nd ACP after completion of 20 years i.e. 10.10.2005, to the petitioner and to fix his pay w.e.f. 10.10.2005 and arrears be paid along with all consequential benefits.

2. Controversy involved in the instant case, being in very narrow compass, has already been noted by Amol Rattan Singh, J. (as he then was in this Court) in order dated 06.11.2017, which is extracted as below:

“In view of what has been stated in paragraph 2 of the reply of the General Manager, Haryana Roadways, Chandigarh, on behalf of all the respondents, he is now directed to file an affidavit that if the petitioner's services were regularised w.e.f. 30.09.1988, in terms of the Haryana Government instructions dated 28.04.1997, firstly, how was an order regularising his services w.e.f. that date, in terms of instructions of 1997, passed 21 years after 1988 and about 12 years after 1997.

Secondly, since it is the specific contention of the learned counsel for the petitioner that the petitioner was granted all other benefits including higher standard pay scale,

taking it that he is in regular service w.e.f. 11.10.1985, how has the benefit of ACP been granted to him taking his service to be w.e.f. 30.09.1998.

The affidavit be filed atleast 3 days before the next date of hearing, failing which the General Manager, Haryana Roadways, Chandigarh, shall remain personally present in the Court.

Mr. Daryal, learned counsel for petitioner, has also produced in Court today a tentative seniority list, stated to have been issued on 28.08.2012, in which the date of regularisation of the petitioner is shown to be 07.06.1986.

The General Manager, Haryana Roadways, Chandigarh, would explain as to how that happened, if right from the beginning, the petitioners' date of regular service is shown in the service book as 30.09.1988.

Adjourned to 11.12.2017.

A copy of this order be given to the learned State counsel under the signatures of the Bench Secretary."

3. *Apropos, an affidavit dated 11.12.2017 deposited by Mr. Ashutosh Rajan, HCS, General Manager, Haryana Roadways, Chandigarh has been filed, wherein in para No.4, it is stated as below:*

"4. That in compliance to the orders dated 6.11.2017, it is submitted that the petitioner was appointed on 11.10.1985 through Employment Exchange and the services of the petitioner were regularised w.e.f. 7.6.1986 after completion of 240 days of service from the date of appointment in terms of the State Transport Controller, Haryana Instructions issued vide memo No.1682-92/A//HAR dated 19.2.1979 (copy of Instructions dated 19.2.1979 is annexed as Annexure D-1). The petitioner has been granted with the financial upgradation by way of standard scale of Rs.1400-2600/- w.e.f. 1.11.1995 in terms of Haryana Government Notification No.1/34/94-4PR (RD) dated 8.2.1994 on completion of 10 years regular satisfactory service. However, it is pertinent to mention here that the petitioner has already been given with all the benefits in accordance with the appointment w.e.f. 11.10.1985. Those benefits neither withdrawn nor refixed. Thereafter as per Haryana Government Instruction dated 28.4.1997 (which is annexed as Annexure D-2), the office of Transport Commissioner, Haryana vide its memo No.3601-02/AE3/E2 dated 13.7.2009 issued another orders to

regularise the service of petitioner and other employees of the Haryana Roadways. Therefore the orders of service of regularization of the petitioner w.e.f. 30.9.1988 issued vide the office of answering deponent order No.10789-830/ECD dated 22.7.2009(copy of order dated 22.7.2009 is annexed as Annexure D-3) after about 12 years of the Government Instructions. It is apt to mention here that the services of the petitioner were again regularized w.e.f. 30/9/1988 as per instruction dated 28/04/1997 of the Chief Secretary to Govt. of Haryana and these orders was deemed to be amended orders in lieu of the earlier regularization orders w.e.f. 7.6.86 and the same has been duly conveyed to the petitioner of which no objections has been raised by the petitioner at that time. Hence the orders of regularization w.e.f. 07.06.1986 neither withdrawn nor cancelled rather the orders was amended w.e.f. 30.09.1988.”

4. In view of the aforesaid candid stand taken in the affidavit that the services of the petitioner were regularized w.e.f. 07.06.1986, I see no reason why the petitioner be not accorded the benefit of calculating the entitlement of his ACP w.e.f. the same date.

5. Accordingly, the impugned order dated 18.06.2009 (Annexure P-4) is set aside. Matter is remanded back to the competent authority to pass a fresh order in tune with the stand taken in the said affidavit. It transpires that during the pendency of the present petition the petitioner has since retired. Resultantly, the consequential benefits along with interest @ 5% per annum be disbursed to him, as expeditiously as possible, but in any case not later than a period of 3 months.

6. Pending civil miscellaneous application, if any, also stands disposed of.

(ARUN MONGA)
JUDGE

December 01, 2022

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Whether speaking/reasoned:

Yes/No

Whether reportable :

Yes/No