

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

**CWP-17077-2021
Date of Decision : 02.03.2022**

Yash Pal ...Petitioner

Versus

The State of Haryana and others ...Respondents

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Jawahar Lal Goyal, Advocate
for the petitioner.

Mr. Harish Rathee, DAG, Haryana.

(In virtual Court)

RAJBIR SEHRAWAT, J (ORAL)

1. This is a petition filed under Article 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari quashing the impugned order dated 26.04.2021/27.04.2021 (P-10) qua Sr. No.949, wherein the posting of petitioner as ESHM is shown as 'Forgo-retirement on 30.04.2021 after completion of 58 years of age; recovery order dated 23.08.2021 (P-13), vide which recovery amounting to Rs.1,36,024/- has been sought from the petitioner as his 2nd ACP has been ordered to be withdrawn on account of forgoing promotion. Certain other prayers have also been made in the petition.

2. The facts involved in the present case are that the petitioner was appointed as Science Master on 29.01.1996, on adhoc basis in the School Education Department, Haryana, which was followed by regularization w.e.f. 01.10.2003. As per the ACP scheme/rules, the

petitioner was granted 1st ACP scale w.e.f. 01.10.2013, on completion of 10 years regular satisfactory service. Thereafter, the petitioner was awarded 2nd ACP scale as well, w.e.f. 01.10.2019, on completion of 16 years of service. After grant of 2nd ACP scale, the pay of the petitioner was fixed on 06.03.2020 and the petitioner started drawing salary accordingly. The next post of promotion from the post of Science Master is to the post of Elementary School Head Master. Since the petitioner was senior enough, therefore, his case was also considered and the necessary promotion order was passed on 23.11.2020. However, thereafter, actual posting orders for promotional post were not issued by the respondent department to any of the persons who are promoted vide the above said order.

3. As has come on record, there were certain earlier promotion orders also qua which the persons promoted had not been granted postings after their promotions. Therefore, a consolidated exercise of granting posting stations was carried out by the respondent department. Online options were invited for places of postings and the candidates were asked to fill-up their options, if they intended to accept the promotion. The online form contained two columns. One was meant for those persons, who accepted the promotions and who intended to get the postings pursuant to the promotion. The other column was where the promoted persons wanted to forego the promotion and did not want to be disturbed from their current place. These options were to be exercised by the promoted persons upto 19.04.2021. The petitioner opted the column of foregoing promotion and filled up the column submitting that he did not want to choose any station. The reason given by the petitioner was also mentioned by stating therein that he was retiring on 30.04.2021 only on completion of 58 years. Pursuant to foregoing of the promotion, the petitioner was not granted any posting

order and he was retained as a Science Master at the same place where he was posted earlier. Hence, pension was also fixed on the post of Science Master only. After the petitioner opted to forego the promotion, the respondents withdrew the 2nd ACP scale from the petitioner, which was earlier granted to him in lieu of lack of promotion, on the ground that he has subsequently foregone the promotion. Accordingly, the pension of the petitioner has also been re-fixed and reduced. Hence, the present petition has been filed challenging the reduction of the pension by withdrawing the ACP scale, as well as, the recovery arising therefrom.

4. It is submitted by the counsel for the petitioner that the promotion of the petitioner was made in November, 2020. It was the respondents only who are responsible for not granting posting to the petitioner within time stipulated in the promotion period, i.e., within a period of 3 days. When the respondents asked for options of stations, the petitioner had already entered into the month of his retirement, rather, he was retiring just after 10 days of seeking the options by the respondents. Moreover, before seeking option from the petitioner, the respondents had already fixed the pension of the petitioner in the scale of Science Master. Faced with this situation, the petitioner had chosen the option to forego the promotion, because he would have been disturbed from his present place of posting only for a period of one week or so. That would have resulted in delay in release of the retiral benefits of the petitioner. Hence, it is submitted that it is the situation created by the respondents themselves which has resulted in the petitioner foregoing the promotion. The petitioner cannot be punished for the fault of the respondents.

5. Learned counsel has further submitted that the respondents themselves had granted the 2nd ACP under the rules and as per the entitlement of the petitioner. The petitioner was getting the pension only as per his entitlement till the date the order withdrawing the ACP scales was withdrawn from him. As submitted above, the petitioner could not opt for promotion because of the delay caused by the respondents, therefore, it is the respondents only because of inaction of whom, the petitioner had got the pension in the 2nd ACP scale. The petitioner is not at fault in this matter at all, therefore, no recovery can be effected from the petitioner on account of withdrawal of the 2nd ACP scale. Learned counsel for the petitioner has relied upon the judgment in **Sahib Ram Verma versus Union of India, 1995(1) S.C.T. 668.**

6. Having heard the counsel for the parties and having perused the record, this Court does not find any substance in the arguments of the petitioner. There is no denying the fact that the promotion order was issued by the respondents in November, 2020 and that the petitioner was not given the appointment within the stipulated period of three days. However, the respondents had granted due opportunity to the petitioner to opt for promotion and to get posted on the promotional post. However, the petitioner had positively chosen to forego the promotion, as such. Hence, the respondents cannot be found at fault in not granting him the promotion and any posting pursuant to the promotion order.

7. Since the promotion had been foregone by the petitioner, therefore, the action of withdrawal of the ACP scale is only the statutory consequence which was to follow and was to visit the petitioner under Rule

14 of the Haryana Civil Services (ACP Rules), 2016, which is reproduced as under :-

“14. Ceasing of entitlement of ACP Level.

(1) A Government employee who foregoes his promotion in the line of hierarchy or seeks reversion on his own accord to feeder post on any ground whatsoever, while drawing pay in --

(a) 3rd ACP Level, the pay shall be re-fixed in 2nd ACP Level ;

(b) 2nd ACP Level, the pay shall be re-fixed in the 1st ACP Level ;

(c) 1st ACP Level, the pay shall be re-fixed in the Functional pay structure, equal to the presumptive pay which shall have been admissible had he not been granted 3rd/2nd/1st ACP Level , as the case may be.

(2) If such Government employee becomes ready to accept promotion, in such case the period of service between the date of foregoing promotion/reversion and date of application indicating readiness to accept the promotion, subject to minimum one year, shall be excluded from the regular satisfactory service for the purpose of grant of ACP Level. On assuming the charge of promotional post the pay shall be re-fixed equal to the pay drawn in ACP Pay structure immediately before foregoing promotion or fixation of pay of the promotional post under normal rules, whichever is higher:

Provided that the request for seeking reversion or foregoing promotion once accepted by the competent authority shall not be withdrawn. Once a Government employee has foregone his promotion or sought reversion to a feeder post, such foregoing/ reversion shall remain in force for a minimum period of one year or upto the period he gives in writing to re-consider his name for promotion, whichever is later.”

Perusal of the above said rules makes it clear that if an employee foregoes the promotion when offered, that is bound to result in withdrawal of the ACP pay scale, which was granted to him on account of

non-availability of promotional avenues. The respondents may have been lax in seeking the options for postings from the persons, including the petitioner, however, the fact remains that he was granted an opportunity to accept the promotion. Since the petitioner has foregone the same, therefore, the respondents cannot be blamed for withdrawing the said 2nd ACP pay scales as well.

8. Although the counsel for the petitioner has submitted that it was the fault of the respondents only in not seeking options for postings for about six months, yet even such fault on the part of the respondents cannot operate as estoppel against the rules. Moreover, since the petitioner had already been issued the pension payment order in the pay scales of the Science Master, therefore, he would have been cognizant of the fact that if he foregoes the promotion, he will be getting the pension only in the post of Science Master. Since the pension is to be fixed as per the rules, therefore, the pension even on the post of Science Master has to be reduced pursuant to the provisions contained in the ACP Scales/rules. Needless to say, that the petitioner's pension has not been reduced lower than in the functional pay scales of the post of Science Master. Therefore, the petitioner does not have any absolute right to get the pension in the ACP scale except where the grant of ACP scale itself is permitted by the statutory rules.

9. However, this Court found substance in the arguments of the learned counsel for the petitioner that the petitioner himself is not responsible for payment of alleged excess amount of pension. For the limited purpose of recovery calculated by the respondents against the petitioner, the petitioner is right in asserting that it is the fault and delay on the part of the respondents only, which created the situation resulting into the payment of excess amount of pension, as per the respondents. This

Court found reliance on the judgment relied upon by the counsel for the petitioner in Sahib Ram Verma (supra). The petitioner is a class-III employee. He is not responsible for any excess payment as such. He was getting the pension only as per the pension payment order issued by the respondents themselves. Hence, no recovery can be effected from the petitioner on account of alleged excess payment of the pension. Hence, the recovery from the petitioner, as such, cannot be sustained.

10. It is also the claim of the petitioner that the amount in lieu of leave travel concession, which was duly sanctioned by the respondents, has not been released by the respondents on the pretext that the same deserves to be adjusted against the recovery. However, since the recovery itself has been held to be non-sustainable, therefore, this amount also deserves to be paid to the petitioner.

11. In view of the above, the present petition is partly allowed. The order of withdrawing the 2nd ACP scale is upheld. However, the order qua effecting the recovery from the petitioner is quashed. Accordingly, if some amount has been recovered from the petitioner on account of the withdrawal of the 2nd ACP scale, the respondents are directed to refund the same to the petitioner within a period of one month from the date of receipt of certified copy of this order. Further, the amount of leave travel concession which already stood sanctioned by the respondents, is also ordered to be paid to the petitioner. Let all due amounts be paid to the petitioner within a period of one month from the date of receipt of certified copy of this order.

(RAJBIR SEHRAWAT)
JUDGE

March 02, 2022
Manpreet

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No