

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

**CWP No.24060 of 2015
Date of Decision:-30.03.2022**

Rajinder Paul

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. Sukhbir Maandi, Advocate for
Mr. S.S. Brar, Advocate
for the petitioner.

Mr. Narender Singh Behgal, AAG, Haryana.

HARSIMRAN SINGH SETHI J.(Oral)

The present petition has been filed with a prayer that the writ of mandamus may kindly be issued to grant the petitioner the benefits under Assured Career Progression Scheme w.e.f. 22.12.2005 alongwith interest.

As per the averments made in the writ petition, the petitioner was recruited in the Police Department and was promoted to the rank of Deputy Superintendent of Police on 22.12.2005, from which post, the petitioner ultimately attained the age of superannuation.

Learned counsel appearing for the petitioner argues that the benefit of ACP has not been extended to the petitioner though he was working on the post of DSP since 12.12.2005 although he was regularly

promoted as DSP w.e.f. 28.12.2006 in the regular pay scale. The prayer of the petitioner is that the service, which the petitioner had rendered on the post of DSP starting from 22.12.2005 should be reckoned for the grant of ACP for computing the required period of five years need to be considered eligible for ACP benefits.

After notice of motion, respondents have filed the reply, wherein, it has been mentioned that the petitioner was given the charge of the post of DSP against the post available for the direct recruits on 22.12.2005 with clear condition that as and when direct recruits comes, the petitioner will have to be reverted. The respondents have further stated that as the regular promotion of the petitioner as DSP is w.e.f. 28.12.2006, he retired before completing minimum period of five years required for the grant of ACP.

I have heard learned counsel for the parties and gone through the records with their able assistance.

It is settled principle of law that for the grant of benefit under the Assured Career Progression Scheme, the length of service has to be taken from the date of the regular promotion and the adhoc service rendered prior to the regular promotion cannot be counted for the grant of said benefits. The grant of benefit under Assured Career Progression Scheme is to mitigate the hardship of stagnation and the stagnation can be served if an employee is regularly promoting in the present cadre as only then the said employee can seek benefit of ACP due to the stagnation. In the present case, it is a conceded fact that the petitioner did not complete the minimum period of five years required for the promotion from the date of

regular promotion as DSP therefore question of the grant of ACP, does not arise as petitioner never attained eligibility for the said benefits. The prayer of the petitioner that the service which he has rendered as regularly basis from 22.12.2005 till 28.12.2006 should be treated as a qualifying service for the grant of benefit of ACP is not correct and cannot be accepted.

The same question of law has already been settled by the Supreme Court in ***Civil Appeal No.13423 of 1996, titled 'State of Haryana vs. Haryana Veterinary and A.H.T.S. Association', decided on 19.09.2000***, relevant para of which reads as under :-

“xxx xxx xxx

Rule 11 provides for continuation on probation for a period of 2 years and Rule 12 is the Rule for seniority. A combined reading of the aforesaid provisions of the Recruitment Rules puts the controversy beyond any doubt and the only conclusion which could be drawn from the aforesaid Rules is that the services rendered either on ad hoc basis or as a stopgap arrangement, as in the case in hand from 1980 to 1982 cannot be held to be regular service for getting the benefits of the revised scale of pay or of the selection grade under the Government Memorandum dated 2nd June, 1989 and 16th May, 1990, and therefore, the majority judgment of the High Court must be held to be contrary to the aforesaid provisions of the Recruitment Rules, consequently cannot be sustained. The initial letter of appointment dated 6.12.1979 pursuant: to which respondent Rakesh Kumar joined as an Assistant Engineer on ad hoc basis in 1980 was also placed before us. The said appointment letter unequivocally indicates that the offer of appointment as Assistant Engineer was on ad hoc basis and Clauses 1 to 4 of the said letter further provides that the appointment will be on ad hoc basis for a period of 6 months from the date of joining and the

salary was a fixed salary of Rs. 400 p.m. in the scale of Rs. 400 to Rs. 1100 and the services were liable to be terminated without any notice and at any time without assigning any reason and that the appointment will not enable the appointee any seniority or any other benefit under the Service Rules for the time being in force and will not count towards increment in the time scale. In view of the aforesaid stipulations in the offer of appointment itself we really fail to understand as to how the aforesaid period of service rendered on ad hoc basis can be held to be service on regular basis. The conclusion of the High Court is contrary to the very terms and conditions stipulated in the offer of appointment and, therefore, the same cannot be sustained. The regular letter of appointment dated 29.1.1982 in favour of Rakesh Kumar was also produced before us and that letter indicates that the respondent Rakesh Kumar alongwith others had applied to the Secretary, Haryana Public Service Commission for being appointed as an Assistant Engineer and the Service Commission after selecting the number of persons prepared a list and appointment letters were issued by the Government from the said list on the basis of the merit position of different candidates. Thus the appointment of respondent Rakesh Kumar was a fresh appointment in accordance with the Statutory Rules after the Public Service Commission adjudged their suitability and the regular service of the respondent Rakesh Kumar must be counted from the date he joins the post pursuant to the offer of appointment dated 29.1.1982 and the prior service rendered by him on ad hoc basis cannot be held to be regular service nor can it be tagged on to the later service for earning the benefit under the Government Circular dated 2nd June, 1989 as well as the Clarificatory Circular dated 16th May, 1990. The conclusion of the majority judgment of the High Court, therefore, is wholly erroneous and cannot be sustained.

*Xxx**xxx**xxx”*

Keeping in view the settled principles of law mentioned hereinabove, no ground for grant of benefit under ACP Scheme to the petitioner is made out.

The petition stands dismissed accordingly.

March 30, 2022
Vijay Asija

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned	Yes / No
Whether Reportable	Yes / No