

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

**CWP-27834-2013 (O&M)
Date of decision: 20.12.2022**

KRISHAN CHANDER & ORS

...Petitioners

VS

STATE OF HARYANA & ORS

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. G.C.Shahpuri, Advocate,
For the petitioners.

Mr. Saurabh Mohunta, DAG, Haryana.

Mr. Shivam, Advocate for
Mr. Jatinder Nagpal, Advocate for respondent No.4.

Respondent No.5 proceeded *ex parte* vide order dated 22.03.2014.

ARUN MONGA, J. (ORAL)

Petition herein, *inter alia*, is for issuance of a writ in the nature of Certiorari for quashing orders dated 18.04.2013 and 11.01.2012 (Annexures P-5 to P-7 respectively) vide which claim of the petitioners for the grant of ACP scales was rejected.

2. Succinct facts first, as pleaded in the petition. Petitioners were initially appointed as Group D employees in Municipal Council, Ambala Sadar in the year 1978, were promoted as Clerk in the month of May-1985 and transferred to Municipal Council, Yamuna Nagar. On abolition of octroi, petitioner No.1 was adjusted in cooperation Department, Haryana as Inspector and petitioners No.2 and 3 were adjusted in Education Department, Haryana as Clerks in the year-1999. The benefit of higher standard pay scale of Rs.1200-2040 was granted to petitioners in erstwhile Municipal Committee, Yamuna

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Nagar with effect from 01.01.1995. Revised pay scale of Rs.3050-4590 was granted to petitioners with effect from 01.01.1996, which was the revised corresponding pay scale of Rs.950-1500 and whereas revised corresponding pay scale of the petitioners' higher standard pay scale of Rs.1200-2020 was Rs.4000-6000. In this manner, the higher standard pay scale of Rs.3050-4590 was only granted instead of Rs.4000-6000 from 01.01.1996.

2.1 Petitioners submitted representations dated 21.08.2012, 24.08.2012 and 22.08.2012 (Annexures P-2 to P-4 respectively) for grant of first and second ACPs from 01.01.1996 and 01.01.2006 respectively. However, claim of petitioners for ACP was rejected vide impugned orders (Annexures P-5 to P-7) by stating that revision granted on 01.01.1996 is correct and there is no shortcoming.

3. In the return filed by respondents No.4 defence taken is as below:

"2. That the petitioners have no locus standi to file the present petition. The petitioners may be put to strict proof for the same if any lapses or mistake occurred on the part of the answering respondent. The brief facts of the case are that the petitioners No.1 to 3 initially appointed as Fitter Coolie, Road Mate Oil Man and Fitter Coolie (Group D) on 05.09.1978 and 26.09.1978 respectively. The services of the petitioners were regularized in the year 1979 and later on was promoted as Clerk in the year 1985 and joined the office of answering respondent. After putting 8 years of service, additional increment was granted to all the petitioners in May, 1993. Thereafter, as per Service Record of the petitioners, the benefit of First Higher Standard Scale of Rs.1200-2040 was also granted to them w.e.f. 01.01.1995 and 01.06.1995 respectively. Being surplus from Municipality, Jagadhri i.e. office of respondent no.4 in the year 1999, all the petitioners were transferred. Petitioner No.1 was transferred to the office of respondent No.2 and petitioners No.2 and 3 were transferred to the office of respondent No.3 in December, 1999 and their pay was intact/protect by the Department treating their service as fresh appointment. As the petitioners initial recruitment in Class D, they were already in excess. Prior to their transfer the revised pay scale of the petitioners were fixed @ 3050-4590 w.e.f. 01.01.1996.

3. That as per Government's letter No. FD-Hr. No.6/48/2009-2PP (FD) dated 16.12.2010, the petitioners who became surplus and were adjusted in other Departments i.e. office of respondents No.2

and 3 w.e.f. December, 1999. As per appointment letter of the petitioners, their pay was fixed while giving pay scale of appointed post and the pay was protected w.e.f. 01.01.1996 and Higher Service Scale was also granted as per ACP Rules 1998. Thereafter, if anything is to be granted that is for the concerned Department i.e. respondents No.2 and 3 to look after.

4. That it is worthwhile to submit here that as per Government Notification GSR/4/Const/ARC 309/98 dated 07.01.1998, the pay of all the employees (petitioners) under those rules and were in order and no further action/revision is required from the office of answering respondent and the orders/letters Annexures P-5 to P-7 were rightly issued/passed by the office of answering respondent and nothing is required to be granted to the present petitioners from the office of the answering respondent. Copy of the Order dated 24.12.1999 regarding surplus Municipal employees in the State alongwith terms and conditions passed by the Office of respondent No.2 is already on the record as Annexure R-2/1.”

4. Having gone through the rival pleadings and after hearing the competing arguments, I shall proceed to deal with the same hereinafter.

5. Concededly, the petitioners got the benefit of only one promotion in the year 1985 upon their being promoted as Clerk and no further promotion thereafter. On revision of pay scale from 01.01.1996, they were to be accorded the benefit of higher standard pay scales of Rs.4000-6000, corresponding to their unrevised pay-scale of Rs.1200-2020. However, on the contrary, they were given the revised pay scale of Rs.3050-4590, even though they were in the unrevised was Rs.1200-2020 at the relevant time. Since they were not accorded benefit of the due higher standard pay scale of Rs.4000-6000, resultantly, the benefit of first ACP from 01.01.1996 and second ACP from 01.01.2006 was not given to them. The same has been claimed in the present writ petition. Reference may be had in this context to the ACP granted to the similarly situated employee, as has been specifically pleaded in the petition, namely, Rashid Mohd., an employee of Municipal Committee, Ambala Sadar, who was/is concededly junior to petitioner No.3. I see no reason, therefore, as to why

on the ground of parity alone petitioner No.3, particularly, be not granted the benefit claimed by him.

6. As regards the service of the petitioners rendered in Municipal Committee, Ambala and Yamuna Nagar is concerned, same is to be collectively counted for determining their entitlement to the ACP benefit. The position *qua* the same is no more *res integra* and reference may be had to the Apex Court's judgment in "***State of Haryana and another Vs. Deepak Sood and others***" which was duly followed by this Court in CWP No.9813-2008 titled "***Raj Kumar and others Vs. State of Haryana and others***" wherein speaking for this Court Parmod Kohli J., (as he then was seized of the matter) held as below:

"Keeping in view the prayer made and with the consent of the counsel, this petition is disposed of at motion stage.

The petitioners had joined their services in different Municipal Councils and on the basis of their eligibility and seniority, the petitioners were promoted as Clerks. In the year 1999, Octroi was abolished by the State of Haryana and the surplus staff was adjusted in various Government departments. The petitioners were also adjusted in various departments. The grievance of the petitioners is that the period of service rendered by them in the Municipal Councils have not been taken into consideration for the purpose of grant of various benefits, including the benefits of 1st and 2nd ACP. The controversy involved in this petition is squarely covered by the judgment of Hon'ble Supreme Court in the case of State of Haryana and Anr. Vs Deepak Sood & Ors (Civil Appeal No.4446 of 2008) decided on 15.7.2008, wherein following directions have been issued:

"Therefore, in the series of judgments given by this Court, the view has been taken that in case of a transfer/absorption from one department to another or from public sector to State though the benefit of the seniority may be denied to the incumbent but not for other benefits like pay fixation and for the pensionary benefits. Therefore, when the benefit of past service rendered in the parent department was given for fixation of pay and pensionary benefits there is no reason why the past service should not be counted for the grant of ACP Grade. Consequently, we are of the view that the view taken by the Division Bench of the High Court in the impugned judgment and order is correct and there is no

ground to interfere in this appeal. Consequently, this appeal is dismissed but with no order as to costs..."

This petition is accordingly allowed in terms of the aforesaid judgment. The petitioners shall be entitled to the benefit of the service rendered in the Municipal Councils, for the purpose of ACP and other benefits. Let the claim of the petitioners be considered and settled in terms of the aforesaid judgment within a period of three months."

7. In view of the aforesaid, coupled with the applicability of the judicial precedents, I see no reason as to why the petitioners be not accorded the same benefit.

8. As a result, the petitioners are held entitled to 1st and second ACPs from 01.01.1996 and 01.01.2006 respectively and the Writ petition is, accordingly, allowed. Respondents No.4 and 5 are directed to *inter se* determine their financial liability and thereafter accord the benefit of ACPs to the petitioners with effect from the respective dates. Arrears be also paid along with interest @ 5 % per annum from due date till payment. The monetary benefits shall be confined to 38 months prior to filing of the writ petition.

9. Pending application, if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

December 20, 2022
Vandana

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