IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(103+242) **CM-13805-CWP-2021 in/and CWP-23599-2019**
Date of Decision : July 12, 2022

Om Pal Singh Ahlawat **.. Petitioner**

Versus

State of Haryana and another **.. Respondents**

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Suraj Mal Bhatia, Advocate for the petitioner.

Mr. R.S. Budhwar, Addl. Advocate General, Haryana.

HARSIMRAN SINGH SETHI J. (ORAL)

CM-13805-CWP-2021

Present application has been filed for placing on record the replication to the written statement filed on behalf of the respondents.

Keeping in view the averments made in the application, the same is allowed and replication to the written statement is permitted to be taken on record.

CWP-23599-2019

In the present petition, the grievance of the petitioner is that the petitioner has not been granted the benefit of ACP in the cadre of Taxation Inspector as the petitioner had put in 10 years service in the said cadre without promotion and therefore, the petitioner is entitled for the grant of

HARSHA RANI
2022.07.14 17:09
I attest to the accuracy and
integrity of this document

ACP in the cadre of Taxation Inspector.

The relevant facts mentioned in the petition are that the petitioner was appointed as a Clerk through proper channel on regular basis on 28.10.1980. He was promoted as a Junior Auditor on adhoc basis on 04.07.1989 but was subsequently reverted to the said post. Thereafter, from the post of Clerk, the petitioner was promoted as Taxation Inspector on 10.04.1990. Petitioner continued working as such till the year 2011 when, the petitioner was further promoted to the post of Assistant Excise and Taxation Officer on 28.08.2011, on which post, the petitioner kept on working till he attained the age of superannuation on 30.06.2017 and retired. The grievance of the petitioner is that the petitioner had worked on the post of Taxation Inspector for a period of 10 years and hence, became entitled for the grant of ACP in the said cadre, which benefit has not been extended and the claim of the petitioner for the grant of the same has wrongly be rejected by the respondents which led to the filing of the present petition.

After notice of motion, the respondents have appeared and has contended that the benefit of ACP scale is only to be granted to an employee who is eligible for further promotion but could not get the same due to the available vacancy and is stagnating in the feeder cadre whereas, in the present case, the petitioner was not eligible for promotion to the post of Assistant Excise and Taxation Officer as, the petitioner failed to pass the departmental examination.

Learned counsel for the petitioner contends that the petitioner had passed the equivalent examination while working on the post of Taxation Inspector and that is why, the petitioner was promoted to the post

HARSHA RANI
2022.07.14 17:09
I attest to the accuracy and
integrity of this document

of Assistant Excise and Taxation Officer in August, 2011 on which post, the petitioner worked for a period of approximately seven years before he attained the age of superannuation and retired and therefore, the ground being taken to deny the benefit is contrary to the facts on record.

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

The undisputed facts in the present petition are that the petitioner has worked on the post of Taxation Inspector from 1990 till 2011 for a period of approximately 21 years, thereafter, he was promoted to the post of Assistant Excise and Taxation Officer vide order dated 28.08.2011 (Annexure P-12) on which post, he kept on working till he attained the age of superannuation on 30.06.2017. In case, according to the respondents, the petitioner was not eligible for promotion to the post of Taxation Inspector, due to which he was not given the ACP, then how come the respondents themselves promoted the petitioner to the said post on 23.08.2011 on which post, the petitioner continued working for a period of 07 years without there being any question raised on the said promotion. Once, the respondents themselves found the petitioner eligible for promotion and promoted to the post of Assistant Excise and Taxation Officer, it cannot be said that the petitioner was ineligible to hold the said post according to the rules governing the service.

It has already come on record that the petitioner has already passed equivalent examination, which was good enough for promoting a Taxation Inspector to the post of Assistant Excise and Taxation Officer. The said fact also find mention in the reply of the respondents. That being so, once the petitioner has actually been promoted by the respondents on the

HARSHA RANI
2022.07.14 17:09
I attest to the accuracy and
integrity of this document

post of Assistant Excise and Taxation Officer on which post the petitioner worked for seven years, the reason being given by the respondents that the petitioner was not eligible for the said promotion due to which, he was not given the benefit of ACP in the cadre of Taxation Officer is contrary to the facts on record.

Keeping in view the above, the prayer of the petitioner is allowed. The petitioner is held entitled for the grant of ACP in the cadre of Taxation Inspector in which cadre, the petitioner had worked for a period of 21 years. Let the respondents grant the said benefit to the petitioner from the due date. However, the arrears for which the petitioner will be entitled for, will be restricted for a period of three years and two months from the date of filing of the present petition. Let the present order be complied with within a period of two months from the receipt of copy of this order.

The present writ petition is allowed in above terms.

July 12, 2022 **(HARSIMRAN SINGH SETHI)**
harsha **JUDGE**

Whether speaking/reasoned : Yes
Whether reportable : No

HARSHA RANI
2022.07.14 17:09
I attest to the accuracy and
integrity of this document