

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

201

CWP-20747-2020

Date of Decision : 07.04.2022

Hukam Singh

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr.Nihal S.Chaudhary, Advocate and
Mr. Vikram Sheoran, Advocate
for the petitioner.

Mr. Narender Singh Behgal, AAG, Haryana.

Harsimran Singh Sethi, J.(Oral)

In the present case, the prayer of the petitioner is for quashing of order dated 13.05.2019 (Annexure P-2) vide which, the 2nd ACP grade with 3rd financial upgradation granted to the petitioner has been withdrawn and the recovery of the excess amount paid to him has been ordered. It has been further prayed that the seniority fixed in the cadre of Clerk be also re-fixed.

From the pleadings, it transpires that the petitioner was appointed as a Clerk on 01.04.1985 and while he was working on the said post, the petitioner was involved in an FIR No.263 dated 06.05.2000, registered at Police Station NIT Faridabad due to which, the petitioner remained under suspension for sometime. As the petitioner was acquitted in the criminal case in the year 2010, vide order dated 25.10.2012, the suspension period of the

petitioner was regularised as the duty period and the petitioner was given the benefit of 2nd ACP with 3rd final upgradation vide order dated 07.12.2012 and the pay of the petitioner was fixed at the higher scale w.e.f. 01.01.2006. The petitioner continued to get the said benefits till 13.05.2019 when the 2nd ACP extended to the petitioner vide order dated 07.12.2012 was withdrawn. The same was withdrawn on the ground that the petitioner had given in writing that the petitioner does not intend to get promotion to the post of Assistant due to his family circumstances and a person, who has foregone promotion himself, is not entitled for concession of ACP by claiming himself to be stagnating on the post of Clerk. The said order dated 13.05.2019 withdrawing the benefits of 2nd ACP with 3rd financial upgradation is under challenge in the present petition.

Upon notice of motion, respondents have filed reply wherein it has been stated that though initially, keeping in view the pendency of the criminal case, the petitioner was not promoted to the post of Assistant but after the petitioner was acquitted in the criminal case in the year 2010, his case was considered for promotion by the department in the year 2012 and the petitioner gave in writing at the said stage that he does not intend to get promotion to the post of Assistant and therefore, keeping in view the said fact, not only the promotion but even the ACP could not have been extended to him by treating him as stagnation on the post of Clerk due to the non-availability of promotional avenue hence, the benefit of 2nd ACP extended to the petitioner was withdrawn. Further, the reliance is placed by the respondents on the instructions of the Government dated 02.11.1992, according to which, an official, who forego their promotions, cannot be considered for promotion at

least for a period of one year.

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

The question which arises for the determination in this petition is whether the petitioner can be granted the benefit of Assured Career Progression Scheme for upgradation of his pay scale by treating him stagnating on the post of Clerk. Once the petitioner had foregone the promotion by giving in writing that he is not interested in getting the promotion to the post of Assistant, promotion was not extended to the petitioner and he was allowed to continue as Clerk. It cannot be said that petitioner was stagnating on the post of Clerk in the absence of any promotional avenue. Intention behind the framing of ACP Rules is that where an employee is eligible for promotion but does not get promotion due to the non-availability of posts in promotional cadre and keeps stagnating in the feeder cadre, higher pay scale is extended to him/her so as to compensate for the said stagnation. The purpose behind the upgradation under the ACP Rule is to mitigate the hardship of an employee who is stagnating in the feeder cadre due to non-availability of promotional avenue.

In the present case, the petitioner refused the promotion. That being so if the petitioner remained in the cadre of Clerk, that is only due to his own choice and not due to the non-availability of avenue of promotion in service. Once the basic purpose of the ACP Rules is not fulfilled, the question of grant of the same, does not arise.

The same question had come up for consideration before the Hon'ble Supreme Court in **Union of India and others vs. Manju Arora and**

another, CWP No.7027 of 2009, decided on 03.01.2022, wherein it has been held that an employee, who chose not to get promotion, is not entitled for grant of ACP benefit. The relevant paragraph of the judgment is as under :-

16. *“We are quite certain that if a regular promotion is offered but is refused by the employee before becoming entitled to a financial upgradation, she/he shall not be entitled to financial upgradation only because she has suffered stagnation. This is because, it is not a case of lack of promotional opportunities but an employee opting to forfeit offered promotion, for her own personal reasons. However, this vital aspect was not appropriately appreciated by the High Court while granting relief to the employees.”*

The case of the petitioner is squarely covered by the above said judgment.

No further argument has been raised in support of the plea.

Keeping in view the above, the claim of the petitioner with regard to the restoration of ACP benefit, the same cannot be allowed as the order passed by the respondent is inconsonance with the settled principles of law.

Dismissed.

(HARSIMRAN SINGH SETHI)
JUDGE

07.04.2022
anju

Whether speaking/reasoned? *Yes/No*
Whether reportable? *Yes/No*