

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

202

CWP-10489-2003

Date of decision :01.02.2023.

RAMESH CHAND AND ORS

...PETITIONERS

VERSUS

STATE OF HARYANA AND ORS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: None for the petitioner.

Mr. Saurabh Mohunta, DAG, Haryana
for the respondents.

SUVIR SEHGAL, J.

Petitioners have approached this Court *inter alia*, seeking issuance of a writ in the nature of certiorari for quashing impugned clarification dated 27.06.2002, Annexure P-4, show cause notices dated 27.11.2002, Annexure P-5, and orders dated 18.12.2002, Annexure P-7, and 30.12.2002, (recorded on Annexure P-6), whereby the ACP increments granted to the petitioners have been withdrawn.

There is no dispute about the factual matrix. Petitioners were engaged on different Group 'C' and 'D' posts on work charge basis and after years of service, they were regularized on different dates as have been given in Annexure P-3. After counting the service rendered by them on work

charge basis, they were given the benefit of increments and Assured Career Progression (ACP) under the Haryana Civil Services (Assured Career Progression) Rules, 1998 (for short “the 1998 Rules”) and their pay was revised. On the basis of the impugned clarification dated 27.06.2002, Annexure P-4, respondent No.3 issued impugned show cause notice, Annexure P-5, proposing to recover the ACP increment given to the petitioners. Reply was submitted but by impugned order, Annexures P-6 and P-7, respondent No.3 proceeded to withdraw the benefit, re-fixed the pay and ordered recovery of Rs.200/- per month from the salary of the petitioners.

Upon notice, respondents have filed a written statement taking a stand that *ad hoc* and work charge service is not liable to be taken into account for grant of ACP under the 1998 Rules. While issuing notice of motion, this Court by order dated 14.07.2003 stayed the recovery from the petitioners.

I have heard the State counsel and perused the paper book with the able assistance of the State counsel.

In **Punjab State Electricity Board vs. Jagiwan Ram, 2009 (3) SCT 92**, Hon’ble Supreme Court has held that work charge employees constitute a distant class and they cannot be equated with any other category or class of employees much less regular employees and they are not entitled to the service benefit which are admissible to regular employees under the relevant Rules or Policy framed by the employer. Interpreting the expression “regular satisfactory service” used in Rule 5 (1) and (2) of the 1998 Rules, Apex Court in **State of Haryana and others Vs. Sita Ram and others**

(2013) 16 SCC 677 held that it means continuous service in the Government after being recruited through the prescribed procedure or rules, etc. It has been observed that regular service is in total contrast to work-charge service, which is always in work-charged establishment and is not preceded by regular selection. The conditions of service of work-charged employees are altogether different from those who are regularly recruited.

In view of the settled position of law, no interference is called for in the impugned orders passed by the respondents.

However, insofar as the recovery is concerned, it is the admitted case of the parties that the petitioners belong to Group ‘C’ and Group ‘D’ service and would fall within category (i) of para 12 of the judgment of the Apex Court in State of Punjab and others etc. vs. Rafiq Masih (White Washer) and others, (2015) 4 SCC 334. Therefore, the recovery of the excess amount paid to the petitioners cannot be effected from him.

Accordingly, while disposing of the writ petition, it is directed that the impugned orders insofar as the same provided for effecting recovery from the petitioners are set aside. If any amount has been recovered from the petitioners, it is ordered to be refunded to them within a period of four months from today along with interest @ 6 per cent per annum from the date of recovery till its refund.

01.02.2023
sheetal

(SUVIR SEHGAL)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No