

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

214

CWP-4906-2019

Date of Decision: 18.10.2023

Indu Rani**...Petitioner(s)****Versus****State of Haryana and others****...Respondent(s)****CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA**

Present:- Mr. Sandeep Goyat, Advocate for the petitioner

Mr. Rohit Arya, DAG, Haryana

TRIBHUVAN DAHIYA, J. (Oral)

1. This petition has been filed seeking a writ of *certiorari* setting aside the order dated 10.08.2018, Annexure P-5, whereby the petitioner has been declined benefit of Ist Assured Career Progression (ACP) scale, on the ground that she was directly recruited as Lecturer on 12.08.2014. Further, a writ of *mandamus* has been sought directing the respondents to count the petitioner's service as JBT Teacher that was rendered prior to joining the Department as PGT Sanskrit.

2. As per facts apparent on record, the petitioner was initially appointed as Junior Basic Training (JBT) Teacher in the Elementary Education Department on 29.11.1999, and later promoted as Sanskrit Teacher with effect from 23.05.2007; worked as such till 11.08.2014. Subsequently, she was directly appointed as Post Graduate Teacher (PGT) Sanskrit in the Secondary Education Department with effect from 12.08.2014.

3. Learned counsel for the petitioner contends that the petitioner is entitled to grant of ACP scale by counting the previous service rendered by her in the Elementary Education Department from 1999 to 2014, prior to joining the respondent Department as PGT Sanskrit. Under the Haryana Civil Services (Assured Career Progression) Rules, 2008 (hereinafter referred to as, 'ACP Rules, 2008'), direct recruitment on a higher post will not disentitle an incumbent to claim the benefit. In case an employee has initially been appointed on a lower post, and subsequently on a higher post through direct recruitment, he/she can claim full benefit under the Rules.

4. The only objection taken by learned State counsel is that the petitioner's case was rejected vide order dated 19.09.2019, Annexure R-2, passed during pendency of petition which is not under challenge. It is to the effect that he is not entitled to grant of the ACP scales by counting the previous service as per instructions, dated 06.11.2002, which stipulate, "that in such cases, the last appointment on regular basis shall be treated as the date on which he has been appointed as Direct recruited fresh entrant within the meaning of Rules 3(b) of ACP Rules, 1998". Therefore, the petitioner's previous service in the Elementary Education Department as JBT Teacher cannot be counted for granting the benefit under ACP Rules, 2008.

5. Heard.

6. The Government notified the ACP Rules, 2008, for grant of financial upgradation to employees on completion of ten, twenty and thirty years of service subject to conditions laid down therein. These rules have been explained by the Memorandum Explanatory to the Haryana Civil Services (Assured Career Progression) Rules, 2008; its relevant Rule 1. (iii) is as

under:

As per General ACP Scheme, an employee can get a maximum of three ACPs in his career. This means, if the employee has got ACP upgradation in the post in which he was initially recruited, then in the promotional post, the number of ACPs will be reduced after adjusting the number of ACPs he got in the post of his initial recruitment. However, direct recruitment to a higher post will not debar for the entitlement of ACP Scheme. An employee initially appointed to a lower post and subsequently appointed to a higher post through direct recruitment or limited competition of existing employee will also be entitled to full range of ACP.

7. The explanation given in the Memorandum makes it clear that once an employee, who was initially appointed on a lower post, is subsequently appointed on a higher post through direct recruitment or limited competition among employees, will be entitled to full benefits under the ACP Rules, as any other employee. Recruitment on a higher post does not bar benefits under the Rules, the same, however, need to be adjusted/reduced keeping in view the benefits already availed during the initial service.

8. Undisputedly, the petitioner has served in the Elementary Education Department from 29.11.1999 to 11.08.2014, before she joined the respondent Department as PGT Sanskrit. The pay she was getting on the previous post, was also protected at the time of joining, vide order dated 07.12.2016, Annexure P-2. There is no bar under the ACP Rules, 2008, for grant of benefits by counting previous service; rather, as per the Memorandum, the petitioner becomes entitled to full benefits as admissible to any other employee after adjusting the benefits given during initial recruitment/service.

9. The instructions, dated 06.11.2002, based upon which the petitioner’s case has been rejected, has no application to her claim. These were issued with reference to Memorandum Explanatory to the Haryana Civil Services (Assured Career Progression) Rules, 1998, whereas the petitioner’s claim is under ACP Rules, 2008. Therefore, there was no basis for the respondents to reject the petitioner’s claim by relying upon the instructions which have no relation to the claim raised, and were issued with reference to the Rules no longer in operation; doing so is arbitrary and discriminatory. It has caused undue harassment to the petitioner also.

10. In view thereof, the petition is allowed. The respondents are directed to release due financial upgradation(s) to the petitioner by taking into account her previous service rendered in the Elementary Education, Department from 29.11.1999 to 11.08.2014, in terms of ACP Rules, 2008, as amended from time to time, within six weeks from receiving a certified copy of the order.

11. Since the petitioner’s claim was rejected in a high handed manner, on unfounded and baseless grounds by referring to the instructions which were not applicable to her case, she shall also be entitled to costs of ₹50,000, which shall be paid within the period specified above.

(TRIBHUVAN DAHIYA)
JUDGE

18.10.2023
Payal

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>