

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.8392 of 2021 (O&M)
Date of decision : 30.01.2023

Kuldeep Kumar Aggarwal & ors. Petitioners

versus

State of Punjab and another Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Ms. Gagandeep Kaur, Advocate
for the petitioners.

Mr. Inderpreet Singh Kang, AAG, Punjab.

PANKAJ JAIN, J. (Oral)

Present petition has been filed under Article 226/227 of the Constitution of India by the petitioners seeking writ in the nature of mandamus directing the respondents to grant them the benefit of ACP Scheme (4-9-14 years) under the policy decision dated 03.11.2006 (Annexure P-3).

The petitioners are/were posted/appointed as Junior Engineers, Municipal Engineers, Assistant Municipal Engineers, Assistant Corporation Engineers, Trust Engineers, Assistant Trust Engineers, XENs and SDOs in the Department of Local Government, Punjab. Vide memo No.17/146/09-2SP3/1582 dated 07.06.2010 issued by Department of Irrigation (Irrigation Personnel Branch 3) under RTI Act, the petitioners have been conveyed that Department of Personnel, Government of Punjab has issued letter/memo vide endst. No.7/64/09-5PPI/108 dated 29.04.2010 wherein it has been held that the benefit of ACP Scheme formulated vide circular dated

03.11.2006 cannot be granted to the Junior Engineers, Assistant Engineer.

Counsel for the petitioners refers to decision of this Court in **CWP No.16446 of 2010** dated 20.05.2013 titled as **Jaswinder Singh Bedi and others vs. State of Punjab and others** (Annexure P-6), wherein the precise objections which has been raised by respondent No.2 while declining the claim of the petitioners was turned down by writ Court and the petitioners were held to be entitled for claim under the newly Promulgated ACP Scheme (Annexure P-3) holding as under:-

“Perusal of the instructions dated 25.9.1998 (Annexure P-1) would show that the recommendations of the 4th Pay Commission were implemented for Assured Career Progression Scheme. There being certain anomalies in giving effect to the same, the anomalies were removed vide a notification dated 27.6.2000 (Annexure P-2) qua the pay scales of Junior Engineers. Apart from granting them the ACP, Class II status and designation as Assistant Engineer was also granted on completion of 16 years of service apart from granting them the next higher pay scale of 6400-10640 on completion of 8 years service and `7200-11320 on completion of 16 years of service in the same cadre, i.e., Junior Engineer. Perusal of the Scheme dated 3.11.2006 would show that it is altogether independent Scheme, where the Assured Career Progression Scheme was made applicable on completion of 4/9/14 years of service in a cadre. This was totally different from the earlier Scheme with regard to the period for which the benefit would be claimed as per the said Scheme. In any case, this Scheme, as per Clause-2 thereof, was made optional and all employees were given option to either continue in the existing Assured Career Progression Scheme after completion of 8/16/24/32 years service as provided under the Scheme dated 25.9.1998, which was further modified for Junior Engineers on 27.6.2000 or to opt under the 4/9/14 years Assured Career Progression Scheme. This clearly indicates that all employees had an option either to continue with

the old Scheme or to opt for the new Scheme, which was now made applicable to the employees. Petitioners having opted for the said Scheme, which was published on 3.11.2006 were, therefore, entitled to the benefit under the said Scheme. That part, Junior Engineers working in the Punjab Mandi Board have already been granted the benefit of the Scheme dated 3.11.2006 and, therefore, the petitioners cannot be denied the same benefit.

Contention of the respondents that the claim of the petitioners would not be covered under the Scheme dated 3.11.2006 on the basis of the letter dated 1.12.2011 cannot sustain as the said letter is prospective in operation and in Para No.5 thereof, it is stated that as per the benefit conferred upon the employees as per the letter dated 1.12.2011, they would not be entitled to the benefit under any other Assured Career Progression Scheme issued by the Government, which further specified that the said revised pay scale would be effective from 1.12.2011, the date of the notification. This clearly shows that the said Scheme or revised pay scales were applicable prospectively and the petitioners be the benefit as claimed by them in the present writ petition on the basis of the letter dated 1.12.2011.

The writ petition is, therefore, allowed. Impugned order dated 29.4.2010 (Annexure P-4) is hereby quashed. Petitioners are held entitled to the benefit of the instructions dated 3.11.2006. The consequential benefits be released to the petitioners within a period of three months from the date of receipt of certified copy of this order. In case of petitioners, who have not yet opted for the applicability of the Scheme dated 3.11.2006, must give their option within a period of one month from today and their claim be also considered and decided by the respondents as per the time stipulated here-in-above.”

State Counsel is not in a position to differentiate the case of the petitioners from the one as already adjudicated by this Court in ***Jaswinder Singh Bedi*** *ibid*.

Counsel for the petitioners further submits that the said order has been upheld in Intra Court in LPA No.244 of 2014 vide

judgment dated 19.12.2014 (Annexure P-7) and even the Special Leave to Appeal preferred by the State of Punjab against the same stands dismissed.

In view of the aforesaid fact and keeping in view the covenant as contained in earlier decision dated 03.11.2006 which specifically provide as under:-

“(i) The benefit gained by an employee under the existing Scheme will be adjusted in the proposed Scheme.”

The present writ petition is allowed. The order rejecting the claim of the petitioners dated 29.04.2010 is found to be unsustainable. It is made clear that in case the petitioners have not opted for the applicability of the scheme dated 03.11.2006, they shall give option within a period of one month from the date of receipt of certified copy of this order in the light of directions issued in CWP No.16446 of 2010 (*supra*). On their doing so, in case the petitioners have not received the benefits in the earlier scheme, they shall be given all consequential benefits and the same be released within a period of 03 months thereafter. In case, the same are not released within the time stipulated hereinabove, the same shall carry an interest @ 18% per annum, which shall be recoverable from the pocket of respondent No.2 in person.

Ordered accordingly.

(PANKAJ JAIN)
JUDGE

30.01.2023

Pooja sharma-I

Whether speaking/reasoned :	Yes
Whether Reportable :	No