

2023:PHHC:091106

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

CWP-11777-2022
Date of decision: 19.07.2023

Sahib Ram and others

...Petitioners

Versus

State of Haryana and others

...Respondents

CWP-15748-2022
Date of decision: 19.07.2023

Amarjeet Singh and others

...Petitioners

Versus

State of Haryana and others

...Respondents

CWP-16534-2022
Date of decision: 19.07.2023

Surender Singh

...Petitioner

Versus

State of Haryana and others

...Respondents

CWP-17242-2022
Date of decision: 19.07.2023

Mahender Kumar

...Petitioner

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...Respondents

...Petitioner

...Respondents

...Petitioners

...Respondents

...Petitioners

...Respondents

<u>CWP-11777-2022</u> <u>and other connected cases</u>	[3]	2023:PHHC:091106
		...Petitioners
	Versus	
State of Haryana and others		
		...Respondents
9.	CWP-22335-2022	Date of decision: 19.07.2023
Ajay Kumar and others		
		...Petitioners
	Versus	
State of Haryana and others		
		...Respondents
10.	CWP-22856-2022	Date of decision: 19.07.2023
Rameshwar Dass and others		
		...Petitioners
	Versus	
State of Haryana and others		
		...Respondents
11.	CWP-24647-2022	Date of decision: 19.07.2023
Jaibir Singh		
		...Petitioner
	Versus	
State of Haryana and others		
		...Respondents
12.	CWP-24723-2022	Date of decision: 19.07.2023

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...Petitioners

State of Haryana and others

...Respondents

CWP-13889-2022
Date of decision: 19.07.2023

...Petitioners

State of Haryana and others

...Respondents

CWP-13969-2022
Date of decision: 19.07.2023

...Petitioners

State of Haryana and others

...Respondents

CWP-17353-2022
Date of decision: 19.07.2023

...Petitioners

State of Haryana and others

...Respondents

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CWP-4698-2023
Date of decision: 19.07.2023

...Petitioners

State of Haryana and others

...Respondents

CWP-21291-2022 (O&M)
Date of decision: 19.07.2023

...Petitioner

State of Haryana and others

...Respondents

CWP-24649-2022
Date of decision: 19.07.2023

...Petitioner

State of Haryana and others

...Respondents

CWP-7378-2023
Date of decision: 19.07.2023

...Petitioners

State of Haryana and others

CWP-11777-2022
and other connected cases

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...Respondents

20.

CWP-10138-2023
Date of decision: 19.07.2023

Amit Kumar

...Petitioner

Versus

State of Haryana and others

...Respondents

21.

CWP-12674-2023
Date of decision: 19.07.2023

Sandeep and another

...Petitioners

Versus

State of Haryana and others

...Respondents

22.

CWP-2063-2023 (O&M)
Date of decision: 19.07.2023

Bijender Singh

...Petitioner

Versus

State of Haryana and others

...Respondents

23.

CWP-2670-2023 (O&M)
Date of decision: 19.07.2023

Sushil Kumar

...Petitioner

Versus

CWP-11777-2022
and other connected cases

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State of Haryana and others

...Respondents

24.

CWP-13872-2022
Date of decision: 19.07.2023

Baldev Singh and others

...Petitioners

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. S.K. Malik, Advocate for the petitioners.
(In all cases)

Mr. Harneet Singh Oberoi, and
Ms. Indira, Advocate for respondent No.4-AG Haryana
(In CWP-24649-2022)

Ms. Palika Monga, DAG, Haryana and
Mr. Naveen S. Panwar, DAG, Haryana
for all the respondents
(In all cases except in CWP-24649-2022
for respondent No.4-AG Haryana)

VIKAS BAHL, J. (ORAL)

1. This order shall dispose of the abovesaid 24 writ petitions, in which, common questions of law and facts arise.

2. On 13.07.2023, learned counsel for the petitioners as well as respondents were ad idem that CWP-11777-2022 be treated as the lead case. The said order dated 13.07.2023 passed by this Court, is reproduced hereinbelow:-

“Learned State Counsel has filed replies in CWP-11777-

2022, CWP-22856-2022, CWP-10138-2023, CWP-2063-2023, CWP-17732-2022 and CWP-22335-2022 today in the Court which are taken on record.

Learned counsel for the petitioners as well as respondents are ad idem that CWP-11777-2022 be treated as a lead case.

Adjourned to 17.07.2023 for arguments.

To be taken up at 02.15 pm.

It would be open to all the counsel to get a copy of the reply filed in CWP-11777-2022 from learned counsel for the respondents and in case of any of the petitioners asks for the same, then the respondents would supply it to them.

It is made clear that no further request for an adjournment shall be entertained.

A photocopy of this order be placed on the files of other connected cases.”

3. In view of the above, CWP-11777-2022 is being taken up as the lead case. Short question that arises for consideration in the present bunch of writ petitions is “Whether, without giving a show cause notice, benefits of ACP Scales granted to the petitioners could be withdrawn?”.

4. Learned counsel for the petitioners has submitted that 33 persons are petitioners in CWP-11777-2022 and as per the case of the said petitioners, they were appointed as Constable in the Haryana Police since 1989 to 2002 and that, since the date of their appointment, they have been continuously working with the respondent Department with utmost sincerity, devotion and hard work to the satisfaction of their superior and on account of the said fact and also after taking into consideration the length of service, benefits of the Assured Career Progression (hereinafter to be referred as

‘ACP’) scale were granted to the petitioners.

5. Learned counsel for the petitioners has referred to the Chart which has been produced in para 2 of the written statement filed on behalf of respondent Nos.1 to 5 in order to highlight the exact date, on which, each of the petitioners had joined the service and the date when the 1st ACP, 2nd ACP and 3rd ACP had been granted. It is further submitted that a perusal of the chart would show that a large number of the petitioners were given 1st ACP on 01.12.2001, 2nd ACP on 01.12.2011 and 3rd ACP on 01.12.2015. It is contended that in the month of May, 2022, without any show-cause-notice having been issued to the petitioners and without any opportunity of hearing having been provided to them, the said benefits were withdrawn and the pay of the petitioners was substantially reduced. It is further contended that the said action of the respondent-authorities is in violation of the principles of natural justice and deserves to be set aside solely on the said ground. It is argued that it has been repeatedly held in various judgments that any order visiting the Government employee with civil consequences cannot be passed without giving reasonable opportunity of hearing to him and for the said purpose, it is mandatory to issue show cause notice and take into consideration the response of that employee before taking a final decision. Reliance in this regard has been placed upon the judgments passed by the Coordinate Benches of this Court in CWP-14282-2011 titled as **Dr. Chander Parkash and others Vs. State of Punjab and others and connected matters**, reported as 2012 SCC Online P&H 1679, judgment dated 14.03.2017 passed in CWP-18068-2013 titled as **“Gurmeet Kaur and others vs State of Haryana and others”**, and judgment dated 24.04.2017

passed in CWP-8331-2017 titled as “Jagdish Kumar Chhabra and another Vs State of Haryana and others”. Reliance has also been placed upon the judgment dated 18.09.1972 passed by Hon’ble the Supreme Court in Civil Appeal No.2129 of 1969 titled as B.D. Gupta Vs. State of Haryana, in support of his arguments.

6. On the other hand, learned State counsel has opposed all the writ petitions and has prayed for dismissal of the same. Learned State Counsel, while referring to the contents of written statement, more so, paragraph 9 of the preliminary submissions, filed on behalf of respondent Nos.1 to 5, has submitted that although, no show cause notice was issued to the petitioners before withdrawing their ACP scale but the action of the respondent authorities was in consonance with the Rules which specifically provide that a person who forgoes his promotion in the line of hierarchy or seeks reversion on his own accord, then, he ceases to be entitled for ACP-Level pay scale. It is further submitted that the validity of Rule 11 of the Haryana Civil Services (ACP) Rules, 1998, has been upheld in various judgments and the provisions of Rule 14 of the Haryana Civil Rules (ACP) Rules, 2016 are in consonance with Rule 11 of the 1998 Rules.

7. This Court has heard learned counsel for the parties and has perused the paper book.

8. The dates of appointment of the petitioners, grant of benefits of 1st ACP, 2nd ACP and also 3rd ACP to some of the petitioners, are apparent from a chart which has been given in para 2 of the written statement filed on behalf of respondent Nos.1 to 5. The said chart is reproduced hereinbelow:-

<i>Sr. No.</i>	<i>Name & Rank & Number of police official</i>	<i>D.O. Joining</i>	<i>Date of ACP 1st</i>	<i>Date of ACP 2nd</i>	<i>Date of ACP 3rd</i>
1.	E/ASI Sahib Ram No.632/FTB	10.11.1991	01.12.2001	01.12.2011	01.12.2015
2.	E/ASI Ravi Dutt No.333/FTB	11.11.1991	01.12.2001	01.12.2011	01.12.2015
3.	E/ASI Shish Pal No.323/FTB	07.12.1991	01.01.2002	01.01.2012	01.01.2016
4.	E/ASI Rajender Kumar No.779/FTB	10.11.1991	01.12.2001	01.12.2011	01.12.2015
5.	E/ASI Satya Pal No.802/FTB	11.11.1991	18.12.2001	01.12.2011	01.12.2015
6.	E/ASI Vinod Kumar No.799/FTB	27.11.1991	01.12.2001	01.12.2011	01.12.2015
7.	E/ASI Sheokaran No.198/FTB	13.11.1991	01.12.2001	01.01.2012	01.12.2015
8.	E/ASI Ram Kumar No.881/FTB	21.11.1991	01.12.2001	01.12.2011	01.12.2015
9.	E/ASI Rajbir Singh No.427/FTB	30.10.1991	01.11.2001	01.11.2011	01.12.2015
10.	E/ASI Rajender Singh No.217/FTB	04.09.1992	01.11.2002	01.12.2012	01.12.2016
11.	E/HC Jagraj Singh No.680/FTB	15.08.2001	01.09.2011	01.10.2017	--
12.	E/ASI Mahender Singh No.754/FTB	10.07.1992	01.08.2002	04.03.2014	01.01.2017
13.	E/ASI Ram Kumar No.1025/FTB	10.07.1992	01.08.2002	01.08.2012	01.08.2016
14.	L/EHC Hemlata No.853/FTB	20.02.2002	01.03.2012	01.03.2018	--
15.	E/ASI Yudhvir No.870/FTB	01.09.1992	21.10.2002	01.10.2012	01.10.2016

16.	<i>E/ASI Karmabir No.819/FTB</i>	<i>01.09.1992</i>	<i>04.10.2002</i>	<i>01.10.2012</i>	<i>01.10.2016</i>
17.	<i>E/ASI Dalip Singh No.840/FTB</i>	<i>04.12.1998</i>	<i>01.01.2009</i>	<i>01.01.2015</i>	--
18.	<i>E/ASI Dharambir No.884/FTB</i>	<i>30.11.1998</i>	<i>01.12.2008</i>	<i>01.01.2015</i>	--
19.	<i>E/ASI Mewa Singh No.850/FTB</i>	<i>23.07.1992</i>	<i>01.08.2002</i>	<i>01.08.2012</i>	<i>01.08.2016</i>
20.	<i>E/HC Sarvan Kumar No.229/FTB</i>	<i>15.08.2001</i>	<i>01.09.2011</i>	<i>01.09.2017</i>	--
21.	<i>E/ASI Tilak Raj No.307/FTB</i>	<i>30.11.1998</i>	<i>01.12.2008</i>	<i>01.12.2014</i>	--
22.	<i>E/ASI Satish Kumar No.316/FTB</i>	<i>20.07.1992</i>	<i>01.08.2002</i>	<i>01.08.2012</i>	<i>01.08.2016</i>
23.	<i>E/SI Jagsir Singh No.395/FTB</i>	<i>25.09.1989</i>	<i>01.10.1999</i>	<i>01.10.2009</i>	<i>04.03.2014</i>
24.	<i>E/SI Rameshwar Puri No.600/FTB</i>	<i>26.09.1989</i>	<i>01.10.1992</i>	<i>01.10.2009</i>	<i>04.03.2014</i>
25.	<i>E/ASI Surjeet Singh No.650/FTB</i>	<i>04.12.1998</i>	<i>01.01.2009</i>	<i>01.01.2015</i>	--
26.	<i>E/ASI Mohinder Singh No.676/FTB</i>	<i>24.06.1992</i>	<i>01.08.2002</i>	<i>01.08.2012</i>	<i>01.08.2016</i>
27.	<i>E/ASI Narender Singh No.743/FTB</i>	<i>26.11.1998</i>	<i>01.12.2008</i>	<i>01.12.2014</i>	--
28.	<i>E/ASI Resham Singh No.972/FTB</i>	<i>03.10.1989</i>	<i>01.11.1999</i>	<i>01.11.2009</i>	<i>04.03.2014</i>
29.	<i>E/ASI Ram Pal No.1022/FTB</i>	<i>03.10.1989</i>	<i>01.11.1999</i>	<i>01.11.2009</i>	<i>04.03.2014</i>
30.	<i>E/ASI Ashok Kumar No.1024/FTB</i>	<i>27.11.1991</i>	<i>01.12.2001</i>	<i>01.12.2011</i>	<i>01.12.2015</i>
31.	<i>E/ASI Rajbir No.475/FTB</i>	<i>01.09.1992</i>	<i>01.06.2004</i>	<i>04.03.2014</i>	<i>01.06.2018</i>

32.	E/ASI Subhash Chander No.910/FTB	06.11.1991	01.12.2001	01.12.2011	01.12.2015
33.	E/SI Dayal Chand No.841/FTB	07.12.1988	01.01.1999	01.01.2009	04.03.2014

9. A perusal of the abovesaid chart would show that the benefit of the 1st ACP was given to a large number of petitioners in the year 2001 and the benefit of 2nd ACP was given on 01.12.2011. Even the benefit of 3rd ACP was given to some of the petitioners on 01.12.2015. It is not in dispute that it is in the year 2022, the said benefit has been withdrawn without issuance of any show cause notice and without seeking any reply from the petitioners.

10. A Coordinate Bench of this Court in **Dr. Chander Prakash and others’ case** (Supra), had observed that it is a settled principle of law that an order, visiting the Government employees with civil consequences, cannot be passed without following the principles of natural justice. In the abovesaid case, the petitioners therein were granted the benefit of proficiency step up and ACP in terms of the Punjab Government Policies on completion of 4, 9 and 14 years of regular service and the same was withdrawn vide impugned orders purportedly in compliance of the directions issued by Hon’ble Division Bench of the Court in CWP-15473-2009. In the above said judgment, it was observed that the orders had been passed without issuance of any show cause notice to the petitioners therein and that the benefits granted to the petitioners therein were being enjoyed uninterruptedly and in the said background, the impugned orders were set aside, granting liberty to the respondents to issue a show cause notice to the petitioners therein and to pass appropriate orders, in accordance with law. In **Gurmeet Kaur and**

others' case (supra), the petitioners therein had challenged the communication, vide which, the grant of ACP had been withdrawn. The sole ground for challenge in the said petition was that no notice was issued to the petitioners therein before withdrawing the said ACP and on the said ground alone, the writ petition was allowed and the impugned action was set aside and liberty was granted to the respondents therein to issue show cause notice to the petitioners therein and to pass a detailed order after considering the reply filed by them to the show cause notice. In the said judgment, it was observed that the withdrawal of ACP granted to the employees had civil consequences inasmuch as it resulted in reducing their pay and thus, it was necessary to issue show cause notice to them before taking the said action. Even in *Jagdish Kumar Chhabra and another' case* (supra), the action of the respondent authorities to withdraw the 3rd ACP and the order recovering the excess payment made, was set aside on the ground that the same had been done without issuance of any show cause notice. While disposing of the said writ petition, the right of the respondents to proceed, in accordance with law, after giving show cause notice was reserved. In the case of *B.D. Gupta* (Supra), Hon'ble the Supreme Court had observed that if an order affects the employee financially, then the same should be passed after following the principles of natural justice.

11. From a perusal of the abovesaid judgments, it is apparent that it has been repeatedly held by Hon'ble the Supreme Court as well as by this Court that before any order is passed which entails penal/civil consequences, it is mandatory to issue a show cause notice and to consider the reply, if any filed, by the employee. It has further been held that the withdrawal of benefit

of ACP entails penal/civil consequences as the pay of the employee stands reduced. Thus, the question of law which has been formulated in para 3 of the present order, is answered in favour of the petitioners in the following terms:-

“Withdrawal of the benefit of ACP Scales granted to the petitioners entails civil/penal consequences and thus, it is necessary for the respondent-authorities to issue show cause notice to the petitioners and seek their response on the same before withdrawing the said benefit.”

12. It would also be relevant to note that a Coordinate Bench of this Court vide order dated 27.05.2022, while issuing notice of motion was pleased to stay the effect and operation of the impugned order till the next date of hearing and the said interim order has continued and been in operation till date. The order dated 27.05.2022 passed by a Coordinate Bench of this Court in CWP-11777-2022 is reproduced hereinbelow:-

“Present: Mr. S.K. Malik, Advocate, for the petitioners.

Counsel appearing on behalf of the petitioners herein would inter alia contend that without following due process, their ACPs have been withdrawn.

Notice of motion for 21.12.2022.

In the meantime, the effect and operation of the impugned order is stayed till the next date of hearing.

Sd/-(JAISHREE THAKUR)

JUDGE

27.05.2022”

13. It would be relevant to note that a similar stay had been granted in all the writ petitions except CWP-4698-2023.

14. Keeping in view the abovesaid facts and circumstances, all the

writ petitions are partly allowed and the impugned action of respondents is set aside. Liberty is, however, granted to the respondent authorities to proceed against the petitioners, in accordance with law, after issuing show cause notice and after giving them an opportunity to file a reply to the same and then to pass appropriate orders in accordance with law.

15. It is made clear that this Court has not opined on the merits of the case and has set aside the impugned action only on the ground of violation of principles of natural justice and it would be open to the respondent authorities to decide the same independently and in accordance with law.

16. All the pending miscellaneous applications, if any, shall stand disposed of in view of the abovesaid judgment.

19.07.2023
Pawan

(VIKAS BAHL)
JUDGE

Whether speaking/reasoned:-	Yes/No
Whether reportable:-	Yes/No