

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

226

CWP No.14788 of 2020

Date of decision:01.05.2023

Raj Pal

... Petitioner

Vs.

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

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

Mr. Harish Rathee, Sr. DAG, Haryana
for the respondents.

SUVIR SEHGAL J.

1. Petitioner has moved this Court *inter alia* seeking issuance of a writ in the nature of *certiorari* for modification of office order dated 22.10.2019 (Annexure P-6) to the extent that he is entitled to first ACP Grade w.e.f. 25.06.2014 instead of 01.03.2019 and for release of arrears and consequential benefits alongwith interest on re-fixation of pay.

2. Facts in brief are that the petitioner was appointed as a Driver on contract basis on 25.06.2008 and his services were regularized from the same date by virtue of order dated 09.12.2016 (Annexure P-4). In compliance of the directions passed by the Hon'ble Supreme Court in **Civil Appeal Nos.7391-7395 of 2013, State of Haryana and another Vs. Mohinder Singh and others** (Annexure P-2), petitioner was granted regular pay scale and arrears were paid to him. Upon coming into force of the modified Assured Career Progression (ACP) Rules, by order dated

22.10.2019 (Annexure P-6), petitioner was granted first ACP w.e.f. 01.03.2019. It has been contended that the petitioner is entitled to the benefit when he completed eight years of regular service.

3. Upon notice, writ petition has been contested by the official respondents by taking a stand that during his service tenure, various punishments were imposed upon the petitioner and he did not enjoy a regular satisfactory service. Petitioner has controverted the stand of the official respondents by filing a replication and has submitted that the petitioner is entitled to the benefits as on 25.06.2016 and the date 25.06.2014 has been inadvertently mentioned in the petition.

4. I have considered the submissions made by counsel for the parties and examined the material placed on the record.

5. The expression “regular satisfactory service” appearing in the Haryana Civil Services (Assured Career Progression) Rules, 2008 (for short “Rules of 2008”) has been explained in Note to Rule 7 *ibid* and is reproduced hereunder:-

“Note:-For the purpose of these rules, “regular satisfactory service” means continuous service counting towards seniority under Haryana Govt. including continuous service in Punjab Govt. before re-organization, commencing from the date on which the Govt.servant joined his service after being recruited through the prescribed procedure or rules etc. for regular recruitment, in the cadre in which he is working at the time of being considered his eligibility for grant of ACP pay band and grade pay under these rules and further fulfilling all the

requirement prescribed for determining the suitability of grant of ACP pay structure.”

6. This expression came up for interpretation before the Hon'ble Supreme Court in **State of Haryana and others Vs. Sita Ram and others (2013) 16 SCC 677** and it has held that regular satisfactory service means continuous service counting towards seniority under the Haryana Govt. Interpreting the UHBVN (Assured Career Progression) Rules, 2009 which are *pari materia* with the Rules of 2008, a Co-ordinate Bench of this Court in **Omi Devi Vs. Uttar Haryana Bijli Vitran Nigam Limited 2012(4) SCT 153** held as under:-

“The learned counsel appearing for the respondents would contend that it is not necessary that the punishment must be current and if during the service there had been any blot, it could itself be a ground for denial of promotion. I would find the latter argument to be strange and liable to be discarded. If there are no particular rules pertaining to service that deny a promotion on account of punishment suffered by an employee during the tenure of service, there is also no scope to deny consideration for ACP scales.”

7. The facts of the present case have to be examined in the light of the settled position of law as has been noticed above. Stand of the respondents is that during his tenure of service, petitioner has been imposed with various punishments, details of which are reproduced hereunder in a tabular form:-

Sr. No.	Particulars of allegations	Punishment	Order No.
1.	Show cause notice was issued vide letter No.8058/TA2 dated 14.03.2018 (regarding to take the bus over the bridge)	Fined with Rs.2000/-	840/TA2 dated 04.06.2018
2.	Show cause notice was issued vide letter No.8059/TA2 dated 14.03.2018 (regarding not to enter of bus in the bus stand of Panipat)	Fined with Rs.500/-	948/TA2 dated 18.12.2018
3.	Charge sheet was issued under Rule-4B vide letter No.2496/TA dated 02.08.2017 (regarding embezzlement of Rs.3700/- in receipt of Toll Tax)	Fined with Rs.3700/-	839/TA2 dated 04.06.2018
4	Charge sheet was issued under Rule-4B vide letter No.5842/TA2 dated 04.06.2013 and show cause notice was issued vide letter No.6117/TA2 dated 18.06.2013 (regarding embezzlement case of Rs.60/- to take as fare from two passengers)	Fined with Rs.1000/-	7472/ECD dated 07.10.2013
5.	Charge-sheet under Rule 7 of HCS(P&A) Rules, 1987. Petitioner found guilty of charges (for an accident on 29.08.2013).	Fined with Rs.10,000/- and suspension period restricted to suspension allowance.	Endst.No.975/TA dated 27.02.2019 (Annexure R-T/1). Appeal is stated to be pending.

8. It is evident from the above table that all the punishments were by way of imposition of fine. In other words, though the petitioner became eligible for grant of the ACP scale on completion of eight years of regular service subject to fulfillment of other conditions laid down in the 2008 Rules, he has been denied the benefit due to the imposition of penalties. The punishment imposed upon him, cannot be taken into consideration for the purpose of refusal of ACP grade in view of the judgment of this Court in **Omi Devi's case (supra)** as it cannot be denied that imposition of fine was not a blot on his career so as to deny consideration for promotion. Moreover,

except for punishment at serial no.4 above, all other punishment orders have been passed after the petitioner completed requisite eight years of regular service and cannot be taken into consideration.

9. As a consequence of the above discussion, a direction is issued to the respondents to consider the case of the petitioner for grant of first ACP grade on completion of eight years of regular service subject to fulfillment of other conditions as laid down in the Rules of 2008. The consideration be carried out within a period of four months from the date of communication of copy of this order. Consequential benefits shall be paid to the petitioner in terms of office order (Annexure P-4) and be disbursed within two months thereafter, failing which, they shall carry interest @ 6% per annum for the delayed period.

10. Writ petition is disposed of.

(SUVIR SEHGAL)
JUDGE

May 01, 2023
savita

Whether Speaking/Reasoned	Yes
Whether Reportable	Yes