

2023:PHHC:166621

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

CWP-10786-2016

DECIDED ON: 31.10.2023

RAJINDER KAUR

.....PETITIONER

VERSUS

STATE OF HARYANA AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Ms.Sangita Dhanda, Advocate and
Mr.Harjot Singh, Advocate
for the petitioner.

Mr. Kapil Bansal, DAG, Haryana.

Mr.K.K.Gupta, Advocate
for respondents No.2 & 3

SANDEEP MOUDGIL, J (ORAL)

1. The jurisdiction of this court has been invoked under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing of the order dated 13.02.2014 (Annexure P-7) passed by respondent No.2 denying benefits of ACP Scales & 6th pay commission with further prayer for issuance of a writ in the nature of mandamus directing the respondents to grant ACP-1, ACP-2, ACP-3 and revise the pay of the petitioner as per 6th pay recommendation commission and to implement the orders dated 29.08.2007 & 18.03.2014 (Annexures P-5 & P-8) and Cental Administrative Tribunal.
2. It is submitted on behalf of the petitioner that she was appointed on 26.09.1979 on the post of 'Lday Health Visitor' in the office of respondents No.2

and 3 and worked with the department with utmost sincerity from the year 1979 to 2016. The petitioner throughout her service career had been getting pay & other benefits as per Haryana Government rules from time to time as the respondents have adopted the Haryana Government rules & regulations by passing a resolution No.5 (Annexure P-1).

3. It is further submitted that in the year 2004, vide letter dated 02.11.2004 (Annexure P-11) respondent No.2 has sought clarification with regard to the release of ACP Scales to the employees working under the project including the petitioner, from respondent No.1-Director General Health Services, Haryana, upon which the respondent No.1 vide letter dated 30.11.2004 (Annexure P-3) informed the respondent No.2 that ACP scales w.e.f. 01.01.1998 be given to all the employees working under the project.

4. It is alleged that after the letter issued by Director General Health Services, Haryana, one co-employee namely Raj Kumari filed a civil suit for issuance of ACP scales ,which was decreed vide judgment/decreed 07.06.2006 (Annexure P-4) passed by Civil Judge (Jr. Division), Ambala. Thereafter, the petitioner submitted various written representation to the respondents. However, the respondents dismissed the representation dated 17.09.2012 (Annexure P-6) of the petitioner vide impugned order dated 13.02.2014 (Annexure P-7).

5. The assertion of the petitioner is that 'promotion or other benefits cannot be given to the employees working under the project' on the basis of letter dated 17.06.2009 issued by Government of India. Hence the present writ petition has been filed.

6. Amittedly the petitioner was the employee of the respondent No.2 & 3 working from 26.09.1979 under the Family Planning Welfare programme on the

post of 'Lady Health Visitor', retired in the year 2016. The objection raised by the respondents that the ACP scales is not applicable to the staff working under the project including the petitioner is not tenable as the respondents No.2 & 3 had raised a query with regard to giving ACP scales to the employees working under project. From perusal of letter dated 02.11.2004 (Annexure P-11) it is abundantly clearly that necessary direction was issued for the grant of 1st & 2nd ACP pay scales to the employees working under Family Planning Centre Scheme upon which the Director General Health Services, Haryana issued letter dated 30.11.2004 (Annexure P-3) mentioning that the ACP scales be given to the employees w.e.f. 01.01.1998.

7. From the afore-said fact it is crystal clear that the ACP scales is applicable to the employees working under the Project including the petitioner. The argument is that after issuance of letter dated 30.11.2004 (Annexure-P-3), one of the co-employee namely Raj Kumari filed a civil suit for issuance of ACP scales which was decreed vide judgment/decreed dated 07.06.2006 (Annexure P-4) and the ACP scales was lateron given to her by the respondents. Therefore once the respondents have granted benefits to the similar situated co-employee, then the respondents can not refuse the benefits to the petitioner also.

8. Learned counsel for the respodnents have submitted t that the petitioner was working under the "Family Planning Welfare Project" and letter dated 30.11.2004 (Annexure P-3) regarding the issuance of ACP Scales was not for the project employees and therefore the representation of the petitioner was rightly rejected by passing speaking order 13.02.2014 (Annexure P-7), which is impugned by the petitioner by way of present petition. The respondents further argued that the Government of India vide its letter dated 17.06.2009 intimated that promotion of

any kind cannot be given to staff working in urban family welfare centre. In addition, it is submitted that the judgment/decreed 07.06.2006 (Annexure P-4) passed by Civil Judge (Jr. Division) is not binding upon the respondents, as it is an *ex-parte* judgement. Accordingly, prayer for dismissal of the petition is made.

9. No other argument has been raised by either of the parties.

10. Having, heard learned counsel for the respective parties.

11. The petitioner was appointed on the post of 'Lady Health Visitor' and retired from as such after putting 36 years in service. Perusal of the letter dated 02.11.2004 (Annexure P-11) issued by respondent No.2 makes it clear that respondent No.2 raised specific query about releasing of ACP scales to the employees working under the project upon which the respondent No.1 issued letter 30.11.2004 (Annexure P-3) allowing ACP scales to the employees working under project w.e.f. 01.01.1998 meaning thereby, ACP scales is applicable to the employees working under the project.

12. As far as the contention of the petitioner with regard to the fact that despite the judgment of the civil court dated 07.06.2006 (Annexure P-4), the respondents illegally withheld the benefits of the petitioner and also the stand taken by the respondents that the said judgment of the civil court is an *ex-parte* judgment and is not binding upon the respondents, is concerned, the said argument raised by the respondents is not tenable in the eyes of law as it is well settled that even an *ex-parte* decree is also binding between the parties in the same way as a decree passed after contest. The respondents are the best persons to challenge the said decree but they have chosen not to challenge the said decree and, on the contrary, has made the payment to the co-employee namely Raj Kumari, meaning thereby, ACP scale is applicable on the employees working under the project.

13. Though the benefit of 6th Pay Commission as well as 1st 2nd and 3rd ACP to the petitioner has been denied to the petitioner on the basis of letter dated 17.06.2009 but the relief claimed in the writ petition accrues much before the issuance of the said letter. It is well settled law that any notification/rules/change in law or government order is prospective in nature unless it is expressly or by necessary implication made to have retrospective effect. Since the notification/letter issued by the Government of India does not contain any clause indicating retrospectively effect, it will have only prospective effect as has been held by the Apex Court in the cases of “A.A.Calton Vs The Director of Education &Anr” 1983 AIR (SC) 1143, “P.Mahendran Vs State of Karnataka” 1990 AIR (SC) 405, “Y.V.Rangaiah &Ors Vs J.Sreenivasa Rao & Ors” 1983 AIR (SC) 852, “Sonia Vs Oriental Insurance Co. Ltd & Ors”, 2007 AIR (SC) 2932 and “State of Punjab & Ors Vs Bhajan Kaur & Ors”, 2008 AIR (SC) 2276.

14. In the light of the discussion made hereinabove, the present petition is allowed and the impugned order dated 13.02.2014 is set aside. Accordingly, respodnents are directed to release the benefits of ACP scales and 6th pay commission to the petitioner along-with interest @ 6% per annum from the date when it became due till the date of its actual realization.

(SANDEEP MOUDGIL)
JUDGE

31.10.2023
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No