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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-17112-2014 (O&M)
Date of Decision: 22.08.2023

Gursewak Singh

. . . . Petitioner

Vs.

State of Punjab and others

. . . . Respondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA

Present Mr. Vishal Sharma, Advocate
 for the petitioner.

Mr. Vishnav Gandhi, DAG, Punjab.

SANJEEV PRAKASH SHARMA, J.(Oral)

1. The petitioner has claimed benefit of ACP on completion of 9 years and 14 years of service w.e.f. 01.11.2016.
2. Learned counsel for the petitioner submits that the petitioner was holding the post of Sub Inspector, Cooperative Societies and was later on read and treated as a post of Cooperative Inspector, Grade II. The post of Cooperative Inspector Grade II was merged with Cooperative Inspector Grade I in the year 1992.
3. Learned counsel submits that State Government vide its letter dt.15.12.2006 clarified the implementation of recommendation of 4th Pay Commission under ACP scheme, and the criteria of granting the ACP benefits in terms of letter dt.10.01.2000 were withdrawn with reference to employees falling under group C and D, and it was clarified that the criteria for grant of benefit of ACP in their cases will be same as provided

for deciding the normal promotion cases which require only a clean record without there being any adversity in the ACRs.

4. Learned counsel submits that petitioner had preferred a writ petition before this Court earlier which was decided with directions to the respondents to take into consideration the case of the petitioner and decide the legal notice for passing a speaking order, whereafter the respondents passed an order denying him benefits of ACP scheme on completion of 9 years and 14 years of service on the ground that in the year 2006 and 2007, the petitioner had adverse remarks of '*below average*', and it is stated that the respondents have wrongfully applied the instructions as laid down in circular dt.03.11.2006 (P-12) which required 50% of the record to be '*good*' for grant of benefit of ACP scheme.
5. *Per contra* learned counsel appearing for the State submits that the Assured Career Progression Scheme was initially circulated vide letter dt.25.09.1998 granting benefit of the ACP scheme after service of 8 years in a post or posts in the same cadre to an employee who was not promoted to the next higher level on account of non-availability of vacancy. The petitioner was granted the said benefit under the said 1998 circular. As per the Government circular dt.10.01.2000, the said higher scale of proficiency step up could be granted only to those employees whose overall service record is adjudged as '*good*' which means that 50% reports should be good and above. However, since the petitioner's 2 ACRs were '*below average*', he was not entitled to proficiency step up and therefore vide detailed speaking order, his case was rejected.
6. I have considered the submissions.
7. After the directions of this Court, the respondents have passed an order on 26.12.2013 wherein they have stated that the petitioner was given benefit

of proficiency after 8 years of service on 17.07.2000. Since he opted under new ACP scheme and completed 9 years of service on 17.07.2001 and 14 years of service on 17.07.2006, the benefit was to be considered w.e.f.01.11.2006. Upon examining his last 5 years reports, as per instructions, it was found that there were 2 adverse remarks for the period 2005-06 and 2006-07 of '*below average*'. Both '*below average*' remarks were conveyed on 09.10.2006 and 14.11.2007 and the petitioner had not filed any appeal against the adverse remarks with the competent authority.

8. In view of circular dt.03.11.2006, 50% report should be '*good*' and 2 out of the last 3 reports should also be '*good*', and therefore the record of the petitioner did not come within the ambit of consideration for grant of ACP scheme. However, this Court finds that the circular dt.03.11.2006 stands superseded by the letter of the Government of Punjab dt.15.12.2006 (P-2) which directs that the criteria of grant of benefit of ACP in cases relating to employees falling under Group C and D would not be the same as that for Group A and B, and in cases of such employees, benefit of ACP scheme shall be granted in accordance with the Rule providing for deciding promotion cases.
9. In view of the said letter issued by the respondents/State of Punjab which has been admitted by them, the respondents were required to pass orders accordingly. The order dt.26.12.2013 (P-8) passed by the respondent is therefore found to be based on wrongful premises. The circular dt.03.11.2006 would not have been looked into for the purpose of petitioner's case.
10. In view thereof, the Writ Petition is allowed. The order dt.26.12.2013 (P-8) is quashed and set aside with the directions to the respondents to grant ACP to the petitioner on completion of 9 years and 14 years of

service in terms of the criteria of promotion available for Group C and D officers as for the letter dt.15.12.2006 issued by the department of Personnel.

- 11. Orders in this regard shall be passed within a period of 3 months. Arrears shall be calculated and released accordingly.
- 12. Pending application(s), if any, also stands disposed of accordingly.

(SANJEEV PRAKASH SHARMA)
JUDGE

August 22, 2023
Mohit goyal

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| 1. Whether speaking/reasoned? | Yes/No |
| 2. Whether reportable? | Yes/No |