

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(203)

CWP No. 24427 of 2012

Date of Decision : 07.12.2023

Avtar Singh

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. R.K. Malik, Senior Advocate with
Mr. Samrat Malik, Advocate for the petitioner.

Mr. Saurabh Mohunta, Deputy Advocate General, Haryana.

Mr. G.S. Aulakh, Advocate for
Mr. Hitesh Malik, Advocate for respondent No. 4.

Harsimran Singh Sethi J. (Oral)

1. In the present petition, the prayer of the petitioner is for the grant of benefit of ACP for counting the service, which the petitioner had rendered in the earlier department prior to his transfer/absorption in the new department.

2. Learned senior counsel appearing on behalf of the petitioner submits that the petitioner was transferred to the department of Block Development and Panchayat vide order dated 24.12.1999. The only restriction placed upon them was that the past service will not be considered towards seniority and for other purposes but his pay will be protected. Learned senior counsel appearing on behalf of the petitioner

argues that now, the benefit of earlier service is not being given to the petitioner for the grant of ACP, which is arbitrary and illegal as, only the benefit of seniority is to be denied to him and once, the petitioner has been given the benefit of protection of pay, which he was drawing in the previous department, the service taken in account for protection of pay needs to be taken into account for grant of ACP as well.

3. Learned senior counsel submits that the said question is no longer res-integra on the ground that the similar benefit has already been allowed by the Hon'ble Supreme Court of India while deciding Civil Appeal No. 4446 of 2008 titled as ***State of Haryana and another Vs. Deepak Sood and others***, wherein the similarly situated employees and the similar clause of placing the employees at the tail in the seniority but the benefit of protection of pay was given, the grant of benefit of ACP by counting the earlier service has already been allowed, hence, the petitioner is also entitled for the benefit of earlier service for the grant of ACP keeping in view the judgment of the Hon'ble Supreme Court of India in ***Deepak Sood and others' case (supra)***.

4. Learned State counsel submits that the petitioner was appointed afresh hence, the benefit of earlier service cannot be given to him. Learned State counsel further submits that in case the benefit of ACP is given to the petitioner despite being junior, he will be getting a higher pay than his senior, anomaly will be created and rather, by extending the benefit of ACP to the petitioner, who is junior to number of employees, who are yet to get benefit of ACP, they will also get the same

benefit on account of step up of pay equivalent to their junior, hence, grant of benefit of ACP to the petitioner will amount giving the benefit of ACP to everyone even if otherwise eligible.

5. I have heard learned counsel for the parties and have gone through the record with their able assistance.

6. The question of law, which has been raised in the present petition is whether the service rendered in the previous department is to be taken into account for the grant of ACP has already been decided by the Hon'ble Supreme Court of India in ***Deepak Sood and others' case (supra)***. The relevant paragraphs of the said judgment are as under -

"9. The admitted facts are that the respondents were employees of the Municipal Committee, Panipat and they have been absorbed in the State of Haryana on terms and conditions which shall be reproduced hereafter. Now, the question is whether the service put in by them in the Municipal Committee should be counted or not for the benefit of ACP grade. The condition on which they were appointed in the State of Haryana clearly stipulated that these officials shall be appointed on transfer basis and shall join as junior most employees in the categories on the date of appointment. These employees shall be eligible for pay and pensionary benefits of their past service. However, no benefit of past service in seniority matters shall be given when being adjusted in the department. The Government has granted various relaxations required for these adjustments. The relevant portion of the order reads as under :-

"The Government has decided that the surplus employees of Group 'C' of the abolished municipalities will be absorbed in your Department against the

existing vacancies as per their bio data at Annexure A. It has also been decided to relax the provision of qualifications to absorb such employees if necessary. These officials have to be appointed on transfer basis and shall joint as the junior most employees in their categories on the date of appointment. These employees shall be eligible for pay and pensionary benefits of their past service. However, no benefit of past service in seniority matters shall be given, when being adjusted in your department. The Government has granted various relaxations required for these adjustments as per the following letters :-

(i) The posts against which these employees have to be adjusted have been taken out of purview of the Staff Selection Commission vide Govt. Notification No.G.S.R. 19/Const/Art.309/2000 dated 7.4.2000.

(ii) Relaxation in the instructions issued by the Finance Department letter No.5/6/92/B&C dated 2.4.1999 vide Finance Department's concurrence issued vide their U.O. No.5/14/2000-I dated 7.3.2000.

(iii) Relaxation in the minimum qualifications as laid down in the Service Rules of the concerned Departments/Boards/Corporations for the Group C and D employees for absorption of employees rendered surplus issued vide Chief Secretary's letter No.42/183/99-5GSI, dated 15.3.2000."

10. A perusal of these terms and conditions makes it clear that what is being lost by these surplus staff is their seniority. They will have to get zero seniority in the new Department but their past service has been counted for fixation of pay as well as pensionary benefits. The scheme of ACP Grade came subsequently. On that basis the respondents made a

*grievance that they were being denied the benefit of ACP and the services rendered by them in the Municipal Committee has not been counted for the purposes of calculating 10/20 years of service in the Department. It is a misfortune that the respondents have been declared surplus in the Municipal Committee, Panipat but the Government has been benevolent to them and absorbed them in the State Government but denied them the benefit of past service for the purpose of seniority. However, at the same time they have counted their past service for the purpose of pay and pensionary benefits. Once the Government considered them eligible for fixation of pay and pensionary benefit and counted their past service then there is no reason why ACP grade should be denied to them. Having lost, at one hand their seniority in the new department, it would be unfair to deny them the benefit of ACP grade. When the Government counts their past service for grant of the benefit of pay fixation and pension, there is no reason why their past service should not be given the benefit of ACP Grade. 11. A similar question came up before this Court in the case of (1) **Dwijen Chandra Sarkar and another v. Union of India and another reported in AIR 1999 Supreme Court 598**. In almost identical situation a person was transferred to another department on administrative grounds and his past service of 16 years was not counted. He challenged the same and matter ultimately reached before this Court and this Court after considering the matter came to the conclusion that granting them higher grade under the Scheme for time bound promotion does not therefore, offend the condition imposed in the transfer order. It was observed by this Court, "We are, therefore, of the view that the appellants are entitled to the higher grade from the date on which they have*

completed 16 years and the said period is to be computed on the basis of their total service both in the Rehabilitation Department and the P & T Department." 12. Their Lordships referred to earlier judgments given by this court i.e. in the case of **Renu Mullick v. Union of India 1994 (1) SCC 373**. In this case also in identical situation the benefit was given to incumbent likewise in **Raksha Mantri v. V.M. Joseph reported in 1998(5) SCC 305** and in the case of **A.P. State Electricity Board v. R. Parthasarathi reported in 1998 (9) SCC 425**. The same principle was re-affirmed recently in the case of **State of Maharashtra & Ors. v. Uttam Vishnu Pawar (2008) 2 SCC 646** to which one of us (A.K.Mathur, J.) was a party, wherein in para 13 it was observed as under :-

"Therefore, in view of the consistent approach of this Court, it is no more res integra that the incumbent on transfer to the new department may not get the seniority but his experience of the past service rendered will be counted for the purpose of other benefits like promotion or for the higher pay scale as per the Scheme of the Government."

13. Therefore, in the series of judgments given by this Court the view has been taken that in case of a transfer/absorption from one department to another or from public sector to State though the benefit of the seniority may be denied to the incumbent but not for other benefits like pay fixation and for the pensionary benefits. Therefore, when the benefit of past service rendered in the parent department was given for fixation of pay and pensionary benefits, there is no reason why the past service should not be counted for grant of ACP Grade. Consequently, we are of the view that the view taken by the Division Bench of the High Court in the impugned judgment and order is correct and there is no ground to

interfere in this appeal. Consequently, this appeal is dismissed but with no order as to costs.”

7. A bare perusal of the above order would show that the petitioners are similarly situated as the respondents before the Hon’ble Supreme Court of India upon whom also, the similar conditions were imposed at the time when they were transferred to the new department. Once, the benefit has been extended by the Hon’ble Supreme Court of India to the similarly situated employees, the non-grant of said benefit to the petitioner will amount to violation of the order passed by the Hon’ble Supreme Court of India, which cannot be done.

8. Learned counsel for the respondents submits that the issue with regard to the grant of benefit to a junior employee will make the others also entitled for the same benefit under the claim of step up of pay which was never raised before the Hon’ble Supreme Court of India.

9. Be that as it may, once an argument was available at that relevant time, if not raised, will deem to have been waived off. Even otherwise, once the benefit of protection of pay was granted to a junior employee, the junior employee i.e. the petitioner herein was getting a higher salary than their senior counterpart, who were already working in the department of Panchayat and were being treated senior. That being the factual position, the ground that the seniors will claim the benefit, will not debar the petitioner to claim the same. Once, the respondents themselves granted the benefit of protection of pay despite not being granted seniority, petitioner was already getting the higher pay than his seniors.

10. That being so, the claim of the petitioner is squarely covered by the judgment in ***Deepak Sood and others' case (supra)*** for counting of the service rendered by the petitioner in the previous department for extending the benefit under the ACP Rules. The respondents are directed to grant the petitioner the benefit of earlier service while considering his claim with regard to the grant of ACP and appropriate order be passed within a period of two months of the receipt of copy of this order.

11. Writ petition is allowed in above terms.

December 07th, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No