

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

CWP-2350-2015

Date of decision : 12.05.2023

Sarwan Singh

....Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Vivek Singla, Advocate
for the petitioner.

Mr. Aman Dhir, Deputy Advocate General, Punjab.

PANKAJ JAIN, J. (ORAL)

By way of present writ petition filed under Article 226/227 of the Constitution of India, the petitioner prays for writ in the nature of certiorari quashing the cut-off date i.e. 1st of December, 2011 assigned in the instructions dated 20th of November, 2011 (Annexure P-7) claiming that the same has been relied upon to deny him benefit of ACP on completion of 14 years of regular service in the cadre of Deputy Superintendent of Police.

2. Admittedly, the petitioner was granted notional promotion as Deputy Superintendent of Police w.e.f. 8th of March, 1995. Having opted for 4, 9, 14 years of ACP scale he was granted 4 years ACP benefit on 28th of March, 2006 (Annexure P-4) and further 9 years ACP benefit vide Annexure P-5. However, when the 14 years ACP scale fell due the same was postponed vide Annexure P-6 on the ground that the ACP schemes according 4, 9, 14 years scale and that 8, 16, 32 years scale are to be

reconciled and the decision is pending before the Government. The petitioner retired on 30th of November, 2009. However his claim was rejected vide Annexure P-8. Relying upon Annexure P-7 on the ground that the schemes though have been re-enforced w.e.f. 28th of May, 2009. However, the decision has been made applicable only w.e.f. 1st of December, 2011.

3. Counsel for the petitioner submits that once there was a vested right under the scheme in favour of the petitioner, the same could not have been taken away by appointing a date. He submits that net effect of the decision is that all those persons who became eligible for these scales between the date of Annexure P-6 (6th of May, 2010) and Annexure P-7 (20th of December, 2011) have been discriminated against.

4. Per contra Mr. Dhir submits that the petitioner is not entitled for 14 year ACP scale even though he has completed 14 years service in the cadre of Deputy Superintendent of Police as the scheme is governed by instructions dated 17th of April, 2000 placed on record as Annexure R-2. He refers to Clause 7 thereof to contend that the placement in higher scale has to be given effect to from the first day of January of the year next to the year in which an employee completed the span of service required for placement in the higher scale. He thus submits that all cases maturing upto the last of the year are to be taken up for consideration before end of the month of October and thus the petitioner having retired on 30th of November, 2009 was not entitled as he never worked till 1st of January of

the year next to the year in which he completed 14 years.

5. I have heard counsel for the parties and have gone through records of the case.

6. In the considered opinion of this Court reliance by the respondents on Annexure P-7 to deny the claim of the petitioner is totally misplaced as the decision taken and communicated vide Annexure P-7 shall come into force only w.e.f. 1st of December, 2011.

7. The question arises for consideration of this Court is: '*whether the petitioner would be entitled for ACP scale in terms of Annexure R-2 or not ?*'

8. Clause 3 and Clause 7 of Instructions dated 17th of April, 2000 read as under :

“3. Service rendered in the same post before 1st January, 1996, or the date opted for by an officer, shall count for the purposes of these decisions. Same post shall mean a post which is in the same cadre, with same designation and same pay scale. Where the post is one for which different pay scales, without involving promotion to a higher cadre was prescribed under the Rules applicable immediately before 1st January, 1996, the entire service of officers adjudged as satisfactory from entry scale onwards shall be taken into consideration. For reckoning the period of service, only the service rendered from the date of assignment of seniority in the Cadre and which counts for increment shall only be taken into consideration.

7. All placements in higher scales shall be given effect to from the First day of January of the year next to the year in which an employee completes the span of service required for placement in the higher scale.

All cases maturing up to the last day of the year shall be taken up for consideration before the end of the month of October. The Annual Confidential Reports up to the 31st March of the relevant year may be taken as the base. Record of work/conduct/other events like starting of an enquiry etc. up to the date when actual placement is made should also be kept in view.”

9. After reading the aforesaid two clauses it is evidently clear that Clause 7 does not take away the right of ACP scale which has to be governed by Clause 3. The same only for the purposes of calculation delay the grant thereof and the same has to be granted w.e.f. 1st of January of the next year. The petitioner admittedly completed 14 years of the service in the cadre of Deputy Superintendent of Police prior to his date of retirement became entitled for 14 years ACP scale. Even if the same has to be granted from 1st of January, 2010 the retirement of the petitioner would not come in the way.

10. In view of above, the present writ petition is allowed. Order dated 30th of July, 2012 is hereby quashed. Respondents are directed to consider the claim of the petitioner *qua* grant of 14 years ACP scale within eight weeks from the date of receipt of certified copy of this order.

May 12, 2023
Dpr

(Pankaj Jain)
Judge

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