

229

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

CWP-17796-2018

Date of decision : 16.02.2023

Kashmir Singh

....Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Ms. Jyoti Sareen, Advocate
for the petitioner.

Mr. Rajesh Mehta, Addl. A.G., Punjab.

PANKAJ JAIN, J. (ORAL)

Present writ petition has been filed impugning order dated 09.05.2018 (Annexure P-8) issued by respondent No.5 vide which the claim of the petitioner for grant of 04 years and 09 years ACP benefit, stands rejected.

Petitioner was appointed as a Constable with the respondent-Department on 23.07.1976 and was thereafter promoted as Head Constable in the year 1984, thereafter, was further promoted to the post of ASI and then as SI. The petitioner earned final promotion as Inspector w.e.f. 26.08.2006 vide Annexure P-I. The petitioner attained age of superannuation on 30.09.2013 and continued to work till 30.09.2015 after two years' extension was granted. In the meantime, the petitioner was also granted officiating charge as Deputy Superintendent of Police Current rank. The petitioner claimed 04 year and 09 year increment

under the ACP scheme and after retirement served notice upon the respondents dated 18.04.2018 (Annexure P-7). In response thereto the claim of the petitioner stands declined in the following terms:-

'It is inform that Sh. Kashmir Singh, D.S.P./CR No.744/PAP is not entitled to get increment under ACP Scheme. The 4 year increment of above official was ignored as he got only 6.5 points in his service record, minimum 12 points are required for getting increment. His 9 years increment was rejected because as per Punjab Govt. instructions he is not entitled to get increment during the extension period. Therefore your legal notice is considered and filed. It is for your information please.'

Learned counsel for the petitioners refers to ACP scheme dated 16.01.2001 (Annexure P-4) to submit that the criteria for grant of the increment under the said scheme was as under:-

'I have been instructed to bring to your notice the instructions issued by this department on 10th January, 2000 vide circular letter no.7/1/99-5 P.P.1/395 dated 10.01.2000. Under these instructions it was provided to grant benefit of placement/proficiency step up in the higher scales under ACP Scheme that the "good" service record means that 50% reports should be good and out of last 3 reports atleast 2 reports should be good and remaining reports can be average. Some departments brought this to the notice of department that in their departments there are certain employees, in whose cases last 3 or more than last 3 years, annual confidential reports have not been written and no report certificates have been issued. As a result of which it is difficult to grant benefit of ACP Scheme under the present instructions and in this situation how the record can be seen'.

It has been further claimed that so far as the ACRs of the petitioner relevant for consideration for grant of 04 year increment under ACP scheme are for the year 2007-08, 2008-09 and 2009-10. ACR of the petitioner for the year 2007-08 was recorded as 'Good', ACR for the period 01.04.2008 to 07.07.2008 was also assessed as 'Good', ACR for the period 07.07.2008-14.02.2009 was assessed as 'Good' as well. Further the petitioner has been assessed as 'Excellent' for the period from 15.02.2009-31.03.2009 and was found to be fit for promotion. ACR for the period 01.04.2009 to 03.09.2009 has been assessed as 'Average', whereas again from 09.10.2009 to 15.03.2010, the petitioner was assessed as 'Very good'. Same was the case for the period from 11.06.2010 to 13.09.2010.

Counsel contends even though the petitioner was reported to be hard working, good and brave police officer, yet was assessed as 'Average' for time period from 01.04.2009 to 03.09.2009. Yet, be as it may be, the fact remains that apart from earning one 'Average' remark the record of the petitioner either remained good or very good or excellent and was found to be fit for promotion. Thus, the ACP for 04 year increment ought not have been denied to the petitioner.

The second limb of the arguments raised by the counsel for the petitioner with respect to denial of 09 year increment is that the claim of the petitioner for extension was assessed prior to the amendment dated 30.10.2015 was carried out in Punjab Civil Services Rules Volume-I Part-I, 3.26, thus, the said amendment cannot be read to deny the claim of the petitioner. She further asserts that even in that amendment, it has been specifically provided that the pay of the government employee

already on extension who has been given promotion or the benefit of ACP during the extended period till the issue of this notification, shall be protected and retiral benefits will be payable on such protected pay. Thus, the assertion is that by incorporating proviso, the intention is explicit that the Rules have been made applicable prospectively and the case of the petitioner would be covered by the second proviso.

Per contra, counsel appearing for the State submits that the claim of the petitioner for grant of ACP was assessed in terms of the scheme wherein it has been provided that the grant of ACP scheme has to be assessed in terms of the same procedure as is applicable for promotion. However, counsel for respondent is not in position to deny the fact that the case of the petitioner for grant of ACP for the extended period is saved in the exception carved out in the proviso appended to Rule 3.26 (b) which reads as under:-

(b) Notwithstanding anything contained contrary in these rules or any other rules for the time being in force, during the extended period of Service under clause (a), the Government employee shall be entitled to pay equal to the pay last drawn by him, on attaining the age of fifty-eight years or sixty years including an employees, who is already on extension, as the case may be:

Provided that the Government employee, whose service is extended, shall not be entitled to:

(i) Promotion

(ii) The benefit of Assured Career Progression:

(iii) An annual increment; and

(iv) Any revision of pay made by the State Government.

Provided further that the pay of the Government employee already on extension, who has been given promotion or the benefit of Assured Career Progression during the extended period till the issue of this notification, shall be protected and he

shall be given the retiral benefits on the basis of his protected pay."

I have heard learned counsel for the parties and have gone through the record of the case.

In the considered opinion of this Court, once the conceded position by the State is that the criteria for grant of ACP scheme is the same as for grant of promotion and the petitioner was found to be fit for promotion on the basis of ACR for the period from 2007 upto 2009 and it is not denied that apart from earning one 'Average' remark, all the ACRs of the petitioner either 'good', 'very good' or 'excellent' (Annexure P-8) impugned under the present petition, cannot be sustained.

Resultantly, the same is ordered to be quashed. The petitioner is held entitled for grant of 04 year and 09 year ACP benefit.

The respondents are directed to revise the pay and pension of the petitioner by granting the aforesaid benefit. The arrears as admissible to the petitioner on grant of such revision, be paid within a period of 12 weeks from the date of receipt of certified copy of this order along with interest @6% per annum calculated for the period commencing from the date of the petitioner became eligible for such benefit till the date of actual realization.

Disposed off accordingly.

16.02.2023

ps-I

(PANKAJ JAIN)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No