

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

211

CWP No.23603 of 2016
Date of decision:18.04.2023

Lal Chand

... Petitioner

Vs.

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Ravinder Malik (Ravi), Advocate
for the petitioner.

Mr. Saurabh Mohunta, DAG, Haryana.

SUVIR SEHGAL J.

1. Challenge in the instant petition is to order dated 28.04.2016 (Annexure P-12) passed by respondent No.2, whereby, petitioner's claim for promotion from the post of Clerk to Assistant with effect from the date his juniors were promoted and for grant of ACP scales and other service benefits, has been rejected.

2. Brief facts deserve to be noticed. The case has a chequered history. Petitioner was appointed as a clerk on 16.01.1981 and retired from service on 31.07.2014. Due to an ailment, he remained under medical treatment from 12.03.1997 to 11.12.1998. When he went to re-join his duties, he was served with a charge-sheet for remaining absent from duty without permission. He submitted a reply to the charge-sheet, an enquiry was conducted. He was issued a show-cause notice dated 01.02.2001 to

which he responded. By order dated 07.02.2008, respondent No.2 terminated the service of the petitioner. After statutory appeal filed by the petitioner was rejected, he approached this Court by filing a writ petition, which was allowed by judgement dated 04.05.2012, (Annexure P-1), whereby, the impugned orders were set aside and the respondents were directed to pass a fresh order after taking into consideration the length of service rendered by the petitioner. Petitioner was reinstated by order dated 03.12.2012 (Annexure P-2). A fresh show-cause notice was issued to him proposing dismissal from service to which he submitted a reply. By office order dated 08/11.07.2013 (Annexure P-5), punishment of stoppage of one annual grade increment with cumulative effect, was imposed. Vide order dated 17.10.2014 (Annexure P-9), the termination period of the petitioner was treated as period spent on duty for all intents and purposes. In the meanwhile, his colleagues were promoted to the post of Assistant. Claiming promotion at par with them as also other service benefits, petitioner approached this Court and by order dated 16.11.2015 (Annexure P-10), he was granted liberty to make a comprehensive representation to the respondents, who were directed to take a decision thereon. A fresh representation was submitted by the petitioner, which has been rejected, vide impugned order (Annexure P-12).

3. Upon notice, writ petition has been contested by the respondents by filing a return, wherein, it has been submitted that most of the ACR's of the petitioner were either 'Average' or 'Below Average'. Some of the reports were even doubtful and therefore, he is not entitled to the financial benefits. It has been further submitted that as his service record has remained unsatisfactory, he is not entitled to be promoted to the post of Assistant.

4. I have considered the rival submissions of counsel for the parties and examined the material placed on the record.

5. It is evident from the stand taken by the respondents that the petitioner does not have a good service record. After his appointment in 1981, his ACRs were either Average or Below Average. He was terminated from service in the year 2008 and reinstated in December 2012, therefore, the ACRs from the year 2008 to 2012 were not prepared. The service record of last two years of service i.e., 2013-2014 and 2014-2015 (upto July 2014) as he retired on 31.07.2014, are no doubt, good but merely on the basis of service record of this short period, the petitioner cannot claim parity with his counterparts, who have been promoted much prior to his reinstatement in service.

6. The claim of the petitioner for the grant of ACP has to be

considered in the light of Rule 5(1) of the Haryana Civil Services (Assured Career Progression) Rules, 1998, relevant extract of which is as under:-

“5. Eligibility for Grant of ACP Scales:- (1) Every Government servant who, after a regular satisfactory service for a minimum period of 10 years, if the minimum period is not otherwise prescribed to be different than 10 years either in these rules or by the Government for any class or categories of Government servant from time to time, has not got any financial upgradation in terms of grant of a pay scale higher than the functional pay scale prescribed for the post as on 31.12.1995, on which he was recruited as a directly recruited fresh entrant:-

- (a) either as a consequence of his functional promotion in the hierarchy, or*
- (b) as a consequence of the revision of pay scale for the same post, or*
- (c) as a consequence of any other event through which the functional pay scale of the post has been upgraded, with respect to the functional pay scale prescribed for the post as on 31.12.1995, shall for the purposes of drawal of pay, be eligible for placement into the First ACP scale with reference to him.”*

7. It is clear from the above produced rule that the essential requirement for the grant of ACP grade is “regular satisfactory service”. Although, order of termination of the petitioner passed in the year 2008 was set aside by this Court, but a liberty was granted to the respondents to pass a fresh order, in consequence of which, by order, Annexure P-5, punishment of stoppage of one annual increment with cumulative effect was imposed on account of absenteeism. As the petitioner does not have a satisfactory service record, the mandatory condition as laid down in the rule reproduced above, is not fulfilled and, consequently, he is is disentitled from claiming ACP grade or promotion.

8. Given the above circumstances, no relief can be granted to the petitioner.

9. Petition is dismissed.

(SUVIR SEHGAL)
JUDGE

April 18, 2023
savita

Whether Speaking/Reasoned	Yes
Whether Reportable	Yes