

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

232

CWP-24918-2015

Date of Decision: 05.07.2023

Dr. Renu Baveja

.... Petitioner

Versus

State of Punjab and another

.... Respondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA

Present: Mr. R.K. Malik, Sr. Advocate with
Mr. Digvijay Singh, Advocate for the petitioner.

Mr. Vikas Arora, AAG, Punjab.

SANJEEV PRAKASH SHARMA, J (ORAL)

1. This is a civil writ petition filed under Article 226 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing the order dated 12.11.2010 (Annexure P-2) and order dated 09.09.2015 (Annexure P-4), whereby the request of the petitioner to grant the benefit of ACP, has been rejected.

2. The brief facts of the case are that the petitioner was granted first and second ACP at due rates, however, the benefit of third ACP which was admissible to the petitioner w.e.f. 01.01.1996 was deferred and was granted w.e.f. 01.01.2004. Aggrieved with the same, the petitioner has filed the present writ petition.

3. Learned senior counsel for the petitioner submits that the petitioner was denied the said benefits solely on the ground that the ACRs for the period from 1991 to 1999 were not available. He further submits that non-availability of ACRs on the said period could not be a cogent and sufficient reason to deny the ACP benefit and he relied upon a judgment

passed by a Co-ordinate Bench of this Court in *CWP No.9545 of 2010 titled Sarabjot Kaur Vs. State of Punjab and others, decided on 01.09.2011*, wherein in similar circumstances, on account of non-availability of ACR, the concerned petitioner was denied the benefit of ACP and this Court after having noticed the facts which are almost akin to the facts as has come on record in the present case reached to the conclusion that such action was unjustified.

4. Learned counsel appearing for the State submits that it was the duty of the petitioner to submit her ACRs timely and get them recorded. On account of her own fault, the ACRs are not available and therefore, she ought not been given the benefit of ACP and she has been given the benefit from the date her ACRs be made available.

5. I have heard learned counsel for the parties at length and have considered the submissions.

6. The Co-ordinate Bench of this Court in the case of Sarabjot Kaur (supra) has held as under:-

“The Full Bench of this Court in Kamal Kumar Gupta Vs. State of Haryana and others 1990(2) PLR 497 had an occasion to examine the effect of non-recording of ACRs and has observed that a candidate cannot be put to disadvantage if his superiors do not record the ACRs for the specific period and held as under:-

Annual confidential reports are never earned by the candidates and in fact they are recorded by superior officers on their own. If for any reason the superior officers were unable or failed to record the same, it was no fault of the candidate and he cannot be put to a disadvantage on that account. Even otherwise in the interest of equality of opportunity guaranteed by Article 16 of the Constitution of India, the Commission was required to spread annual confidential reports of all the

candidates over 10 years pro-rata on the basis of available reports i.e., for the same period or it should have worked out average in case of each candidate and thereafter evaluated in terms of marks. The Commission having not done so, did not provide equal opportunity to all the candidates required to be considered by it.

First of all mere non-availability of annual confidential report cannot possibly be taken to be conclusive proof of its non-recording. Again, even if annual confidential report is not recorded if a person worked in the service for which it was not recorded, it cannot be said that he had not experienced in line or service for that period. Evaluation under the head experience in line therefore should have been made on the basis of length of service put in and not the length of period for which annual confidential reports were available. In these respects, the criteria laid out by the Commission thus was not fairly implemented resulting in discrimination. This for obvious reasons had vitiated the selection which deserves to be quashed on that score as well.”

7. Keeping in view the aforesaid findings and the conclusion drawn by the Co-ordinate Bench of this Court, I respectfully agreed that the order dated 09.09.2015 (Annexure P-4) denying the benefit of ACP from 01.01.1996 is held to be bad in law and is set aside and the petition deserves to be allowed.

8. Accordingly, the present petition is allowed. The respondents are directed to re-fix the petitioner's third ACP w.e.f. 01.01.1996 instead of 01.01.2004. The re-fixation be made henceforth and the amount of arrears shall also be released to the petitioner within a period of two months from today.

(SANJEEV PRAKASH SHARMA)
JUDGE

05.07.2023
D.Bansal

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