

CWP No.22286 of 2017

[1]

2023:PHHC:062447

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

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CWP No.22286 of 2017

Date of decision:02.05.2023

Joginder Pal and others

... Petitioners

Vs.

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. R.K.Malik, Senior Advocate with
Mr. Sandeep Dhull, Advocate
for the petitioners.

Mr. Saurabh Mohunta, DAG, Haryana.

SUVIR SEHGAL, J. (Oral)

1. Petitioners have approached this Court primarily seeking the following reliefs:-

“iv) a writ in the nature of certiorari be issued to quash the impugned orders (P-5 to P-19) by which the benefit of 1st ACP already granted to the petitioners after rendering 10 years service from the date of their initial appointments i.e., w.e.f. 2012 was ordered to be withdrawn and further declare that the petitioners were rightly granted the benefit of 1st ACP from the dates the petitioners have completed 10 years service by counting their service from the dates of their initial appointments i.e. w.e.f.2012;

v) a further direction be issued that the petitioners were appointed in the year 2002 and they are entitled the benefits of

Old Pension Scheme which was applicable to the employees appointed prior to 01.01.2006;”

2. At the outset, upon instructions from Mr.Sandeep Dhull, Advocate, learned senior counsel representing the petitioners does not press prayer (v) and seeks permission to withdraw the same with liberty to agitate it at an appropriate stage.

3. Permission is granted.

4. Ordered accordingly.

5. Learned senior counsel argues that the petitioners, who are drivers and have been engaged on contract basis, were granted 1st ACP on completion of 10 years’ service in the year 2012 under the Haryana Civil Services (Assured Career Progression) Rules, 2008. He submits that without issuing any show-cause notice or affording any opportunity of hearing, ACP Grades have been withdrawn, vide impugned orders, Annexure P-5 to P-19, which cannot be sustained. He has placed reliance upon a judgment of Co-ordinate Bench of this Court in CWP No.19027 of 2017 titled as ‘**Mahender Singh and others Vs. State of Haryana and others**’, decided on 27.11.2020.

6. Opposing the prayer, State counsel by making a reference to the short reply as well as additional affidavit filed on behalf of the respondents, submits that the petitioners were inadvertently granted the 1st ACP in the year 2012. He submits that the petitioners were regularized in the year 2008 and were entitled to 1st ACP Grade in terms of the amended ACP Rules in the year 2016. The stand of the respondents is that the error was detected

when an audit objection was raised and it has been corrected vide the impugned orders and pay as well as ACP benefits granted to the petitioners have been re-fixed.

7. Having heard counsel for the parties, but without examining the controversy regarding the date of entitlement of the petitioners to the ACP scales, this Court is of the view that impugned orders deserve to be set aside on the short ground that the petitioners have not been given any action oriented notice prior to the impugned action. As the petitioners have been visited with adverse monetary consequences, they should have been put to notice and provided with an opportunity to present their objections. Failure to do so, has resulted in infraction of principles of natural justice and therefore, the impugned orders, cannot be sustained.

8. At this stage, reference deserves to be made to paras 7 and 8 of the short reply filed on behalf of the respondents, which are produced as under:-

7. That so far as petitioners No.13 (Sh. Mohinder Singh, Driver No.21), is concerned, it is submitted that his pay was not reduced, therefore, he has been arrayed as petitioner unnecessarily because he has no cause of action to file the present writ petition.

8. That so far as petitioners No.2 (Sh. Shish Pal, D.No.91), 3 (Sh. Kashmir Singh, D.No.37), 5 (Sh. Manoj Kumar, D.No.58), 6. (Sh. Kuldeep Singh, D.No.170), 7. (Sh. Baljeet Singh, D.No.63) and 12. (Sh. Raj Kumar, D.No.223) are

concerned, it is submitted that their pay was rightly fixed and was not reduced, therefore, they have been arrayed as petitioners unnecessarily because they have no cause of action to file the present writ petition.

9. x x x x

In view of the submission made above, it is respectfully prayed that the answering respondents may kindly be allowed to fix the pay of the petitioners No.1, 4, 8, 9, 10, 11, 14 and 15 after giving them opportunity of being heard and after following due procedure.”

9. In view of the above unambiguous stand of the respondents, impugned orders insofar as they pertain to petitioners No.1, 4, 8 to 11, 14 and 15 are set aside. Liberty is granted to the respondents to take action in accordance with procedure prescribed under the law.

10. Writ petition is disposed of with the above direction.

May 02, 2023
savita

(SUVIR SEHGAL)
JUDGE

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No