

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(217)

CWP No. 24865 of 2018
Date of Decision : 26.07.2023

Devender Singh

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Aditya Yadav, Advocate for the petitioner.

Mr. Harish Rathee, Sr. Deputy Advocate General, Haryana.

Harsimran Singh Sethi J. (Oral)

1. In the present petition, the grievance being raised by the petitioner is that upon foregoing of promotion, the benefit under the Assured Career Progression Scheme (hereinafter referred to as 'ACP Scheme') has been withdrawn and even the recovery is being effected from the petitioner, which is totally arbitrary and illegal.

2. Learned counsel for the petitioner submits that pay of the petitioner can be reduced from the date when the promotion was foregone by withdrawing the benefit but recovery of the amount paid prior to the withdrawal of benefit of ACP is not permissible as the same has not been envisaged anywhere in the rules by which the benefit of ACP Scheme has been extended to the petitioner.

3. Learned counsel for the respondents submits that once the benefit of ACP Scheme can be withdrawn under the Rule 14 of the ACP Rules, 2008 upon foregoing of promotion, even recovery of amount already paid can be made, hence, the recovery of the amount after re-fixing the salary of the petitioner is perfectly valid.

4. I have heard learned counsel for the parties and have gone through the record with their able assistance.

5. Rule 14 of the ACP Rules, 2008 only envisages that in case an employee foregoes his promotion, the benefit of ACP Scheme already extended to him will be withdrawn. That means, the salary of the petitioner needs to be re-fixed after withdrawing the benefit of ACP but the same does not envisage the recovery of the amount already paid. No Rule has been brought to the notice of this Court as to recover the amount already paid after withdrawing the benefit of ACP Scheme. The benefit of ACP is only to be withdrawn upon foregoing of the promotion and that too prospectively but not from retrospective effect, hence, the recovery of the amount already recovered under ACP Rules prior to the date, promotion is foregone, which is being done by the respondents, is without any basis and is not supported by any Rule governing the service as no Rule, which give such kind of jurisdiction, has been cited before this Court to support the said action, hence, any recovery of amount as being done from the petitioner upon withdrawal of the benefit of ACP Scheme, is held to be impermissible and any amount recovered from the petitioner is liable to be refunded to the petitioner.

6. At this stage, learned counsel for the petitioner submits that the promotion to the post of Multipurpose Health of Supervisor was given to the petitioner vide order dated 20.09.2016 but due to certain reasons, the petitioner could not avail the said promotion and requested to forego the same, which request was ultimately accepted by the respondents vide order dated 25.07.2018 (Annexure P-3) but the same is now being interpreted to mean that till the rest of the service career of the petitioner, he cannot be promoted, which is totally arbitrary and illegal.

7. Learned counsel for the respondents submits that in the impugned order dated 19.07.2018 (Annexure P-3), no such statement has been mentioned that the petitioner will not be entitled for promotion for the rest of his career and the same is only his own interpretation.

8. The present dispute can be resolved. In case, the petitioner has this kind of apprehension that according to order dated 25.07.2018 (Annexure P-3) that the respondents are restricting his promotion for the rest of his service career, he may file an appropriate representation with the respondents and the respondents will decide the same by passing an appropriate speaking order keeping in view the rules and regulations, which relate to foregoing of promotion.

9. The time period for which the petitioner will not be promoted after foregoing of the promotion, will be mentioned while deciding the representation. In case, after the decision of the representation, the petitioner is still aggrieved in any manner, he will be open to challenge the same.

10. Petition is disposed of in above stated terms.

July 26, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No