

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-16846-2016

Date of decision : 30.01.2023

Jagir Chand Jossan

..... Petitioner

versus

State of Punjab and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Peeush Gagneja, Advocate
for the petitioner.

Mr. Sehajbir S. Aulakh, AAG, Punjab.

PANKAJ JAIN, J. (Oral)

Petitioner was working as a Junior Engineer and retired as Assistant Municipal Engineer. He has invoked the writ jurisdiction of this Court by way of present petition seeking writ in the nature of mandamus directing the respondents to release the benefits of ACP Scheme under the policy decision dated 03.11.2006 (Annexure P-1) alongwith consequential benefits.

2. The claim of the petitioner has been rejected vide order dated 21.05.2015 passed by respondent No.2 holding as under:-

“xx xx xx

3. Where Punjab Government issued instruction vide its letter no. 7/37/98-5PP1/12851 dated 25.09.1998 to give 8,16,24 and 32 years ACP benefits to its employees and the same is adopted vide Punjab Government letter no. 7/56/99-5PP1/8014 dated 27.06.2000 on Municipal Corporation/ Municipal Council/ Improvement Trust employees. As per these

instructions only 8 years ACP benefit is to be given to Junior Engineers and after completion 16 years of service, 16 Years ACP benefits is to be given as under:-

“After a service of 16 years in a post in the same 'Cadre' a Junior Engineer in the scale of Rs. 6400-10640 in the State, if he still continues in the same post, shall be granted next higher scale of Rs. 7220-11320 with Class-11 Gazatted status and designation of Assistant Engineer. Service rendered by an employee in the lower and higher pay scale granted as per (1) above shall be reckoned as service in the same post for this purpose, and his pay shall be fixed as mentioned in sub para(ii) above.”

4. Where Punjab Government issued instruction vide its letter No. 7/60/2006-4PPL/15963 dated 03.11.2006 for giving 4,9 and 14 years ACP benefits instead of 8,16,24,32 Years and as per these instructions Junior Engineers are not entitled for 4,9.14 years ACP Scheme.

5. Where as according to Punjab Govt. instruction 8 and 16 years ACP benefit has already given to Sh. Jagir Chand Joshan, Junior Engineer (Now retired as Assistant Municipal Engineer) in the Junior Engineer Cadre.

In the light of above mentioned facts and in compliance of Hon'ble Punjab and Haryana High Court Orders dated 31.03.2015 in CWP No. 5917 of 2015 to dispose of Annexure P-4 (Legal Notice) in which petitioner claimed for 24 years ACP benefit, the claim of the petitioner is hereby rejected in the light of Punjab Government Instruction issued vide letter No. 7/56/99-

5PP1/8014 dated 27.06.2000 and letter No. 7/60/2000-4PPL/15963 dated 03.11.2006. As Sh. Jagir Chand Joshan, Junior Engineer (Now retired as Assistant Municipal Engineer) was already given 8 and 16 year ACP benefit and he is not entitled for 24 years of ACP benefit.”

3. Counsel for the petitioner refers to decision of this Court in ***CWP No.16446 of 2010*** dated 20.05.2013 titled as ***Jaswinder Singh Bedi and others vs. State of Punjab and others*** (Annexure P-2), wherein the precise objections which has been upheld by respondent No.2 while declining the claim of the petitioner was turned down by writ Court and the petitioner was held to be entitled for claim under the newly Promulgated ACP Scheme (Annexure P-1) holding as under:-

“Perusal of the instructions dated 25.9.1998 (Annexure P-1) would show that the recommendations of the 4th Pay Commission were implemented for Assured Career Progression Scheme. There being certain anomalies in giving effect to the same, the anomalies were removed vide a notification dated 27.6.2000 (Annexure P-2) qua the pay scales of Junior Engineers. Apart from granting them the ACP, Class II status and designation as Assistant Engineer was also granted on completion of 16 years of service apart from granting them the next higher pay scale of 6400-10640 on completion of 8 years service and ₹7200-11320 on completion of 16 years of service in the same cadre, i.e., Junior Engineer. Perusal of the Scheme dated 3.11.2006 would show that it is altogether independent Scheme, where the Assured Career Progression Scheme was made

applicable on completion of 4/9/14 years of service in a cadre. This was totally different from the earlier Scheme with regard to the period for which the benefit would be claimed as per the said Scheme. In any case, this Scheme, as per Clause-2 thereof, was made optional and all employees were given option to either continue in the existing Assured Career Progression Scheme after completion of 8/16/24/32 years service as provided under the Scheme dated 25.9.1998, which was further modified for Junior Engineers on 27.6.2000 or to opt under the 4/9/14 years Assured Career Progression Scheme. This clearly indicates that all employees had an option either to continue with the old Scheme or to opt for the new Scheme, which was now made applicable to the employees. Petitioners having opted for the said Scheme, which was published on 3.11.2006 were, therefore, entitled to the benefit under the said Scheme. That part, Junior Engineers working in the Punjab Mandi Board have already been granted the benefit of the Scheme dated 3.11.2006 and, therefore, the petitioners cannot be denied the same benefit.

Contention of the respondents that the claim of the petitioners would not be covered under the Scheme dated 3.11.2006 on the basis of the letter dated 1.12.2011 cannot sustain as the said letter is prospective in operation and in Para No.5 thereof, it is stated that as per the benefit conferred upon the employees as per the letter dated 1.12.2011, they would not be entitled to the benefit under any other Assured Career Progression Scheme issued by the Government, which further specified that the said revised pay scale would be effective from

1.12.2011, the date of the notification. This clearly shows that the said Scheme or revised pay scales were applicable prospectively and the petitioners be the benefit as claimed by them in the present writ petition on the basis of the letter dated 1.12.2011.

The writ petition is, therefore, allowed. Impugned order dated 29.4.2010 (Annexure P-4) is hereby quashed. Petitioners are held entitled to the benefit of the instructions dated 3.11.2006. The consequential benefits be released to the petitioners within a period of three months from the date of receipt of certified copy of this order. In case of petitioners, who have not yet opted for the applicability of the Scheme dated 3.11.2006, must give their option within a period of one month from today and their claim be also considered and decided by the respondents as per the time stipulated here-in-above.”

4. State Counsel is not in a position to differentiate the case of the petitioner from the one as already adjudicated by this Court in ***Jaswinder Singh Bedi*** *ibid*.

5. Counsel for the petitioner further submits that the said order has been upheld in Intra Court in LPA No.244 of 2014 vide judgment dated 19.12.2014 (Annexure P-3) and even the Special Leave to Appeal preferred by the State of Punjab against the same stands dismissed.

6. In view of the aforesaid fact and keeping in view the covenant as contained in earlier decision dated 03.11.2006 which specifically provide as under:-

“(i) The benefit gained by an employee

under the existing Scheme will be adjusted in the proposed Scheme.”

7. The present writ petition is allowed. The order rejecting the claim of the petitioner dated 21.05.2015 is found to be unsustainable. It is made clear that in case the petitioner has not opted for the applicability of the scheme dated 03.11.2006, he shall give option within a period of one month from today in the light of directions issued in CWP No.16446 of 2010. On his doing so, in case the petitioner has not received the benefits in the earlier scheme, he shall be given all consequential benefits and the same be released within a period of 03 months from the date of receipt of certified copy of this order. In case, the same are not released within the time stipulated hereinabove, the same shall carry an interest @ 18% per annum which shall be recoverable from the pocket of respondent No.2 in person.

8. Ordered accordingly.

(PANKAJ JAIN)
JUDGE

30.01.2023

Dinesh

Whether speaking/reasoned : Yes

Whether Reportable : No