



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

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**CWP No. 3903 of 2021 (O&M)
Date of Decision: 23.09.2024**

Munish Gautam

.....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Puneet Sharma, Advocate
for the petitioner. (Through Video Conferencing)

Ms. Neha Sonawane, DAG, Punjab.

Mr. Amrit Paul, Advocate for respondent No. 2 & 3.

MAHABIR SINGH SINDHU, J.

Present writ petition has been filed under Article 226 of the Constitution, *inter alia* for issuance of a writ in the nature of *certiorari* for quashing of the impugned order dated 09.01.2020 (P-8) passed by respondent No.3-learned District & Sessions Judge, Patiala whereby claim of petitioner for benefit of 2nd Assured Career Progression (ACP) Scheme was declined.

2. BRIEF FACTS

2.1 Petitioner was appointed as Clerk vide order dated 13.10.2009 (P-1). In pursuance to his appointment, he joined his duties on 14.10.2009 in the office of learned District and Sessions Judge, Mansa. The petitioner was transferred from Mansa Sessions Division to Patiala Sessions Division vide letter bearing Endst. No. 935 spl/E.11/VII.B.4 (8E) dated 17.10.2014 (P-3) issued by the High Court and accordingly, he joined in Patiala Sessions



Clerks working in Sessions Division, Patiala.

2.2 Thereafter, Punjab Government, vide Notification No. 7/60/06-5PP1/15863 dated 03.11.2006 (P-2), had introduced a policy for grant of ACP Scheme to the employees, who remained unpromoted in the same cadre, on completion of 4/9/14 years' service.

2.3 Petitioner was granted the benefit of aforesaid policy by learned District and Sessions Judge, Mansa on 18.11.2013 (P-5) as per instructions dated 03.11.2006 on completion of four years of service in the cadre of Clerk, but his claim for granting the benefit of 2nd ACP on completion of nine years was declined by learned District & Sessions Judge, Patiala vide impugned order dated 09.01.2020 (P-8) on the ground that service rendered by petitioner on transfer from one Sessions Division to another Sessions Division, stood forfeited. Hence, present writ petition.

3. CONTENTIONS ON BEHALF OF PETITIONER

3.1 Contends that when the benefit of past service rendered in the parent department was given for fixation of pay and pensionary benefits, there is no reason why the past service should not be counted for grant of ACP grade. In support of his contention, learned counsel relies upon Minutes of Meeting of Hon'ble High Court dated 29.11.2017/02.12.2017 (P-9).

3.2 Further contends that benefit of ACP has been granted to similarly situated employees, who had been transferred to Sessions Division Patiala from other Sessions Division and relies upon letters dated 18.07.2020 (P-10 & P-11) received from Sessions Division, Patiala and Sessions Division, Fatehgarh Sahib, in response to application(s) seeking information under the Right to Information Act, 2005 (for short, 'RTI Act').



15.11.2005, 22.11.2005 and 25.05.2006 (P-14, P-15 and P-16 respectively), vide which benefit of ACP was extended to State Government employees in case of their transfer to some other department(s).

3.4 Also contends that when the past service rendered in the parent department has been considered for fixation of pay and pensionary benefits, then there is no occasion to deny the benefit of the same for grant of ACP to petitioner. To bring home his viewpoint, he relies upon judgment dated 15.07.2008 passed by Hon'ble Supreme Court in *Civil Appeal No.4446 of 2008 (Arising out of SLP (C) No. 14099 of 2006)* titled as 'State of Haryana & Anr. Vs. Deepak Sood & Ors.'

3.5 Lastly contends that petitioner has been in government service since 2009 and is eligible for second ACP as he has uninterruptedly performed his duties sincerely and diligently for more than 09 years.

4. CONTENTIONS ON BEHALF OF RESPONDENT NOS. 2 & 3

4.1 *Per contra*, learned counsel for respondent Nos. 2 & 3 submits that once past service rendered by petitioner cannot be considered for the purpose of seniority by virtue of his transfer in Sessions Division, Patiala from Sessions Division, Mansa, there is no reason why the same can be considered for grant of ACP grade in view of the specific bar under proviso (b) of the statutory Rule 4.8 of Punjab Civil Services Rules, Volume 1 Part 1 (R-3/9) (for short 'Rule').

4.2 Further submits that petitioner has not challenged the *vires* of aforesaid Rule, therefore, he will be bound by the implications and consequences of said Rule.

4.3 Also submits that petitioner is getting annual increments and benefits, but he is not eligible for second ACP by any stretch of imagination



4.4 Specifically submits that benefit of Punjab Government Notification dated 01.01.2018 (P-13) for grant of one increment instead of higher pay scale as relied upon by the petitioner, is to be given only to eligible employees and as petitioner has not completed stipulated time period of 9 years from the date of his joining in Sessions Division, Patiala, therefore, in view of the specific bar of the aforesaid Rule, petitioner would not be eligible for said benefit.

5. **CONTENTIONS ON BEHALF OF RESPONDENT NO. 1**

5.1 Learned State counsel also submits on the same lines as that of respondent Nos. 2 and 3 and submits that prayer of the petitioner cannot be accepted in view of the bar of the Rule (*ibid*).

6. Heard learned counsel for the parties and perused the paper book.

7. **FINDINGS & OBSERVATIONS**

7.1 At the outset, it is relevant to extract Rule 4.8 on which learned counsel for respondent Nos.2 & 3 has placed heavy reliance and which reads as under:-

“4.8: A Government employee is also entitled to the benefit of fixation of pay under the Assured Career Progression Scheme notified by Government from time to time subject to such terms and conditions as may be specified;

Provided that grant of benefit of such Scheme, shall also be subject to the following general terms and conditions:-

(a) A government employee who forgoes promotion offered to him shall not be eligible for benefits under the A.C.P. Scheme;

(b) Only the Service which counts for seniority and increments in a cadre against a post, shall be reckoned for the grant of benefit under the Assured Career



Progression Scheme.”

(Emphasis supplied)

7.2. It is discernible that as per the reply submitted by respondent Nos. 2 and 3, Rule 4.8 (b) relied upon by them to deny the benefit of second ACP to petitioner, was inserted subsequently vide Notification dated 22.12.2015; however, petitioner had joined the Sessions Division, Patiala much prior to that date i.e. on 17.10.2014, which makes it crystal clear that said rule was inserted after the joining of the petitioner in Sessions Division, Patiala. In such a scenario, petitioner is entitled to grant of second ACP by counting his past service and the rule cannot have retrospective effect.

7.3. Also noteworthy that Hon’ble the Supreme Court in *State of Haryana & Anr. Vs. Deepak Sood’s* case (supra) has affirmatively laid down that an incumbent cannot be denied the benefit of past service for the purpose of grant of ACP grade. For ready reference, the relevant extract of the aforesaid judgment is recapitulated as under:-

“ 11. A similar question came up before this Court in the case of (1) **Dwijen Chandra Sarkar and another v. Union of India and another reported in AIR 1999 Supreme Court 598**. In almost identical situation a person was transferred to another department on administrative grounds and his past service of 16 years was not counted. He challenged the same and matter ultimately reached before this Court and this Court after considering the matter came to the conclusion that granting them higher grade under the Scheme for time bound promotion does not therefore, offend the condition imposed in the transfer order. It was observed by this Court, “We are, therefore, of the view that the appellants are entitled to the higher grade from the date on which they have completed 16 years and the said period is to be



computed on the basis of their total service both in the Rehabilitation Department and the P & T Department.”

12. *Their Lordships referred to earlier judgments given by this court i.e. in the case of **Renu Mullick v. Union of India 1994 (1) SCC 373**. In this case also in identical situation the benefit was given to incumbent likewise in **Raksha Mantri v. V.M. Joseph reported in 1998(5) SCC 305** and in the case of **A.P. State Electricity Board v. R.Parthasarathi reported in 1998 (9) SCC 425**. The same principle was re-affirmed recently in the case of **State of Maharashtra & Ors. v. Uttam Vishunu Pawar (2008) 2 SCC 646** to which one of us (A.K.Mathur, J.) was a party, wherein in para 13 of it was observed as under:-*

“Therefore, in view of the consistent approach of this Court, it is no more res integra that the incumbent on transfer to the new department may not get the seniority but his experience of the past service rendered will be counted for the purpose of other benefits like promotion or for the higher pay scale as per the Scheme of the Government.”

13. *Therefore, in the series of judgments given by this Court the view has been taken that in case of a transfer/absorption from one department to another or from public sector to State though the benefit of the seniority may be denied to the incumbent but not for other benefits like pay fixation and for the pensionary benefits. Therefore, when the benefit of past service rendered in the parent department was given for fixation of pay and pensionary benefits, there is no reason why the past service should not be counted for grant of ACP Grade. Consequently, we are of the view that the view taken by the Division Bench of the High Court in the impugned judgment and order is correct and there is no ground to interfere in this appeal. Consequently, this*



appeal is dismissed but with no order as to costs.”

7.4. Apart that, it has come on record vide information received under RTI Act (P-10 & P-11) that relief sought by petitioner has been granted to similarly situated employees by respondent No.3-learned District and Sessions Judge, Patiala and learned District and Sessions Judge, Fatehgarh Sahib, respectively. Learned counsel for respondent Nos.2 & 3 has failed to point out as to why petitioner has been meted out with discrimination when other similarly situated employees have been granted the benefits .

7.5 Although, learned counsel for respondents tried to justify their stand by contending that if a wrong has been committed earlier, it cannot be set as a precedent for all times to come and a wrong cannot be allowed to perpetuate. However, as already discussed, claim of petitioner for grant of second ACP grade is lawful and there is absolutely no reason as to why benefit of his past service rendered in Sessions Division, Mansa be not counted for the purpose.

7.6 There is an old saying '*You show me the man and I will show you the rule*' which means that rule(s) change(s) depending on how influential or powerful the person is likely to be affected. It appears *ex facie* to be a classic case of pick-and-choose policy adopted by respondent Nos. 2 & 3 by denying the lawful benefit of second ACP to the petitioner while granting the benefit to other similarly situated employees. Thus, action of respondent No.3 is found to be wholly unreasonable; hence liable to be invalidated.

8. CONCLUSIONS

8.1 In view of the above, there is no other option except to allow this petition with costs.



8.2. Ordered accordingly.

8.3. Consequently, impugned order dated 09.01.2020 (P-8) passed by respondent No. 3, is hereby set aside with costs of Rs.10,000/- (Rupees ten thousand only) to be paid to the petitioner by respondent Nos.2 & 3 within 03 (three) months from the date of receipt of certified copy of this order.

Pending application(s),if any, shall also stands disposed off.

23.09.2024
Harish Kumar

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No