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

**CWP-8199-2021
Date of Decision: 17.12.2024**

Jagdish Chander

..... Petitioner

Versus

Registrar, Cooperative Societies, Haryana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. R.S. Panghal, Advocate,
for the petitioner.

Mr. Gaurav Jindal, Addl. AG, Haryana.

Mr. Subhash Ahuja, Advocate,
for respondents No.2 & 3.

JASGURPREET SINGH PURI, J. (ORAL)

1. The present writ petition has been filed under Article 226/227 of the Constitution of India for issuance of a writ in the nature of *certiorari* for quashing and setting aside the order dated 26.10.2020 (Annexure P-13) by which appeal has been rejected and order dated 27.05.2016 (Annexure P-6) by which the ACP scale granted in the year 2001 has been withdrawn and pay has been reduced and refixed at a belated stage i.e. after 16 years. Further prayer to issue a writ in the nature of *mandamus* directing the respondents to restore the pay-scale before refixation and at par with junior employee, namely, Dharampal and pay the arrears along with interest.

2. Learned counsel for the petitioner submitted that while giving brief facts of the case submitted that the petitioner was working as a Clerk in

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the respondent-Bank and he was charge-sheeted on the allegations of willful absence from duty on various dates in the year 1998. Thereafter, the Managing Director of the respondent-Bank on 19.05.2000 vide Annexure P-2 imposed a punishment of stoppage of two increments with cumulative effect against the petitioner by taking a lenient view. He further submitted that after the aforesaid punishment was inflicted upon the petitioner, for the next two years, his increments were to be stopped with cumulative effect, which has been so done by the respondents, regarding which there is no dispute. However, after about more than one year, the respondent-Bank themselves, consider the case of the petitioner for grant of Assured Career Progression (ACP) to the employees, who are Class-III & Class-IV category employees on completion of 10/20 years of their regular satisfactory service and in this way vide Annexure P-3 on 25.10.2001, the petitioner along with some other employees was granted the benefit of 1st ACP on the basis of the ACP Rules. The petitioner had been granted the aforesaid benefit of 1st ACP on the basis of the Rules and after completion of his 10 years of service as aforesaid. He submitted that after about 15 years, a show-cause notice was issued to the petitioner vide Annexure P-4 to show cause as to why the aforesaid benefit granted to him should not be withdrawn because the same has been granted on 25.10.2001 which was granted during the currency of the aforesaid punishment time because as per the punishment order (Annexure P-2), the punishment was to be operative with cumulative effect for two years but the ACP has been granted to the petitioner during the aforesaid period which could not be done and in fact he ought to have been granted the ACP w.e.f. 01.12.2003 whereas he was granted the benefit of 1st

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ACP from 01.01.2003. He further submitted that the petitioner replied to the aforesaid show-cause notice vide Annexure P-5 but thereafter vide impugned order dated 27.05.2016 (Annexure P-6) the Managing Director passed an order by which it has been so directed that the pay of the petitioner will be re-fixed by withdrawing the aforesaid ACP which has been granted to him vide Annexure P-3 but he has now been granted the ACP w.e.f. 01.12.2003 instead of the date of Annexure P-3 i.e. 25.10.2001 on the ground that the petitioner could not have been granted ACP because he was facing the punishment of stoppage of two increments and he was not fit for promotion. Learned counsel further submitted that although there is no reason mentioned in the aforesaid impugned order (Annexure P-6) and it is an unreasoned order but now when a reply has been filed by the respondents, they have referred to Rule 8 of the ACP Rules and they have invoked the aforesaid Rule which is not applicable to the present petitioner and submitted that although recovery has not been effected from the petitioner but his pay has been refixed w.e.f. 01.12.2003 instead of the date of Annexure P-3 i.e. 25.10.2001 and therefore, the impugned order (Annexure P-6) is liable to be set aside.

3. On the other hand, Mr. Subhash Ahuja, learned counsel for respondents No.2 & 3 while referring to the reply filed on behalf of the respondent-Bank submitted that the petitioner was facing punishment of stoppage of two increments vide Annexure P-2 and thereafter, it was the mistake of the Bank that the benefit of 1st ACP was granted to him on 25.10.2001 during the currency of the punishment, but the same ought to have been granted after the expiry of two years. He further submitted that

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this mistake was detected and rectified vide Annexure P-6 wherein now he has been granted the 1st ACP w.e.f. 01.12.2003 because during the currency of the aforesaid punishment order, the petitioner could not have been granted the ACP because he was not fit for promotion by virtue of Rule 8 of the ACP Rules which has been reproduced in Para No.4 of the reply. He also submitted that as per the aforesaid Rule, the ACP can be granted to a Government servant after completion of the respective prescribed period for eligibility for grant of ACP pay-structure the Government servant should be fit to be promoted to the next higher post in the notional hierarchy in his cadre but could not be functionally promoted due to lack of vacancy in the promotional post in hierarchy to which he is eligible to be promoted. He also submitted that earlier the promotions were granted by the respective Department of the State of Haryana as per the Instructions issued by the Chief Secretary which are also applicable to the respondent-Bank by which it was so provided that overall record is to be seen in order to consider an employee to be fit for promotion even if he was facing the punishment, but the aforesaid Instructions which were prevalent from the year 1973 were superceded by the Instructions issued by the Chief Secretary to the Government of Haryana to all the Departments on the basis of judgment of Hon'ble Supreme Court wherein now it has been so decided that no promotion should be allowed to any employee during the currency of the punishment of stoppage of increment and therefore, the petitioner was not entitled for grant of 1st ACP because he was not fit for promotion as per Rule 8 of the ACP Rules and also as per the aforesaid Instructions (Annexure R-2/1) and consequent upon the same, his grade for grant of 1st ACP has been



changed from 25.10.2001 to 01.12.2003 in a rightful manner.

4. I have heard the learned counsels for the parties.

5. The issue involved in the present case is as to whether after the grant of the benefit of 1st ACP to the petitioner on 25.10.2001, the same could have been withdrawn after 15 years by the respondent-Bank or not and if so then under what provision of law the same could have been done. Before proceeding further, the relevant Rule which has been relied upon by the learned counsel for respondents No.2 & 3 which has been reproduced in Para No.4 of the reply, is reproduced as under:-

8. Other General Conditions of Eligibility of ACP Pay Structure:

The following general conditions shall also be fulfilled by a Government servant for availing benefit of ACP:

(a) After completing the respective prescribed period for eligibility for grant of ACP pay-structure the Government servant should be fit to be promoted to the next higher post in the notional hierarchy in his cadre but could not be functionally promoted due to lack of vacancy in the promotional post in hierarchy to which he is eligible to be promoted.

(b). If such promotion involve passing of any departmental or other test etc. such condition should also be fulfilled by such Government servant.

6. Similarly, the Instructions relied upon by the learned counsel for respondents No.2 & 3, which are at Annexure R-2/1 are also reproduced as under:-

“Annexure R-2/1

Compendium of Instructions on Career Development Vol. IV



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No. 2/5/2006-2GSI

From

The Chief Secretary to Government Haryana.

To

- 1. All Heads of Departments, Commissioners, Ambala, Hisar, Gurgaon and Rohtak Divisions;*
- 2. The Registrar, Punjab and Haryana High Court, Chandigarh; and*
- 3. All the Deputy Commissioners and Sub Divisional Officers (Civil) in Haryana.*

Dated Chandigarh, the 31st May, 2006.

Subject: Regarding consideration of promotion during the currency of stoppage of increments.

Sir.

I am directed to refer to the subject noted above and to invite your attention to para-2 of the Haryana Government instructions issued vide letter No.3508-4GS1-1-73/18540, dated 19.7.73 which Inter-alia provide that if an employee has been awarded punishment of stoppage of one or more grade increments and his turn comes up for promotion during the currency of stoppage of his grade increment(s), the decision for his eligibility for promotion or otherwise should be taken keeping in view his overall record and he should be considered fit for promotion if his over all record makes him eligible for promotion notwithstanding the fact that the punishment awarded to him becomes ineffective on his promotion.

2 In a judgment of the Hon'ble Supreme Court in the case of State of Tamilnadu Versus Thiru KS. Muragesan & others (C.A.Nos.3432-33 of 1995) decided on 28.2.1995, reported as 1995 (3) RSJ 271. this Hon'ble Court has held that :-



".....Unless the period of punishment gets expired by efflux of time, the claim for consideration during the said period cannot be taken up. Otherwise, it would amount to retrospective promotion which is impermissible under the Rules and it would be a premium on misconduct. Doctrine of double jeopardy has no application and non-consideration is neither violative of Article 21 nor Article 14 read with Article 16 of the Constitution"

3 *The State Government has considered the matter in the light of aforesaid judgment and it has been decided that no promotion should be allowed to any employee during the currency of punishment of stoppage of his grade increment (s). The instructions issued vide letters No.6034-2GS 1-71/32498, dated 18.11.71 and No.3508-4GS1-1-73/18540, dated 19.7.73 shall stand modified to the extent indicated above.*

These instructions may be brought to the notice of all concerned for their information and strict compliance.

*Yours faithfully,
Sd/-*

*Deputy Secretary General Administration,
for Chief Secretary to Government Haryana."*

7. A bare perusal of the aforesaid Rule 8 of the ACP Rules would show that when an employee is to be considered for grant of ACP, then as per Rule 8(a), an employee should be fit to be promoted to the next higher post in the notional hierarchy in his cadre but could not be functionally promoted due to lack of vacancy in the promotional post in hierarchy to which he is eligible to be promoted. In another words the aforesaid Rule is meant for the purpose of avoiding stagnation in case the promotional avenues are not available because of the non-availability of vacancy. In another words, the grant of ACP has been equated with the person to be fit

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for promotion. Therefore, for the purpose of considering as to whether the petitioner was to be granted ACP or not it has to be first considered as to whether he was fit for being promoted or not and only then Rule 8 will be applicable. For the purpose of ascertaining the aforesaid as to whether the petitioner was fit or not there was a requirement for the respondents to have passed any order in this regard but admittedly no order has been passed by the respondent-Bank. Even otherwise also, a perusal of the aforesaid Instructions issued by the Chief Secretary would show that the same have been issued on 31.05.2006 and the petitioner has been granted the benefit in the year 2001 vide Annexure P-3 which is sought to be invoked now after 15 years.

8. The legal position which emerges from the aforesaid Instructions issued by the Chief Secretary would show from the first para of the aforesaid Instructions that if an employee has been awarded punishment of stoppage of one or more grade increments and his turn comes up for promotion during the currency of stoppage of his grade increment(s), the decision for his eligibility for promotion or otherwise should be taken keeping in view his overall record and he should be considered fit for promotion if his over all record makes him eligible for promotion notwithstanding the fact that the punishment awarded to him becomes ineffective on his promotion. In another words, the Instructions which were prevalent at the time when the petitioner was granted the ACP vide Annexure P-3 in the year 2001, the Instructions suggested that the mere pendency of the stoppage of increment itself cannot become a ground for stopping the promotion but his overall record has to be seen. In another

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words, it has to be seen by the competent authority as to whether an employee is fit for promotion on the basis of the overall record or not. It is only after the decision taken by the Authority, then the applicability of Rule 8(a) will come into vogue for the purpose of equating promotion with that of the grant of ACP in terms of Rule 8(a).

9. It was only in the year 2006 that the Chief Secretary issued another Instructions in which it has been so decided that no promotion should be allowed to any employee during the currency of the stoppage of his grade increment. In another words, the aforesaid Instructions, which have been issued on 31.05.2006 cannot operate restrospectively and in the first paragraph of the aforesaid Instructions by which it was so provided that the currency of stoppage of one or more grade will not itself be a ground for eligibility because the entire record is to be seen for a person to be considered as fit for promotion and the same will apply to the case of the petitioner. Therefore, while applying the aforesaid Instructions to Rule 8(a) for the purpose of grant of annual increments and for ascertaining as to whether the petitioner was fit for being promoted or not then it is very clear that as per the aforesaid Instructions of the year 1973 as so stated in Para No.1 of Annexure R-2/1, there was no order passed by the respondent-Bank that the petitioner was either fit for being promoted or not nor the same is reflected from the impugned order (Annexure P-6). The aforesaid Instructions (Annexure R-2/1) issued in the year 2006 could not have operated retrospectively upon the petitioner and therefore, such a ground which has been taken by the respondent is misconceived and against the law.

10 In view of the aforesaid facts and circumstances, the present



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petition is allowed. The impugned order (Annexure P-6) is hereby set aside and the respondents are directed to refix the pay of the petitioner accordingly and grant all consequential benefits within a period of four months from today.

17.12.2024

(JASGURPREET SINGH PURI)

JUDGE

Bhumika

1. Whether speaking/reasoned:

Yes/No
2. Whether reportable:

Yes/No