

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

211

CWP-2463-2014
Date of Decision: 30.04.2024

Kamla Devi ...Petitioner(s)

Versus

State of Haryana and another ...Respondent(s)

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present:- Mr. S.P. Chahar, Advocate for the petitioner
Mr. Rohit Arya, DAG, Haryana
Mr. Nilesh Bhardwaj, Advocate for respondent no.2

TRIBHUVAN DAHIYA, J. (Oral)

The petition has been filed seeking a writ of *certiorari* quashing the letter/clarification dated 28.06.2011, Annexure P-8, stipulating if an employee has completed twenty years or more in service on the same post before 01.01.2006, he/she is entitled to second Assured Career Progression (ACP) scale from that date, without getting first ACP scale. Further, a writ of *mandamus* has been sought directing the respondents to give first ACP scale on the promotional post of Nursing Sister with effect from 01.01.2006 as per Rule 7 (4) of the Haryana Civil Services (Assured Career Progression) Rules, 2008 (for short, 'the ACP Rules'), as also second ACP scale with due increments and arrears.

2. Briefly, the facts relevant to decide the matter are, the petitioner was appointed as Staff Nurse on regular basis in the respondent-University with effect from 08.11.1976, and was promoted as Nursing Sister on 05.04.1985 without any financial upgradation. ACP Rules, 2008, which were deemed to have come in force on 01.01.2006, were notified. These rules are applicable to the University. The impugned clarification was issued by the government on 28.06.2011, that in case an official has stagnated on the post for more than twenty years as on 31.12.2005, he/she will be entitled to second ACP grade pay with respect to the functional pay structure. Accordingly, the petitioner was granted second ACP grade pay with effect from 01.01.2006, vide office order dated 30.01.2013, Annexure P-7.

3. Learned counsel for the petitioner has contended that instead of straightaway placing the petitioner in the second ACP grade pay with effect from 01.01.2006, she was entitled to be initially placed in the first ACP grade pay with effect from 01.01.2006. Only after the release of admissible increment in first ACP grade and by counting the same, she was to be placed in the second ACP grade pay. Not doing so has resulted in the financial loss of one increment to the petitioner. The petitioner had not been given any financial upgradation ever since her appointment on 08.11.1976, as her promotion on 05.04.1985 was without any financial upgradation. Accordingly, in terms of Rule 7(4), she was entitled to be considered for ACP grade after completion of ten years of regular satisfactory service, i.e., with effect from 01.01.2006, as also for the second ACP grade pay with effect from the same date since before 01.01.2006, she had been stagnating in the same pay-scale for more than twenty years. The impugned clarification is contrary

4. Learned counsel for the University, on the contrary, contends that the petitioner is not entitled to first and second ACP grade pay from the same date. In fact, vide office order dated 30.01.2013, she was initially placed in the first ACP grade pay and her pay with effect from 01.01.2006 was fixed at ₹22,190. After receiving the impugned clarification dated 28.06.2011, she was given second ACP grade pay with effect from 01.01.2006 in terms thereof, and her pay was fixed at ₹24,100 as on 01.07.2006. Accordingly, grant of second ACP grade pay was financially beneficial to the petitioner, and the same was in accordance with the ACP Rules as well as the impugned clarification.

5. Heard.

6. Undisputedly, the petitioner had rendered more than twenty years of service in the same grade pay prior to coming into force of the ACP Rules with effect from 01.01.2006. Rule 7 whereof reads as under:

7. Eligibility for Grant of ACP grade Pay under the general ACP scheme:-

- (1) Every Government servant covered under the general ACP scheme shall, for the purposes of drawal of pay, be eligible for the first ACP grade pay (given in column 4 of Part II of Schedule 1 in respect of the functional pay scale or pay structure of his post) if he has completed 10 years of regular satisfactory service and has not got any financial upgradation in these ten years with reference to the functional pay structure of the post to which he was recruited as a direct entrant. Financial upgradation in this context includes functional promotion in the hierarchy or further revision/ modification of the pay structure for the same post after 1.1.2006.

- (2) Every Government servant covered under the general ACP scheme shall, for the purposes of drawal of pay, be eligible for the second ACP grade pay (given in column 5 of Part II of Schedule I in respect of the functional pay scale or pay structure of his post) if he has completed 20 years of regular satisfactory service and has not got any financial upgradation in the last ten years. Financial upgradation in this context includes functional promotion in the hierarchy or further revision/ modification of the pay structure for the same post after 1.1.2006.
- (3) Every Government servant covered under the general ACP scheme shall, for the purposes of drawal of pay, be eligible for the third ACP grade pay (given in column 6 of Part II of Schedule I in respect of the functional pay scale or pay structure of his post) if he has completed 30 years of regular satisfactory service and has not got any financial upgradation in the last ten years and has not got more than two financial upgradation so far. Financial upgradation in this context includes functional promotion in the hierarchy or further revision/ modification of the pay structure for the same post after 1.1.2006.
- (4) In case of a Government servant who gets promoted, he will be considered for the next ACP grade pay after he completes 10 years of regular satisfactory service in the promotional post without any financial upgradation and will be entitled to the next ACP grade pay with reference to the grade pay of the promotional post he holds:

Provided that a Government servant shall not be entitled to avail ACP upgradation if, he has already availed of three financial upgradation of any kind in his career.

7. A perusal of the Rule makes it apparent that a government servant is eligible for the first ACP grade pay on completion of ten years of regular satisfactory service in case no financial upgradation has been given with reference to functional pay structure on the post he/she was recruited as direct entrant. Under sub-rule (2) of Rule 7, a government servant is entitled to second ACP grade pay on completion of twenty years of regular satisfactory service in case he/she has not been given financial upgradation in the last ten years. Accordingly, the petitioner, who has stagnated in the same pay scale for more than twenty years, becomes entitled to grant of second ACP grade pay in terms of sub-rule (2) from 01.01.2006, the date ACP Rules came in force. The impugned clarification, dated 28.06.2011, has also been issued to that effect, and is in consonance with the provisions of Rules. There is no stipulation in the Rules that only after giving first ACP grade pay, a government servant will become entitled to the second ACP grade pay. The only requirement is that the government servant should have completed twenty years of regular satisfactory service without financial upgradation for grant of second ACP grade pay. In the petitioner's case, she completed twenty years of regular satisfactory service without any financial upgradation before 01.01.2006 and became entitled to the second ACP grade pay with effect from that date, which was duly given to her by the University.

8. The petitioner's claim for grant of first ACP grade pay before granting the second ACP grade pay, relying upon Sub-rule (4) of Rule 7 is

misplaced. It stipulates a situation where a government servant gets promoted after getting first ACP grade pay, such a person becomes entitled to second ACP grade pay after completing ten years of regular satisfactory service on the promotional post without any financial upgradation. The situation postulated can arise only after notification of the Rules and grant of first ACP grade pay thereunder. It is in the nature of a safeguard against someone claiming second ACP grade pay on the strength of ten years satisfactory service after grant of first ACP grade pay, despite having been promoted. The petitioner is not placed in such a situation. She never got first ACP grade pay, therefore, sub-rule (4) has no application to her case.

9. Accordingly, finding no merit in the petition, it stands dismissed.

(TRIBHUVAN DAHIYA)
JUDGE

30.04.2024

Payal

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>