



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

**Reserved on : 28.10.2024
Pronounced on : 05.11.2024**

(i)

CWP-25858-2016

K.L. Mittal and others

.....Petitioners

Versus

State of Haryana and another

.....Respondents

(ii)

CWP-232-2016

B.K. Gupta and others

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present : Mr. Rahul Bansal, Advocate for
Mr. D.R. Bansal, Advocate
for the petitioners in CWP-25858-2016.

Mr. Ishnoor Singh, Advocate for
Mr. Vikram Singh, Advocate
for the petitioner in CWP-232-2016.

Mr. Saurabh Mohunta, D.A.G., Haryana.

NAMIT KUMAR, J.

1. This judgment shall dispose of both the above-said writ petitions, as common question of law and facts are involved for adjudication. For the sake of convenience, facts are taken from CWP No.25858 of 2016, titled as “K.L. Mittal and others Vs. State of Haryana and another”.

2. The petitioners have approached this Court by filing the



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present writ petition under Articles 226/227 of the Constitution of India,
seeking the following reliefs :-

“A writ in the nature of certiorari quashing the condition imposed in order dated 29.08.2014 that the pay structure is revised prospectively with immediate effect from the issue of the order (Annexure P-2) to the effect that the revised pay scale of 3rd ACP of the Junior Engineers of three wings of PWD, Panchayati Raj and Town & Country Planning Departments of Rs.9300-34800 + GP of Rs.5400 on completion of 24 years regular satisfactory service will be applicable to the employees in service on the date of issuance of the order, for setting aside order dated 14.06.2016 rejecting the representation of the petitioner No.1 (P-4) and further a writ in the nature of mandamus directing the respondents that the petitioners shall be entitled to the benefit of P-2 from 01.01.2006 irrespective of the fact that the petitioners retired from the service earlier to the issuance of the order dated 29.08.2014 with further directions to respondents to pay the consequential benefit to the petitioner with interest from the date due till the date of payment may be issued.”

3. Brief facts of the case, as have been pleaded in the petition, are that the petitioners were appointed as Junior Engineers in the Irrigation Department, Haryana between 1976 to 1982. Some of the petitioners have further been promoted as Sub Divisional Engineers during the year 2006 to 2013 and all of them stood retired between 31.10.2010 to 31.07.2014. The Haryana Government framed the rules known as Haryana Civil Services (ACP) Rules, 2008 granting 1st and 2nd

ACP to its employees w.e.f. 01.01.2006 and all the employees of the

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State Government were granted the 1st, 2nd and 3rd ACP, whereas the Junior Engineers of three wings of PWD, Panchayati Raj and Town and Country Planning Departments were granted 1st and 2nd ACP on completion of 10 and 18 years of regular satisfactory service. The Diploma Engineers Association has raised the above issue and demanded to remove the anomaly and discrimination caused to these employees and finally on 29.08.2014 an order was issued under Rule 17 and 19 of the Haryana Civil Services (Revised Pay) Rules, 2008 and Rules 26 and 28 of the Haryana Civil Services (Assured Career Progression) Rules, 2008, whereby the Government took decision to upgrade the pay structure of certain categories of the Government employees and revised/modified the pay structure prospectively and Junior Engineers working in the three wings of PWD, Panchayati Raj and Town and Country Planning Departments were granted the grade pay of Rs.5400/- as 3rd ACP on completion of 24 years of regular satisfactory service with changed designation of Additional S.D.E. Since the petitioners have already retired from service prior to 29.08.2014, therefore, they have not been granted the said grade pay of Rs.5400/- in the pay band of Rs.9300-34,800/-.

4. The grievance of the petitioners in the present writ petition is that the abovesaid modified pay structure shall be made applicable retrospectively w.e.f. 01.01.2006.

5. Pursuant to notice of motion, the respondents have filed a



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detailed written statement, wherein the claim of the petitioners has been opposed. The relevant portion from the written statement is as under :-

“1) That in the present writ petition, the petitioner has prayed to this Hon'ble Court to quash the condition imposed in order dated 29.08.2014 that the pay structure is revised prospectively with immediate effect from the issue of the order (Annexure P-2) to the effect that revised pay scale of 3rd ACP of Junior Engineers of three wings of PWD, Panchayati Raj and Town & Country planning departments of Rs.9300-34800+GP of Rs.5400 as completion of 24 years regular satisfactory service will be applicable to the employees in service as the date of issuance of these orders for setting aside order dated 14.06.2016 rejecting the representation to the petitioner No.1 (P-4) and further prayed to direct the respondent that the petitioners shall be entitled to the benefit of P-2 from 01.01.2006 irrespective of the fact that the petitioners retired from the service earlier to the issuance of the order dated 29.08.2014 with further direction to the respondents to pay the consequential benefits to the petitioner.

2) That it is pertinent to mention here that instructions dated 29.08.2014 were challenged by some similarly situated Junior Engineers by filing CWP No.23820 of 2014 which was disposed of by Hon'ble High Court vide order dated 07.04.2015 with directions to the Finance Department to consider the legal notice and take appropriate decision. In compliance of the said order, a detailed speaking order dated 1.10.2015 was passed by Additional Chief Secretary to Govt of Haryana, Finance Department clarifying that it was a case of Pay-up



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gradation and not that of pay anomaly. Copy of said speaking order is annexed herewith as Annexure R-1. Said order was again challenged by the petitioners of CWP No.23820 of 2014 by filing CWP No. 232 of 2016 titled B.K Gupta & Ors Vs State of Haryana & Ors, which is still pending adjudication before the Hon'ble High Court.

3) *That the petitioners are seeking grant of third ACP after their retirement. It is submitted that pay structure/ACP structure of Haryana Government employees was improved/revised vide notification dated 29.08.2014 (Annexure P-2). In view of said revision, the Junior Engineers of three wings of PWD, Panchayati Raj and Town and Country Planning Departments became eligible for ACP scales after 8, 16 and 24 years regular satisfactory service, whereas earlier they were being given only 2 ACP scales after 10 and 18 years of regular satisfactory service. It is pertinent to mention here that in Para No.3 of the said instructions it was clearly mentioned that*

"the ACP structure of the following categories of Government employees is hereby revised/modified prospectively (with effect from the issue of these orders) as under:-"

As per own admission of the petitioners and clearly reflected in Annexure P-1, all the petitioners had retired prior to 29.08.2014, i.e date of issuance of the orders dated 29.08.2014 and hence they want that these instructions should be made applicable retrospectively and not prospectively as mentioned in the order dated 29.08.2014. It is submitted that if the orders dated 29.08.2014 are made applicable retrospectively, it will have cascading effect and moreover it was a case of pay revision and not anomaly.



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Thus the present writ petition is liable to be dismissed being devoid of merit.

ON MERIT :-

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9. *That in reply to the contents of Para No.9 of the writ petition, it is submitted that perusal of the order dated 29.08.2014 reveals that it was a case of Pay up-gradation/pay revision and not that of pay anomaly. The petitioners are trying to present it as a case of pay anomaly only for the reason that they might become eligible for the benefit of 3rd ACP. It is further submitted that it is absolutely wrong to say that all the employees of State Government were granted the benefit of first, second and third ACP w.e.f 1.1.2006 because perusal of the notification dated 29.08.2014 would reveal that even the officials of Ayush Department were earlier given only 2 ACPs and it was only w.e.f 29.08.2014, that they were granted 3 ACPs.”*

6. Learned counsel for the petitioners has submitted that the action of the respondents in revising the pay structure/ACP pay structure prospectively i.e. w.e.f. 29.08.2014 and not from 01.01.2006 is totally illegal, arbitrary and discriminatory and the same should be made applicable w.e.f. 01.01.2006 and the petitioners be granted the grade pay of Rs.5400/-.

7. Per contra, learned State counsel has submitted that the notification dated 29.08.2014 is perfectly legal and valid and the pay structure/ACP pay structure has been modified and earlier the petitioners were granted two ACPs on completion of 10 and 18 years of



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service which has been increased to grant of three ACPs on completion of 8/16/24 years of regular satisfactory service and since the petitioners already stood retired prior to issuance of notification dated 29.08.2014, therefore, they are not eligible for the grant of grade pay of Rs.5400/-. In support of his contention, learned State counsel has placed reliance upon the judgment of Hon'ble Supreme Court in ***Dr. Prakasan M.P. and others Vs. State of Kerala and another : 2023 AIR (Supreme Court) 4059.***

8. I have heard learned counsel for the parties and perused the relevant record with their able assistance.

9. The facts are not in dispute that the petitioners joined the services of the Irrigation Department, Haryana as Junior Engineers between 1976 to 1982. Some of them have further been promoted as Sub Divisional Engineers between 2006 to 2013 and all of them stood retired between 31.10.2010 to 31.07.2014. When the order dated 29.08.2014 has been issued, whereby the pay structure/ACP pay structure have been modified and 3rd ACP has been granted to the Junior Engineers, all the petitioners stood retired from service prior thereto. The Hon'ble Supreme Court in ***Dr. Prakasan M.P.'s case (supra)***, has held that the retired employees cannot claim benefits of subsequent Government decision. Although, the said case relates to increase of retirement age, however, the principles laid down in the said judgment would be equally applicable in the present case. The employees in the said case has raised the issue of extension of retirement age from 55



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years to 60 years on the basis of Government order dated 14.01.2010, whereby the age of retirement was enhanced from 55 years to 60 years w.e.f. 01.05.2009 and the employees, who already stood retired from service on attaining the age of superannuation prior to 01.05.2009, had raised the issue of making the said order applicable retrospectively. The said claim was finally rejected by Hon'ble Supreme Court in the abovesaid judgment by observing as under :-

“17. xx xx xx xx As for the aspect of retrospectivity of such a decision, let us not forget, whatever may be the cut-off date fixed by the State Government, some employees would always be left out in the cold. But that alone would not make the decision bad; nor would it be a ground for the Court to tread into matters of policy that are best left for the State Government to decide. The appellants herein cannot claim a vested right to apply the extended age of retirement to them retrospectively and assume that by virtue of the enhancement in age ordered by the State at a later date, they would be entitled to all the benefits including the monetary benefits flowing from G.O. dated 9th April, 2012, on the ground of legitimate expectation.

*18. Pertinently, similar pleas as taken by the respondents-employees herein were raised in the case of NOIDA (supra) where the employees had sought to invoke the principles of promissory estoppel and legitimate expectation for increasing the age of superannuation retrospectively and were shot down as inapplicable. For taking this view, reliance was placed on **Monnet Ispat and Energy Limited. Vs. Union of India (2012) 11 SCC 1** wherein this Court had opined that if a communication issued was a proposal or a mere recommendation, the*



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principle of promissory estoppel will not apply for the simple reason that for invoking the said principle, there must be a promise and based on the said promise, the party concerned ought to have acted to its prejudice. In the NOIDA case (supra), this Court had outrightly turned down the argument advanced by the respondent–employees therein that the Doctrine of Legitimate Expectation would come into play. It was held that the said doctrine cannot have a place when enhancement of the age of superannuation is “a public function” that is governed by the provisions of the Statute and the relevant service regulations. The position is the same in the present case.

19. *No doubt, the appellants were the first to raise the battle cry when they filed not one, but two writ petitions in the High Court for extending them the benefit of G.O. dated 14th January, 2010. But it is a matter of record that there was no positive order granted in their favour throughout. Even in the present proceedings, no interim order was passed in favour of the appellants who have superannuated in the meantime. The clock cannot be put back for them by reading retrospectivity in the G.O. dated 09th April, 2012, when the State elected not to insert any such clause and evidently intended to apply it with prospective effect. The idea behind extension of retirement age of doctors was to take care of the emergency situation caused by shortage of doctors, which was resulting in affecting the studies or patient care. It was not merely to grant benefits to a particular class. The Doctrine of Legitimate Expectation does not have any role to play in matters that are strictly governed by the service regulations. This is an exercise that is undertaken by the*



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State in discharge of its public duties and should not brook undue interference by the Court.

20. In view of the aforesaid discussion, the impugned judgment is upheld. It is deemed appropriate to dismiss the present appeal as meritless while leaving the parties to bear their own expenses. Ordered accordingly.”

10. Further, the order dated 29.08.2014 has not been challenged in the present petition.

11. In view of the above factual position and the law laid down in the abovesaid judgment, the present petition is hereby dismissed with no order as to costs.

05.11.2024
Kothiyal

(NAMIT KUMAR)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No