

228
IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-21003-2018(O&M)
Date of decision: 29.04.2024

Ram Lal

...Petitioner

VERSUS

Haryana Power Generation Corporation Ltd. and another

...Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. J.S. Maanipur, Advocate, for the petitioner.

Mr. Sunil Kumar Dhanda, Advocate, for the respondents

JASGURPREET SINGH PURI, J. (Oral)

1. The present writ petition has been filed under Article 226 of the Constitution of India seeking issuance of a writ in the nature of *mandamus* directing the respondents to grant ACP to the petitioner on the post of Plant Attendant on completion of 10 years w.e.f. 09.02.2010 as he was promoted w.e.f. 09.02.2000 vide office order dated 12.06.2002 (Annexure P-2) in terms of Sub Rule (4) of Rule 7 of the Haryana Civil Services (Assured Career Progression) Rules, 2008.

2. Learned counsel for the petitioner while giving the facts of the case submitted that the petitioner was appointed as T-Mate on 10.11.1988 and thereafter, he was promoted as Plant Attendant on 09.02.2000. He submitted

that as per Haryana Civil Services (Assured Career Progression) Rules, 2008, the petitioner was entitled for the grant of first ACP on completion of 10 years of regular satisfactory service in the promotional post without any financial upgradation. He submitted that in this way the petitioner was entitled for the grant of first ACP in the year 2010 i.e. on 09.02.2010 after completion of 10 years of satisfactory service but he has been denied the aforesaid ACP without any justifiable reason and his claim in the present petition is only to the extent of grant of the aforesaid first ACP.

3. On the other hand, learned counsel appearing on behalf of the respondents while referring to the reply filed by the respondents submitted that the aforesaid Rule 7 is also to be read alongwith Rule 8 and according to Rule 8, there are other conditions of eligibility for ACP pay structure wherein it has been so provided that after completing the respective prescribed period for eligibility for the grant of ACP pay structure the Government servant should be fit to be promoted to the next higher post in the functional hierarchy in his cadre but could not be functionally promoted due to lack of vacancy in the promotional post in the hierarchy to which he is eligible to be promoted and if such promotion involves passing of any departmental test or other test, then such condition should also be fulfilled by such Government servant. He submitted that Rule 7 cannot be read in isolation and it has to be read alongwith Rule 8 and also referred to the reply and submitted that in the present case the petitioner was not even eligible for being promoted to next higher post of Operator because he did not have the qualification of Matric with 2 years ITI with 12 years experience and since he was not even eligible for further promotion, he cannot claim ACP. He also submitted that the petitioner was

granted financial upgradation by way of revision of pay in the year 2006 and 2016 and in view of Rule 8 once financial upgradation has been granted, the petitioner is not entitled for the grant of first ACP.

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

5. The only claim in the present petition is for grant of first ACP in the year 2010 on the ground that the petitioner was promoted as Plant Attendant on 09.02.2000 and according to the learned counsel for the petitioner, after completion of 10 years in terms of Rule 7(4), he was entitled for the grant of first ACP. Rule 7 and 8 are reproduced 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 I 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.

Note.— *For the purpose of these rules, “regular satisfactory service” means continuous service counting towards seniority under Haryana Government, including continuous service in Punjab Government before re-organization, commencing from the date on which the Government servant joined his service after being recruited through the prescribed procedure or rules etc. for regular recruitment, in the cadre in which he is working at the time of being considered his eligibility for grant of ACP pay band and grade pay under these rules and further fulfilling all the requirements prescribed for determining the suitability of grant of ACP pay structure.*

Explanation.— *The ACP pay structure upgradation in the form of first ACP grade pay will come into play only if a Government servant has not got the benefit of at least one grade pay upgradation within the prescribed period of first*

10 years. Similarly, the second and third ACP grade pays will come into play only if a Govt. servant does not get two upgradations after twenty years of service and three upgradations after thirty years of service. If within 10 years of service, the Government servant has already got at least one financial upgradation or within 20 years of service, the Government servant has already got atleast two financial upgradations, or within 30 years of service, the Government servant has already got at least three financial upgradations, benefit of these rules will not be extended to such employees save if otherwise provided in these rules.

8. Other general conditions of eligibilities 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 the grant of ACP pay structure the Government servant should be fit to be promoted to the next higher post in the functional hierarchy in his cadre, but could not be functionally promoted due to lack of vacancy in the promotional post in the hierarchy to which he is eligible to be promoted;

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

6. The submission which has been advanced by the learned counsel for the respondents based upon the reply filed by the respondents was that because of two reasons, the petitioner was not entitled for the grant of ACP as aforesaid. The first reason was that the petitioner was not eligible for being promoted to the next higher post of Operator and the second reason was that the petitioner has already got financial upgradation by way of revision of pay in the year 2006 and 2016 and therefore by virtue of Rule 8 as reproduced above,

he was not entitled for the grant of first ACP. It is also the case of the respondents that since as per Rule 8 in case an employee is not promoted because of lack of vacancies in the functional hierarchy only then the ACP is to be granted.

7. So far as the first objection raised by the learned counsel for the respondents that the petitioner was not eligible for promotion on the next higher post and therefore, by virtue of Rule 8, he was not entitled for the grant of first ACP is concerned, the same appears to be misconceived. It is not in dispute that the reason and rationale of grant of ACP is to avoid stagnation because in case an employee is not promoted to the higher post for long period of time, then in that situation an ACP is granted after a particular period of time and in the present case as per Rules, the first ACP is to be granted after 10 years on the promotional post and the petitioner was holding a promotional post of Plant Attendant. The petitioner got his right to get first ACP after completion of 10 years by virtue of Rule 7. Rule 8 deals with the general conditions that in these circumstances the ACP is to be granted i.e. in case a Government employee is otherwise stated to be promoted but because of lack of vacancies he could not be promoted in the functional hierarchy after passage of time, he will be entitled for the grant of ACP.

8. This Court is of the view that the aforesaid Rule 8 pertains to those circumstances where a Government servant should be fit to be promoted but it does not state that a Government servant should be eligible to be promoted. If a Government servant is otherwise not eligible to be promoted and he has completed 10 years, then it will fulfill the rationale of Rule 7. The rationale behind grant of ACP is to avoid stagnation and in case an employee cannot be

promoted because of eligibility and not because of the fact that he is unfit, then he will be governed by Rule 7. Even otherwise also during the course of arguments, learned counsel for the petitioner has stated that the petitioner when he was promoted as Plant Attendant, he was not eligible for being promoted because he was only 8th pass and not fulfilling any ITI or Matric etc. which was also requirement of being promoted to the post of Plant Attendant and he was promoted by way of relaxation granted and which is not in dispute in the present case. He also submitted during the course of arguments that once he has already been granted relaxation and his eligibility qualification has been waived off, then it would not mean that he cannot be said to be eligible for being promoted to the next higher post. Therefore, this Court is of the view that the petitioner will be governed by Rule 7 by virtue of which once he has completed 10 years on the promotional post and even if he was not eligible for being promoted to the next higher post, then he will not be hit by Rule 8.

9. So far as the second objection raised by the learned counsel for the respondents that the petitioner has already been granted financial upgradation and therefore by virtue of Rule 8, he cannot be granted first ACP is concerned, the same also appears to be misconceived in view of the fact that even as per the reply filed by the respondents, the financial upgradation has been stated to be that of the revision of pay in the year 2006 and 2016, whereas the revision of pay is a general revision for all the employees and therefore, it cannot be said that such a revision can be termed as a financial upgradation for any employee. Had it been a case that the petitioner was given any financial upgradation otherwise, then he would not have been eligible for getting the ACP at all in

view of Rule 8 but the aforesaid revision of pay has been at par for all the employees and it cannot be said to be a financial upgradation qua the petitioner.

10. In view of the above, the present petition is allowed. The petitioner is entitled for the first ACP as prayed for which accrued to him on completion of 10 years. The respondents are directed to grant the aforesaid ACP and calculate the arrears and to pay the petitioner within a period of four months from today.

(JASGURPREET SINGH PURI)
JUDGE

29.04.2024
rakesh

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No