



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

108

CWP-21852-2024
Date of Decision:24.09.2024

HOSHIAR SINGH GUNESHER ...Petitioner(s)

Versus

STATE OF HARYANA AND OTHERS ...Respondent(s)

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present:- Mr. S.K. Chauhan, Advocate
for the petitioner.

Ms. Tanushree Gupta, DAG, Haryana.

TRIBHUVAN DAHIYA, J. (Oral)

This petition has been filed, *inter alia*, seeking a writ of *certiorari* quashing the communication dated 05.01.2011, Annexure P-2, conveying to the petitioner that after giving first Assured Career Progression (ACP) grade pay his salary has been correctly fixed as per rules. Further, a writ of *mandamus* has been sought directing the respondents to re-fix his pay by giving third ACP grade pay with effect from 01.01.2006.

2. As per facts apparent on record, the petitioner was appointed as Clerk in the respondent/Board of School Education, Haryana, on 22.01.1976. He was promoted as Assistant in the pay scale of ₹1400-2600+60 as special pay on 28.01.1988, and as Superintendent in the pay scale of ₹6500-10500 on 05.02.1994. Later, he superannuated from service.

3. Learned counsel for the petitioner has submitted that the petitioner is entitled to invoke extra ordinary jurisdiction of the Court at this stage since his representation is still pending with the Board, without any

decision having been taken thereupon. He further submitted that as per Rule



7(3) of the Haryana Civil Services (Assured Career Progression) Rules, 2008 (for short, ‘the ACP Rules, 2008’), the petitioner was entitled to be placed in third ACP grade pay, instead of first, which was given to him vide impugned letter dated 05.01.2011. This will have effect on his retiral benefits as well and, therefore, this is a recurring cause of action.

4. Heard.

5. As per undisputed facts on record, the petitioner has been given the promotions/financial upgradations as Assistant and Superintendent on 28.01.1988 and 05.02.1994, respectively. Prior to notification of the ACP Rules, 2008, the employees were entitled to only two financial upgradations under the ACP Rules, 1996. The third financial upgradation became admissible with effect from 01.01.2006 under the ACP Rules, 2008. In terms thereof, the petitioner was granted first ACP grade pay with reference to his functional pay scale as on 01.01.2006, on the post of Superintendent as per Rule 7(4) of the Rules.

6. Eligibility for grant of ACP grade pay in the general ACP scheme as mentioned in Rule 7 of the ACP Rules, 2008, is as under:

7. Eligibility for Grant of ACP grade pay under the general ACP Scheme

(1) (2) xxx xxx

(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 upgradations 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 1st January, 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. Rule 7(4) clearly provides that a government servant who gets promoted, will be considered for the next ACP grade pay after completion of ten years of regular satisfactory service on the promotional post without any financial upgradation. Accordingly, the petitioner was given the first ACP grade pay after he completed ten years on the promotional post of Superintendent with effect from the date these Rules were notified. The petitioner's reliance on Rule 7(3) to claim third ACP grade pay, instead of first, is misplaced since an employee gets entitlement to third ACP grade pay on completion of, (i) thirty years regular satisfactory service without any financial upgradation in the last ten years, and (ii) has not been given more than two financial upgradations so far/up to notification of the Rules; the upgradation includes functional promotion as well. These twin conditions



need to be satisfied for entitlement to third ACP grade pay, whereas, undisputedly, the petitioner has already been given two financial upgradations/promotions. Accordingly, he does not fulfill the requisite conditions, and cannot be given third ACP grade pay with effect from 01.01.2006 under the Rules.

8. In view thereof, there is no merit in the petition and it stands dismissed in *limine*.

(TRIBHUVAN DAHIYA)
JUDGE

24.09.2024
Ad

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