

2025:PHHC:090473



**IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH**

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CWP-4406-2022

Date of Decision: 22.07.2025

MAHENDER SINGH @ MOHINDER SINGH

... Petitioner

VERSUS

STATE OF HARYANA & OTHERS

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. Lalit Rishi, Advocate
for the petitioner.

Mr. Ravi Pratap Singh, DAG, Haryana.

VINOD S. BHARDWAJ, J. (ORAL)

Seeking setting aside the action of the respondents in not granting the 2nd ACP to the petitioner, the instant writ petition has been filed.

The claim of the petitioner for the said relief is based on his initial appointment as a 'Group D' employee on regular basis in the Municipal Committee Kalanwali on 09.08.1999. It is submitted that he was later absorbed in Health Department against the post of Ward-Servant- a 'Group D' post on 08.02.2000. He was later absorbed to the post of Lab Attendant on 3.01.2003 and has since then been discharging his duties as a Lab Attendant. It is claimed that on promulgation of the Haryana Civil Services (ACP) Rules 2008, w.e.f. 01.01.2006, the petitioner became entitled to 1st/2nd/3rd ACP on completion of 10/20/30 years of service. Computing the same from the date of initial appointment i.e. 09.08.1999, the ACP ought to be computed accordingly.

Subsequently, vide notification dated 04.03.2014, the petitioner became entitled to the ACP on completion of 8/16/24 years of service.

As the first ACP was not released to him, he filed Civil Suit No.283-C of 2012 before the Civil Courts at Sirsa for declaration to the effect that he is entitled to ACP on completion of 10 years, as it was then, w.e.f. 01.09.2009 considering his date of initial appointment as 09.09.1999. The said Civil Suit was decreed vide judgment dated 10.02.2014. The Civil Appeal No.133-CA of 2014 was dismissed by the Addl. District Judge, Sirsa vide judgment dated 30.09.2015 and finally the ACP was granted w.e.f. 01.09.2009. Since the rules had been amended and 2nd ACP became due in August, 2015 on completion of 16 years of service, request was made to the Civil Surgeon for doing the needful, however, the same was not done. A detailed representation dated 18.12.2019 was thereafter, submitted by the petitioner followed by a reminder representation on 03.12.2021, but, as needful was not done, the instant petition has been filed.

Respondents have however objected to the claim and submitted that even though petitioner initially joined in 'Group D' category as a peon on 09.08.1999 and was later absorbed as a Ward Servant w.e.f. 04.02.2000, however, the petitioner submitted an application dated 28.08.2002 for his promotion as a Laboratory Attendant. The petitioner was appointed, by way of absorption, to the post of Laboratory Attendant vide order dated 23/30.01.2003 by treating the post as a Group D post whereas the services of Laboratory Attendant and Laboratory Technician are governed by the 'Haryana Health Department Lab-Technician Group-C Service Rules, 1998'. Since the petitioner did not possess the qualification for further promotion as a Lab Technician, hence, he could not be further promoted. He is thus not entitled to ACP as he

does not fulfill the essential eligibility condition for further promotion. The mandatory provisions of Rule 8 of the ACP Rules are not fulfilled, hence, the petitioner is not entitled to further ACP.

Counsel for the parties have been heard at length and documents have been perused meticulously. The averments contained in reply to Paragraph No.7 need to be specifically examined. The same reads thus: -

*“7. That in reply to the contends of para No.7 of writ petition. It is respectfully submitted that petitioner became entitled for grant of 1st, 2nd, and 3rd ACP scale in **the cadre of Group D employees** as under:*

<i>Date of Appointment</i>	<i>Date of 1st ACP 8 years</i>	<i>Date of 2nd ACP 16 years</i>	<i>Date of 3rd ACP 24 years</i>
<i>09.09.1999</i>	<i>01.09.2009</i>	<i>01.09.2015</i>	<i>01.09.2023”</i>

The denial of the 2nd ACP is on the ground that the petitioner does not possess the qualification for the post of next promotional post as a Lab Technician and has not passed the departmental test.

The sole issue which arises for consideration before this Court is as to whether an employee is essentially required to possess the qualification prescribed by the respondent-State under the applicable Service Rule, for promotion to the next higher post to be eligible and entitled for grant of ACP or not has already been examined by a Division Bench of this Court in a bunch of LPAs including the LPA No.1865 of 2015 titled as ***State of Haryana and Others Versus Parmanand and Others*** decided on **05.03.2025** by placing reliance on the judgment of the Hon’ble Supreme Court ***Amresh Kumar Sinha and Others Versus The State of Bihar and Others (2023 SCC Online SC 496)***. The relevant extract of the abovesaid LPA judgment is reproduced hereinafter below:

“4. Learned State counsel for the appellants has referred to Rule 5(3)(b) of the Rules of 1998 and Rule 8(b) of the Rules of 2008 and has contended that both these Rules envisage the fulfilment of the pre-requisite of passing the departmental test for promotion to the next post in departmental hierarchy, for becoming eligible for the grant of benefit of ACP Scales and the respondents-Patwaris had not passed/cleared the afore-said departmental test for the post of ‘Kanungo’ and therefore, they are not entitled to the abovementioned benefit but however, learned Single Judge(s) did not take the aforesaid pre-requisite and the factum of its non-fulfilment by the respondents, into consideration at the time of granting the relief of ACP Scales to them vide the above-referred impugned judgments and therefore, these judgments are not legally sustainable and hence, the same deserve to be set-aside.

XXX XXX XXX

6. Explicitly, the object of framing the Rules of 1998 as well as the Rules of 2008 was to ensure that no Government servant stagnates without any financial upgradation for more than 10 years unless he has already availed 03 financial upgradations in his career. It goes undisputed between the parties that these Rules are applicable to the respondents. The appellants have also not disputed the factum of the completion of requisite service tenure by the respondents for grant of 2nd/3rd ACP Scales, as the case may be. The sole objection, as set-forth by the appellants to deny the above-said benefit to the respondents, is that they had not cleared/passed the departmental test/exam for the post of ‘Kanungo’. However, they (appellants) have not denied the fact that some similarly placed ‘Patwaris’ were granted ACP Scales by exempting them from clearing/passing the departmental test.”

Hence, I find that the reasons cited by the respondent-State for denying the benefit i.e. non-possession of the essential qualification of having a

diploma of Laboratory Technician for further promotion cannot be upheld for denial of the benefit of 2nd ACP.

The respondents have themselves admitted in the written statement that Lab Attendant is a 'Group D' post but consistently raised an argument to the contrary. No reference has been made even in the written statement whether there was any financial upgradation or not. Despite the same, arguments contrary to the written statement have been repeatedly raised. Counsel was also called upon to examine the judgment of the Division Bench about the necessity to possess eligibility for further promotion and whether the same could be cited as a reason to deny the ACP, in the matter of *State of Haryana Versus Parmanand (supra)* as well as the judgment of the Hon'ble Supreme Court in the matter of *Amresh Kumar Sinha and others (supra)* so that a fair stand is adopted by the State and judicial time could be better utilized. However, it was insisted that the arguments be noted and be dealt with, without referring to any points of distinction or referring to any provisions of law that has not been considered. Such an insistence, without any argument to distinguish as to why the judgment of the Hon'ble Supreme Court as well as the Division Bench would not be applicable and binding, only infringes upon judicial time and that too at times when people are waiting for their matter to be taken up for hearing for years.

Despite the aforesaid position in law having been well propounded by the Division Bench of this Court, the respondent-State failed to adopt a fair stand. Hence, while allowing the instant writ petition, the State is burdened with a cost of Rs.50,000/- to be deposited with Poor Patients Welfare Fund, PGIMER, Chandigarh for the unfair practices being adopted and pressed insistence for only a repetitive judicial exercise.

Resultantly, the respondents are directed to grant the benefit of 2nd ACP to the petitioner on completion of 16 years of service, as admitted by them in the Table in paragraph No.7 of the reply, under Haryana Civil Service, ACP Rules, 2008.

Petition stands allowed in above terms.

JULY 22, 2025.

Rajender

**(VINOD S. BHARDWAJ)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No