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2025:PHHC:116631



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

**CWP-24370-2013 (O&M)
DECIDED ON: 28.08.2025**

HOSHIAR SINGH AND OTHERS

.....PETITIONERS

VERSUS

STATE OF HARYANA AND ORS

.....RESPONDENTS

AND

CWP-14861-2013

HAWA SINGH

.....PETITIONER

VERSUS

STATE OF HARYANA AND ORS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. H.S. Saini, Advocate for the petitioners.
Mr. Rahul Dev Singh, Addl. AG, Haryana

SANDEEP MOUDGIL, J (ORAL)

By way of this order, this Court intends to dispose of both the above said writ petitions as common question of law involves therein. Just to avoid repetition, the facts are being taken from CWP-24370-2013.

1. The jurisdiction of this Court has been invoked under Article 226/227 of the Constitution of India for issuance of a writ in the nature of *certiorari* for

quashing the decision to postpone regularization date, whereby it was proposed to be postponed from 11.02.1980 to some future date, which would affect their Assured Career Progression (hereinafter referred aa ACP) benefits and requesting the court to direct the respondents to retain the benefits of 1st and 2nd ACP and grant the 3rd ACP benefit on completion of 30 years of service with arrears and interest. Additionally, they seek interim relief to prevent the respondents from withdrawing the benefits and making recoveries during the petition's pendency.

2. Before advertng to the facts of the present case, it is apposite for this court to deal with the question of law involved in the present petition dealing with the relief being:

Whether the benefits of ACP granted on the basis of said regularization date can be retrospectively withdrawn after retirement?

To answer the question posed above, this court deems it apt to discuss the facts involved in the present case which have been admitted by the petitioners. All petitioners were appointed as Conductors in Harayana Roadways on ad hoc basis w.e.f 11/12.09.1979 to 22/30.09.1979 during strike period and were later re-engaged and joined their duties on 11.02.1980, continuing in service without any break. Their services were thereafter regularized w.e.f. 11.02.1980 in terms of the prevailing policy of the State Government for regularization of adhoc employees appointed through due process. The petitioners were granted the benefit of 1st and 2nd ACP under the Haryana Civil Services (ACP) Rules, 2008 based on their regularization from 11.02.1980 after completion of regular service of 10 and 20 years. Some petitioners were later promoted to higher posts such as Sub-Inspector and Inspector and ultimately retired from service.

However, in 2010, long after retirement in some cases, show cause notices were issued by Respondent No. 4, contending that their services were wrongly regularized from 11.02.1980 and proposing to revise the date of regularization to a future date. The respondents further indicated that ACP benefits would be withdrawn and recoveries made from the pensions of the petitioners. Aggrieved by this, the petitioners filed the present writ petition challenging the arbitrariness, illegality, and retrospective nature of the proposed action.

2. **Contentions**

The petitioners contend that they were lawfully appointed through the Employment Exchange in 1979 and have continuously served without break. Their services were duly regularized w.e.f. 11.02.1980 under the prevailing government policy and after completing more than 240 days of service, which entitles them to continuity and regularization. Based on this, they were granted 1st and 2nd ACP benefits under the HCS (ACP) Rules, 2008 and, in some cases, became eligible for the 3rd ACP as well.

It is further advanced that the issuance of show cause notices decades later after retirement and the proposed revision of their regularization date and withdrawal of ACP benefits is arbitrary, illegal, and violative of principles of natural justice. They argue that similarly situated employees were granted the same benefits, and any retrospective change or recovery is unjustified, discriminatory, and against settled legal principles, including those laid down in ***State Of Punjab & Ors vs Rafiq Masih (White Washer) AIR 2015 SUPREME COURT 696*** case.

The learned counsel for the respondent has submitted that the present writ petition is devoid of merit as the petitioners were appointed on ad hoc basis

and were regularized on 11.02.1980 vide orders dated 18.11.2008, but as informed to the petitioners vide letter issued in 2009, the regularization was erroneous and the petitioners were not liable to be regularized w.e.f 11.02.1980.

Furthermore, it is asserted that since the petitioners joined services on 09.02.1980, the policy dated 19.02.1979 is not applicable on them, instead the policy applicable on them would be the one that came into existence on 19.01.1984 that stipulates that the regularization of services has a requisite 2 years of service, which were completed on 15.09.1982.

It is advanced by the counsel that the benefits granted to the petitioners were under a mistake about their date of regularisation and the same are liable to be recovered.

4. Analysis

Having heard learned counsel for the parties and upon perusal of the record, this Court finds that the issue involved is narrow but significant, namely whether the petitioners, who were engaged through Employment Exchange in 1979, continuously served without break, and whose services were subsequently regularized w.e.f. 11.02.1980 by the respondent no. 4, are entitled to the benefits of ACP including the 3rd ACP, and whether such benefits can be withdrawn retrospectively after their retirement.

It is not in dispute that the petitioners were duly selected through the Employment Exchange and initially appointed as Conductors in Haryana Roadways, Jind Depot, 11/12.09.1979 to 22/30.09.1979. Thereafter, they were re-engaged by the respondent vide orders dated 30.11.1979 on 11.02.1980, and since then, they have continued to serve without break. It is further borne out from the record that vide orders dated 26.01.2008 passed by respondent No. 4 in

consonance with the policy dated 19.02.1979, their services were regularized w.e.f. 11.02.1980. On that basis, they were granted the benefit of 1st and 2nd ACP under the HCS (ACP) Rules, 2008. Some of the petitioners were even promoted and ultimately retired from service after having rendered more than three decades of satisfactory service.

It is only in the year 2010, long after retirement in some cases, that show cause notices were issued by the respondents proposing to alter the date of their regularization and withdrawal of already granted ACP benefits. This Court is of the view that such retrospective alteration of service benefits, once lawfully conferred and enjoyed by the employees during service, is impermissible in law. The petitioners cannot be faulted for having received benefits on the strength of valid orders passed by the competent authority. The petitioners had continuously served since 11.02.1980 without break, and their services were in fact regularized from that date in compliance with Government instructions issued on 19.02.1979. Once such regularization had attained finality and was acted upon for decades, it cannot be unsettled at the stage of retirement to the detriment of the employees.

The Apex Court while dealing with the issue of recovery of benefits accrued upon employees, in ***Sahib Ram v. State of Haryana 1994(5) SLR 753*** and ***Purshotam Lal and others v. State of Bihar and others, 2007(1) RSJ 150***, answered the question in the negative and held that no recovery could be made if the employee was not himself responsible for any fraud or misrepresentation in the grant of the benefit. Guidance may also be derived from the judgment of this court in ***Budh Ram v. State of Haryana 2009(3) SCT 333***

Having gone through the averments made in the writ petitions, we are of the opinion that we also need not set out in detail the factual matrix in which

the question referred to us arises for consideration for determination especially when the facts appear to us to be peculiar to each case forming part of this Bunch. Having said so, the question referred to us can in our opinion be seen from three distinct dimensions. These are :-

- i) Cases in which the benefits sought to be recovered from the employees were granted to them on the basis of any fraud, misrepresentation or any other act of deception;*
- ii) Cases in which the benefits sought to be recovered were granted on the basis of a **bonafide mistake** committed by the authority granting the same while applying or interpreting a provision contained in the service rule, regulation or any other memo or circular authorising such grant regardless whether or not grant of benefits involved the performance of higher or more onerous duties by the employee concerned;*
- iii) Cases that do not fall in either one of the above two categories but where the nature of the benefit and extent is so unconnected with his service conditions that the employee must be presumed to have known that the benefit was flowing to him undeservedly because of a mistake by the authority granting the same.*

Dealing with category ii,

Cases involving recovery of benefits received by the employees on account of misrepresentation or erroneous application of rules, regulations, circulars or instructions issued by the Government have often come up before the Courts including the Apex Court. The consistent view taken as regards the recovery of such benefits erroneously extended to the employees without the employee being, in any way, guilty of any fraud, misrepresentation or deception is that such recovery would be unfair inequitable and against justice and good conscience.

Moreso, this court cannot ignore the fact that the case of the petitioners is squarely covered by the principles laid down in **Rafiq Masih (supra)**,

wherein the Supreme Court has held that recovery from retired employees, or employees due to retire within one year, of financial benefits wrongly extended without their fault, would be arbitrary and inequitable. This Court is conscious of the divergence of judicial opinion on the issue of recovery of financial benefits erroneously extended to government servants. One line of authority, as noticed in *Syed Abdul Qadir v. State of Bihar (2009) 3 SCC 475* and *Rafiq Masih (supra)*, has consistently answered the question in the negative, holding that no recovery can be made from an employee if he was not himself responsible for any fraud, misrepresentation, or suppression of material fact in the grant of such benefit. The underlying rationale is founded in equity and fairness, recognizing that an employee who has planned his affairs and drawn his subsistence based upon benefits extended by the State for decades ought not to be visited with harsh financial consequences, particularly after retirement, for no fault of his own. However, the other line of decisions, proceeds on the principle that the State exchequer cannot be made to suffer on account of an administrative error, and that no person should be allowed to unjustly enrich himself by retention of benefits to which he was not legally entitled.

This Court is persuaded by the enunciation in *Rafiq Masih (supra)* wherein the Supreme Court, carved out a nuanced principle that while the State may, in general, recover wrongful payments, such recovery would be impermissible and inequitable in cases where the employee is not guilty of misrepresentation, has long since retired or is on the verge of retirement, or where the recovery would cause undue hardship. The case at hand squarely falls within that protective ambit since the petitioners neither practiced fraud nor misled the authorities and the benefits flowed from regularization orders passed by the

competent authority and acted upon for decades and thus, to now fasten liability upon them would be a travesty of justice.

Coming to the question of release of 3rd ACP benefits as prayed for by petitioner no. 2,3 and 4. after completion of 30 years of satisfactory regular service, this court is of the view that the doctrine of legitimate expectation assumes particular significance in the context of the said petitioners' claim for the 3rd ACP. The petitioners, having been lawfully regularized w.e.f. 11.02.1980 and continuously granted the 1st and 2nd ACP under the Haryana Civil Services (ACP) Rules, 2008, were entitled to legitimately expect that they would also be considered for the 3rd ACP upon completion of the requisite service period. The court notes that this expectation is not founded upon mere desire, but upon a consistent course of conduct adopted by the State itself first in regularizing their services, then in granting the earlier ACPs, and thereafter permitting them to serve till superannuation without raising any objection.

The sudden issuance of show cause notices decades later, seeking to retrospectively alter the date of regularization and thereby deny the petitioners the 3rd ACP, offends the principle of fairness in administrative action. The Supreme Court in ***Food Corporation of India v. Kamdhenu Cattle Feed Industries (1993) 1 SCC 71***, the Court held that legitimate expectation, though not a legal right per se, ensures that State action remains fair, non-arbitrary, and consistent. Relevant extract of the same has been reproduced below:

7. In contractual sphere as in all other State actions, the State and all its instrumentalities have to conform to Art, 14 of the Constitution of which non-arbitrariness is a significant facet. There is no unfettered discretion in public law : A public authority possesses powers only to use them for

public good. This imposes the duty to act fairly and to adopt a procedure which is 'fairplay in action'. Due observance of this obligation as a part of good administration raises a reasonable or legitimate expectation in every citizen to be treated fairly in his interaction with the State and its instrumentalities, with this element forming a necessary component of the decision-making process in all State actions. To satisfy this requirement of non-arbitrariness in a State action, it is, therefore, necessary to consider and give due weight to the reasonable or legitimate expectations of the persons likely to be affected by the decision or else that unfairness in the exercise of the power may amount to an abuse or excess of power apart from affecting the bona fides of the decision in a given case. The decision so made would be exposed to challenge on the ground of arbitrariness. Rule of law does not completely eliminate discretion in the exercise of power, as it is unrealistic, but provides for control of its exercise by judicial review.

In instant case, denial of the 3rd ACP after the petitioners had already enjoyed the benefits of the earlier two ACPs, and that too at a belated stage post-retirement, is manifestly arbitrary and defeats their legitimate expectation. The State, having itself treated the petitioners as entitled beneficiaries under the ACP scheme for decades, cannot now turn around to their detriment by unsettling settled service conditions as the doctrine of legitimate expectation, therefore, fortifies the petitioners' claim for grant of the 3rd ACP and operates as an additional ground to restrain the respondents from retrospectively withdrawing the benefit.

Accordingly, this Court holds that the petitioners are entitled to protection of their regularization date as 11.02.1980, as well as to all consequential benefits flowing therefrom. The respondents are directed to grant the benefit of the

3rd ACP to eligible petitioners w.e.f. their respective due dates, with all consequential benefits, within a period of three months from the date of receipt of this order. The proposed action of revising the date of regularization and withdrawing 1st and 2nd ACP benefits, or effecting recovery from pension, is hereby quashed.

The writ petitions are hereby allowed.

Pending application(s), if any shall disposed off, accordingly.

28.08.2025

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Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*

(SANDEEP MOUDGIL)
JUDGE