IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

211

CWP-21579-2017
Date of decision: 07.07.2025

JAI KISHAN SHARMA ......Petitioner

VERSUS

STATE OF HARYANA AND OTHERS ....Respondents

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

*****

Present: - Mr. Mohinder Pal, Advocate
for the petitioner.

Mr. Rahul Dev, Addl. A.G. Haryana.

*****

VINOD S. BHARDWAJ, J. (Oral)

Challenge in the present writ petition is to the order dated 17.08.2017 passed by the respondents whereby recovery of Rs. 6,14,700/-, on account of revised pay fixation w.e.f. 01.01.1996 to 30.06.2017, by shifting of ACP sanctioned vide Superintending Engineer, Water Services Circle, Jhajjar dated 23.06.2017 has been ordered to be effected from the pay and sanctioning the ACP w.e.f. 11.11.2014, the instant writ petition has been filed.

2. Learned Counsel appearing on behalf of the petitioner contends that the petitioner is not alleged to have committed any fraud or of

committing any concealment of fact or misrepresentation, at the time when the benefit of the ACP was granted to him on completion of the services, as required in terms of the applicable instructions/rules notified by the respondents. The recovery is being effected on account of withdrawing ACP granted long ago and that too soon before he was to retire within 07 months. He contends that the respondents are thus prohibited from effecting recovery of the amount that has been disbursed to the petitioner, in good faith, in view of the judgment of the Hon'ble Supreme Court in the matter of ***"State of Punjab and another versus Rafiq Masih"*** dated 18.12.2014. It is further contended that in the matter pertaining to the grant of ACP, the Hon'ble Supreme Court has been referred in the matter ***"Amresh Kumar Singh and others versus State of Bihar and others"*** reported as ***2023 SCC Online SC 496*** that extending benefit of ACP is in nature of grant of monetary benefits without effectuating any promotion to any higher post and intended to compensate for the stagnation and cannot be denied only because qualification for promotion is not fulfilled.

3. Reliance is also placed on the judgment of the Division Bench passed in LPA No. 1865 of 2015 dated 05.03.2025 titled as ***"State of Haryana and others versus Parmanand and others".***

4. Counsel for the respondent even contends that the recovery was being effected since the disbursement of the ACP had been extended to the petitioner even though he was not fit to be promoted to the next higher post and suitability for promotion is a pre-condition for claiming ACP. However, he is not in a position to dispute the judgment of Hon'ble Supreme Court in

the matter of ***"State of Punjab and another versus Rafiq Masih"*** which restrains the State from effecting recovery of the benefits that had been disbursed or to the ratio in the matter of ***"State of Haryana and others versus Parmanand and others (supra)*** as well as Hon'ble Supreme Court in the matter of ***Amresh Kumar Singh (supra).*** The relevant extract in ***Amresh Kumar Singh*** (supra) thereof reads thus:-

> "***14.*** *The object and purpose of ACP/MACP Scheme has been reiterated by this Court in Union of India v. C.R. Madhava Murthy, (2022) 6 SCC 183, as one to relieve the frustration on account of stagnation and it does not involve actual grant of promotional post but merely monetary benefits in the form of next higher grade subject to fulfilment of qualifications and eligibility criteria.*
>
> ***15.*** *In sum and substance, both ACP and MACP Schemes are schemes devised with the object of ensuring that the employees who are unable to avail of adequate promotional opportunities, get some relief in the form of financial benefits. Accordingly, the schemes provide for regular financial upgradation on completion of 12-24 years and 10-20-30 years of service without promotion. They are incentive schemes for the employees who complete a particular period of service but without getting promotion for lack of promotional avenues. The effect of the schemes must be judged keeping in view the object and the purport of the scheme.*
>
> ***16.*** *In Union of India v. G. Ranjanna reported in (2008) 14 SCC 721, the three-Judges Bench of this Court held that in situ promotions are made to remove stagnation of grade C and grade D employees by giving them certain monetary benefits.*

17. *It was further observed that fulfilment of educational qualifications prescribed under the recruitment rules for the purposes of promotion are not necessary for non-functional in situ promotion. In other words, educational qualification required for the purposes of promotion is not necessary for the grant of in situ promotion, i.e., only for extending the monetary benefit where there are no promotional avenues and the employees are likely to be stagnated.*

18. *In the aforesaid case, the employees were working as malis (Gardeners) and had claimed promotion in the higher pay scale. The Central Administrative Tribunal seized of the original applications observed that the employees cannot claim the scale of the next higher post by way of in situ promotion. On the matter being taken to the High Court by way of a writ petition, the contention of the employees was accepted and it was observed that the object of in situ promotion on non-functional posts, is to ensure that the group C and D employees are not stagnated in the same cadre/pay scale and that they should be provided with certain monetary benefits. Therefore, the rejection of the claim for such nonfunctional in situ promotion on the ground that the employees do not possess the necessary minimum qualification of matriculation as per the rules is not justified and renders the order erroneous in law. The view so taken by the Division Bench of the High Court was affirmed by this Court in the above referred Civil Appeals holding that the High Court has correctly analysed the object of the in situ promotion and fixation of pay scales to Group C and D employees to avoid stagnation.*

5. In view of the aforesaid uncontroverted position in law, the present writ petition need not be examined at length and the same is accordingly allowed. The impugned order dated 17.08.2017 is set aside. The respondents are further directed to release the amount which already stands recovered from the petitioner, within a period of three months alongwith interest @6% per annum from the date of recovery till its actual disbursement. In case the amount is not returned within the above said period, the petitioner shall thereafter become entitled to interest @ 9% per annum. The enhanced interest liability may be recovered from the official who caused delay.

(VINOD S. BHARDWAJ)
JUDGE

JULY 07, 2025
Vishal Sharma

Whether speaking/reasoned	**:**	Yes/No
Whether Reportable	:	Yes/No