



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

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**CWP-21759-2022
Date of decision: 02.04.2025**

PARVEENPetitioner

VERSUS

STATE OF HARYANA AND OTHERSRespondents

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

Present: - Mr. Sanjiv Gupta, 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 impugned communication dated 27.06.2022/18.08.2022, 30.08.2022 and 01.09.2022 whereby the respondents have conveyed that the pay of the petitioner was wrongly fixed at Rs. 44,900/- w.e.f. 01.01.2016 whereas as per the rules, it was required to be fixed at Rs. 43,600/- and the pay was consequently revised and a further direction was given for recovery of excess payment already made and also to the consequential office order passed by the respondents in compliance thereto.

2. Learned Counsel appearing on behalf of the petitioner contends that the petitioner was appointed as a Staff Nurse, eventually designated as



‘Nursing Officer’. She was directly recruited to the services through the Haryana Staff Selection Commission and joined the respondent-Department on 04.09.2008 in the old pay scale of 5000-7850 which was later revised to 9300-34800+4200 G.P. w.e.f. 01.01.2006. The next due date of increment was thus on First of July alongwith other admissible allowances. He contends that the recommendation of the petitioner as well as the other staff Nurses had been made in August, 2008 and the petitioner joined in the month of September, 2008. He contends that the petitioner availed medical leave from 04.01.2015 to 04.03.2015 on account of medical circumstances but as her health did not permit her to resume duties, hence, she sought an extension of leave which was eventually sanctioned by the respondents, without pay. A specific entry in this regard has been made by the Senior Medical Officer in the Service Book of the petitioner by sanctioning the leave from 05.03.2015 to 02.04.2015 i.e. 29 days, vide letter dated 27.07.2015.

3. He contends that the petitioner was entitled to get the ACP to her credit w.e.f. 01.10.2016 as per the Government instructions and the pay was to be revised/re-fixed from 01.01.2016. The limit of the pay was rightly fixed, however, the ACP which was to be granted to the petitioner w.e.f. 01.10.2016 was granted w.e.f. 01.11.2016 whereas Smt. Mukesh was granted the ACP w.e.f. 01.09.2016 itself. Thus, a pay anomaly was created. He submits that the respondents have held that the grant of ACP to the petitioner was wrongly awarded and that she was entitled to the grant of ACP



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w.e.f. 01.11.2016 since she was on leave without pay for a period of 29 days from 05.03.2015 to 02.04.2015.

4. Learned Counsel for the petitioner contends that the aforesaid interpretation by the respondents is contrary to the Haryana Civil Services (Assured Career Progression), Rules, 2016 notified by the respondents on 28.10.2016 itself wherein the eligibility for grant of ACP level under the General ACP Scheme have been provided for under Rule 7. The explanation 1 thereto defines "regular satisfactory Service" for the purposes of these rules to mean as under:-

7. *Eligibility for grant of ACP level under the General ACP Scheme.*

(1) Every Government employee covered under the general ACP scheme shall, for the purposes of drawal of pay, be eligible for the first ACP Level (given in column 3 of Part II of Schedule I in respect of the functional pay structure as on 1st day of January, 2016 of his post) if he has completed 8 (eight) years of regular satisfactory service and has not got any financial upgradation in these 8 (eight) years with reference to the functional pay structure of the post to which he was recruited as a direct recruit.

Xx xxx xxx xxx xxx xxx xxx xxx xxx

Explanation 1. –

"Regular Satisfactory Service" for the purpose of these rules shall mean-

the service on regular basis mentioned below shall be deemed to be satisfactory if no departmental or judicial proceedings are pending against the Government employee



during this period and there are no adverse remarks about integrity in the Annual Confidential Reports of this period:-

xx xxx xxx xxx xxx xxx xxx xxx

(3) All kinds of leave (excluding EOL without medical certificate) duly sanctioned by the competent authority.

5. Referring to the above, he contends that as per the respondents' own admission, all kinds of leave once sanctioned by the competent authority, have to be counted towards rendering of regular satisfactory service. The respondents thus cannot place reliance on the leave already sanctioned without pay, to hold that the said period can not be taken into consideration for computing regular satisfactory service.

6. Counsel for the respondent has referred to the written statement filed by the Principal Medical Officer, Civil Hospital, Sector-6, Panchkula wherein the aforesaid factual aspects submitted by the petitioner are not disputed. The averments contained in para No. 4 of the preliminary submissions specifically records that the petitioner remained on leave till 02.04.2015 and that the 29 days leave was sanctioned without pay. He submits that it remains undisputed that the respondents have granted ACP w.e.f. 01.11.2016 by referring to explanation 1 Rule No.7 (wrongly referred to as explanation 7 of Rule No.7) of the Haryana Government Gazette Notification. The relevant extract of preliminary submissions has been reproduced as under:-

“5. That in the present case, the petitioner was granted the ACP w.e.f 01/11/2016. It is to be mentioned here that as per Explanation (7) of Point No. 7 Haryana



*Govt. Notification on 28/10/2016 (**Annexure R-1**) "Regular Satisfactory Service" for the purpose of granting ACP includes All kind of leave (**including EOL, without medical certificate**) duly sanctioned by competent authority. The petitioner remained on leave from 05/03/2015 to 02/04/2015 i.e. 29 days which was sanctioned without pay. Thus, vide Director General Health Services, Haryana Office Order No 70/P(217)-1 Nursing-2017/7301 dated 15/12/2017, 1" ACP in the pay Level of ACPL-10 w.e.f. 01/11/2016 was granted to the petitioner after completion of 8 years of satisfactory service on the post of Staff Nurse. The office order of Director General Health Services, Haryana is reproduced as below:*

"In pursuance of Haryana Government Finance Department letter No. 83/2008/1 POR (FD) dated 07.01.2009 and notification dated 30.12.2008, for implementation of Haryana Civil Services (Revised Pay) Rules, 2008 and Govt. instruction dated 04.03.2014, Smt. Parveen D/o Sh. Kuljeet Singh, Staff Nurse, Civil Hospital, Panchkula presently working in structure of FPL-6 is hereby granted 1st ACP in the pay Level of ACPL-10 w.e.f. 01-11-2016 after completion of 8 yrs of satisfactory service on the post of Staff Nurse and has not got any financial up-gradation in the last 8 yrs on the post of Staff Nurses. She will not be entitled for the benefit of re-fixation of pay on her next promotion in future as per Financial Department order No. 2/102/2009-2 PR(FD) dated 09.04.2010.



If, at any later stage it is found that the ACP is wrongly granted, the same will be withdrawn assigning any reason.”

*The Office Order of Director General Health Services, Haryana is (**Annexure R-2**).*

7. I have heard learned Counsel appearing on behalf of the respective parties and have gone through the documents appended alongwith the present petition.

8. The sole reason for directing recovery of the alleged excess payment made on account of award of ACP to the petitioner is by treating the period of sanctioned leave from 05.03.2015 to 02.04.2015 to be not computable for determining regular satisfactory service.

9. It remains uncontroverted that the petitioner had joined service with the respondents on 04.09.2008. The explanation to the Rule 7, as extracted above, defines the ‘regular satisfactory service’ and how the same is to be computed. All kinds of leave that have been sanctioned by the competent authority excluding extra ordinary leave without medical certificate enclosed are to be counted for determining regular satisfactory service within the meaning of the ACP Rules, 2016. The respondents have, however, drawn inference by excluding the said period from her entitlement and while computing the 08 years period of regular satisfactory service which such interpretation is clearly not borne out from correct reading of the said explanation.

10. Counsel for the respondent-State is also not in a position to counter the facts that the respondents have nowhere dealt with sub

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explanation (3) to explanation (1) extracted above and have nowhere referred as to how the said clause would not be applicable to the petitioner.

11. Under the given circumstances, this Court has no hesitation in coming to a conclusion that the impugned office order passed by the respondents directing re-fixation of the pay of the petitioner by re-determination of the date for grant of ACP as 01.11.2016 instead of 01.10.2016 is not in conformity with the ACP Rules. The same is thus set aside. The consequential proceedings thus would also be liable to fail and are accordingly set aside. The respondents are directed to refix the pay correctly and to restore the admissible benefits of the petitioner.

The present petition is accordingly allowed.

APRIL 02, 2025
Vishal Sharma

(VINOD S. BHARDWAJ)
JUDGE

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