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

201

**RSA-1223-2018 (O&M).
Date of Decision: 16.01.2025.**

**STATE OF HARYANA DEPARTMENT OF DEVELOPMENT AND
PANCHAYATS AND ANOTHER**

... Appellant

Versus

BHARAT GIR

... Respondents

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

Present: Mr. Tapan Kumar, DAG, Haryana,
for the appellant.

Mr. Rakesh Nagpal, Advocate,
for the respondent.

VINOD S. BHARDWAJ, J (ORAL).

Appellants-defendants State is in challenge to the judgment and decree dated 16.12.2016 passed in Civil Suit No.398-C of 2015 titled as Bharat Gir Vs. State of Haryana and others' by the Civil Judge (Jr. Divn.), Sirsa, as well as the subsequent dismissal of Civil Appeal No.277 of 2015 vide judgment and decree dated 21.08.2017 by the Additional District Judge, Sirsa.

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2 Briefly summarized, the facts of the present case are that respondent-plaintiff filed a civil suit for seeking declaration and mandatory injunction claiming that he was appointed as Patwari in the office of BDPO, Narwana on 27.02.1986 and was later promoted as Social Education and Panchayat Officer on 06.01.1994 and therefore, he was entitled to first ACP w.e.f. 06.01.2004 on completion of 10 years of regular service under the Haryana ACP Rules, 1998 and was also entitled to get his pay fixed and to get arrears arising therefrom along with interest @18 per cent per annum from the due date till its actual disbursement.

3 It was further pleaded in the said civil suit that the respondent-plaintiff retired from the service on 31.08.2013 from District Sirsa and he had an unblemished service career and there was no adverse annual confidential reports ever conveyed to him. It was averred that even though the respondent-plaintiff, after his first promotion on 06.01.1994 and on completion of 10 years of regular service, became entitled to first ACP Scale w.e.f. 06.01.2004 under the Haryana ACP Rules, 1998 made effective from 01.01.1996 but the said benefit was not extended to him. Impugning the same, the civil suit was filed. It was also averred that the plaintiff was placed under suspension vide order dated 08.03.2006 and a charge sheet vide memo dated 15.09.2008 under Rule 7 of the Haryana Civil Service (Punishment and Appeal) Rules, 1987, was also served upon him, however, in the Departmental Inquiry that had been held, he was found innocent and was exonerated of all the charges levelled against him and vide order dated 09.05.2008, he was reinstated in service. During the period of suspension of respondent-plaintiff, 14 Social

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Education and Panchayat Officers' were promoted as Block Development and Panchayat Officer vide order dated 08.07.2008, however, the name of respondent-plaintiff was not considered for promotion because of the pendency of the chargesheet under Rule 7 of the Haryana Civil Service (Punishment and Appeal) Rules, 1987. The promotion of the persons junior to the respondent-plaintiff was without prejudice to his rights and on having been exonerated from all the charges, he was entitled to be considered for promotion as BDPO w.e.f. 09.07.2008 i.e. the date when his juniors were promoted to the said post. A prayer was also made for release of all the service benefits along with interest.

4 The appellant/defendants-State entered appearance and filed its written statement admitting the initial appointment of the respondent-plaintiff in the Department as well as his subsequent promotion as Social Education and Panchayat Officer (SEPO). It was also not disputed that the respondent-plaintiff had also completed 10 years of regular service on the post of SEPO on 05.01.2004 and that he raised the claim for the grant of first ACP w.e.f. 06.01.2004, however, it was averred that the respondent-plaintiff was not entitled to the same as there was no such provision in the ACP Rules, 1998. The period of service has to be computed from the date of entry into service and since the respondent-plaintiff had already been promoted to the post of SEPO, hence, in terms of Rule 5 of the ACP Rules, 1998, the respondent-plaintiff was not entitled to the ACP as claimed by him. Eventually, the ACP Rules of 2008 were notified by the Government on 30.12.2008 and the same were made applicable w.e.f. 01.01.2006. The respondent-plaintiff did not

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represent for the grant of ACP pursuant to the above rules because at the relevant point of time, he was facing criminal proceedings under the Prevention of Corruption Act in case bearing FIR No.02 dated 03.01.2006. In any way, after the filing of the civil suit, the office considered the case of the respondent-plaintiff and granted him the benefit of ACP Grade Pay of Rs.3,300/ in the pay band of Rs.9300-34800 w.e.f. 01.01.2006 vide order dated 01.09.2015. It was also averred that after the termination of the criminal proceedings vide order dated 17.09.2009, the representation of the respondent-plaintiff was considered and vide office letter dated 13.11.2009, he was granted promotion w.e.f. the date when the persons junior to him were promoted i.e. 09.07.2008.

5 Replication was not filed and on completion of the pleadings, the following issues were framed:-

- 1 Whether the plaintiff is entitled to the decree of declaration along with consequential relief of permanent and mandatory injunction as prayed for? OPP
- 2 Relief.

6 Parties led their respective evidence to substantiate their case. Arguments were heard and upon consideration of the same as well as the documents established on record, the Civil Judge (Jr. Divn.) Sirsa, came to the conclusion that there was no dispute that the respondent/plaintiff was appointed as Patwari on 27.02.1986 and thereafter was promoted as SEPO on 06.01.1994 and further that the respondent-plaintiff had completed ten years

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of service as SEPO w.e.f. 6.01.1994 to 5.01.2004 and that the shelter sought to be availed of by the appellants/State under Rule 5 of the ACP Rules of 1998 does not stand established. The relevant extract of the findings recorded by the trial Court reads thus:-

“14. The factum of plaintiff being appointed to the post of Patwari in Development and Panchayat Department and his joining on 27.2.1986 and his subsequent promotion to the post of SEPO on 6.1.1994 is admitted. There is no dispute regarding the same. This fact that the plaintiff has completed 10 years on post of SEPO on 5.1.2004 and his claim regarding first ACP w.e.f. 6.1 2004 is also admitted. It is evident that plaintiff completed his 10 years on post of SEPO. This fact is not specifically denied by the defendants in their written statement. Defendants have taken shelter of the provisions of ACP rules 1998, however, no such documentary evidence has been placed on record by the defendants to prove the averment. It has been admitted that defendant has been granted Ist ACP w.e.f. 1.1.2006 vide order dated 1.9.2015. However, when plaintiff has completed is 10 years on 5.1.2004, he certainly was entitled to the first ACP from the same date i.e. 5.1.2004 when he completed his 10 years on the post of SEPO. This evasive denial on the part of defendants have proved the averments of the plaintiff as per the theory of deemed admission contained in order 8 rule 5 (1). Further it is the admitted case on part of the defendants that the plaintiff was exonerated of the charges levelled against him vide order dated 24.8.2009 i.e. Ex.P-6 which categorically contains in itself that his suspension period shall be treated as duty period for all intent and purposes. When plaintiff has been exonerated of the charges against him in the considered opinion of this court he will be treated at par with

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other employees. The contentions regarding the claim of plaintiff that he be promoted as BDPO from the same date when his juniors were promoted i.e. w.e.f. 9.7.2008, defendants have not denied this fact in their written statement and it has been categorically submitted that his claim regarding promotion to the post of BDPO is expected to be settled at administrative level shortly. It impliedly means the deemed admission on the part of the defendant. Nothing else remains to be proved by the plaintiff in order to prove the issue under consideration. Accordingly, the present issue is decided in favour of the plaintiff and against the defendants.”

7 The appellants-defendants Department was accordingly directed to grant the benefit of first ACP to the respondent-plaintiff w.e.f. 06.01.2004 and to fix his salary accordingly and also to give the benefit of promotion to the post of BDPO w.e.f. 08.07.2008 i.e. the date when persons junior to the respondent-plaintiff were promoted. The arrears were also directed to be released along with interest @ 6% per annum from the date when it fell due till its actual disbursement.

8 Aggrieved thereof, the State filed an appeal before the District Judge, Sirsa. The said Civil Appeal No.277 of 2015 was dismissed vide judgment and decree dated 21.08.2017 by the Additional District Judge, Sirsa by recording as under:-

“15. After considering the rival contentions of the learned counsel for the parties and after going through the case file carefully and thoroughly this court is of the considered view that the facts which are not dispute are that the respondent/plaintiff

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was appointed as Patwari on 27.02.1986, he was promoted as SEPO on 6.01.1994 and he has completed ten years of service as SEPO w.e.f. 6.01.1994 to 5.01.2004. It is also not disputed that respondent/plaintiff was charge sheeted and inquiry under Rule 7 of Rules of 1987 was conducted and a criminal case under the Prevention of Corruption Act was also registered but in that criminal case as well as in disciplinary proceedings under Rule 7, respondent/plaintiff was exonerated.

*16. Since respondent/plaintiff has been promoted as SEPO w.e.f. 6.01.1994 and he remained on the same post for ten years. Therefore as per the ACP rules of 1998 his pay should have been fixed granting him ACP Scale on account of ten years of his regular satisfactory service on the post of SEPO. Similar question has been adjudicated by Hon'ble High Court in case **Ramesh Dahiya Vs Uttar Haryana Bijli Vitran Nigam Limited (Supra)** and the law laid down in Supra case is squarely applicable to the facts and circumstances of the present case. So the respondent/plaintiff was entitled for ACP after completion of ten years service on the post of SEPO w.e.f. 5.01.2004 and the learned lower court has rightly held so.*

17. After exoneration of the plaintiff in the disciplinary proceedings under Rule 7 of the Rules of 1987 as well as in criminal case there was no ground to deny his promotion as BDPO. Moreover, Ex. P10 specifically contains that promotions of other SEPOs to the post of BDPOs was subject to rights of respondent/plaintiff Bharat Gir against him disciplinary proceedings under Rule 7 of Rules of 1987 was pending. Thus, the respondent/plaintiff is also entitled for his promotion as BDPO w.e.f. 9.7.2008 when his junior SEPOs were promoted as

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BDPO and he is also entitled for all consequential benefits because it was lapse on the part of defendants not to promote him as BDPO w.e.f. 9.7.2008 after his exoneration in criminal case as well as disciplinary inquiry under Rule 7 of Rules of 1987. So, the learned lower court has rightly passed the impugned judgment after taking into consideration the relevant law and rules framed by State Government.

18. No other point has been urged before me in this appeal.

19. As a sequel to above said finding, it is held that since there no scope of interference with the findings recorded by the learned trial court no infirmity, irregularity and illegality could be found in the findings recorded by the learned trial Court and as such the said findings are hereby affirmed. Consequently, the present appeal fails and the same is dismissed, with cost. Decree sheet be prepared accordingly. Lower court file be sent back along with a copy of this judgment. File be consigned to record room after due compliance.”

9 Aggrieved of the dismissal of the first appeal, the present regular second appeal had been filed.

10 Learned State counsel for the appellants-defendants makes a reference to Rule 5 of the ACP Rules of 1998 to contend that the respondent-plaintiff had already been promoted to the post of SEPO prior to 06.01.2004 hence, he would not be entitled for grant of benefit of first ACP w.e.f. 06.01.2004. It is vehemently argued that the benefit under the ACP Rules can be extended to an employee only in case he remains at the post against which he was directly recruited as a fresh entrant and that there has been no financial

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upgradation for him other than the functional pay. It is contended that since the respondent-plaintiff had already been promoted to the post of SEPO, hence, he could not be granted the said benefit on a meaningful reading of the ACP Rules. It is also contended that the cut off date prescribed for the said post was 31.12.1994 and since the respondent-plaintiff had already been promoted in the year 1994, hence, even on the said parameter he would be ineligible for the grant of benefit under the ACP Rules of 1998. The case of the respondent-plaintiff thus was to be covered under the ACP Rules of 2008 and the financial benefits in terms of the said ACP Rules already stand released. It is argued that the judgments and decrees passed by both the Courts are bad being based upon misreading of the ACP Rules of 1998 rendering the same to be set aside.

11 Responding to the above, learned counsel for the respondent-plaintiff has contended that the above said argument is based upon non-appreciation of the interpretation of the aforesaid provision by a Division Bench of this Court in the matter of **Ramesh Dahiya Vs. Uttar Haryana Bijli Vitran Nigam Limited, vide judgment dated 04.04.2008 passed in CWP No.3528 of 2005 and reported as 2008 (2) S.C.T. 624.** He contends that under the similar circumstances, the petitioner therein had been inducted as a Junior Draftsman and he was promoted as a Draftsman. It was held that notwithstanding the promotion of the respondent-plaintiff as a Draftsman, he would be entitled to the benefit of ACP on completion of 10 years of regular service against the said post. The said judgment having attained finality, any contrary interpretation, as is being sought to be augmented/put forth by the

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appellants-State, cannot be taken into consideration. The relevant part of the said Division Bench judgment reads thus:-

*“4. The Nigam has filed written statement contesting the claim of the petitioner. It is admitted that the employees of the Nigam are entitled for 1st Assured Career Progression (for short A.C.P) and 2nd A.C.P as per the A.C.P. Rules of 1998. **It is pleaded that the petitioner was working as a Draftsman on December 31, 1995 in the old pay scale of Rs. 1400-2600 and the revised functional pay scale of this post is Rs. 5000-8000. His pay was fixed in the functional pay scale of Rs. 5000-8000 with effect from January 01, 1996. It is further pleaded that the petitioner is entitled to the benefit of A.C.P. Rules of 1998 in respect of the post on which he was initially appointed i.e the post of Junior Draftsman. As the 2nd A.C.P of the post of Junior Draftsman is Rs. 5450-8000, therefore, he was granted the same under Rule 5 of the A.C.P. Rules of 1998 with effect from December 01, 2000 on completion of 20 years of regular service vide order dated October 20, 2004 (Annexure P-2).***

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6. The petitioner was working on the post of Draftsman since April 13, 1983. He completed ten years on this post on April 13, 1993 and twenty years on April 13, 2003. Admittedly, he did not get any financial upgradation in terms of grant of a pay scale higher than the functional pay scale prescribed for the post as on December 31, 1995, during this period of twenty years either as a consequence of his functional promotion in the hierarchy or as a consequence of the revision of pay scale for the same post or as a consequence of any other event through which the functional pay scale of the post had been upgraded. For the

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purposes of withdrawal of pay, the petitioner was, thus, eligible for placement into the 1st A.C.P Scale and 2nd A.C.P. Scale under the A.C.P. Rules of 1998. It is not the case of the Nigam that the petitioner did not fulfil all the requirements prescribed for determining the suitability of grant of A.C.P. Scales. The petitioner had been promoted as Draftsman with effect from April 13, 1983. So, under the A.C.P. Rules of 1998, his pay should have been fixed in the 1st A.C.P. Scale on account of ten years of regular satisfactory service on the post of Draftsman with effect from January 01, 1996 and in the 2nd A.C.P. Scale on account of twenty years of regular satisfactory service on this post with effect from April 01, 2003. Vide the impugned order dated October 20, 2004 (Annexure P- 2), the petitioner has been erroneously granted the 2nd A.C.P scale of the post of Junior Draftsman on which post he was initially appointed on November 07, 1980, on completion of 20 years of regular service. The purpose of providing 1st and 2nd A.C.P pay scale is to remove stagnation of the employees on one post for more than 10/20 years. The petitioner joined the Nigam as Junior Draftsman on November 07, 1980. He was promoted as Draftsman on April 13, 1983. Had he remained on the post of Junior Draftsman for all this period, he would have been granted 1st and 2nd A.C.P pay scale on the post of Junior Draftsman. Since after his promotion as Draftsman, he remained on the same post for more ten years on the date of coming into force of the A.C.P. Rules of 1998 i.e. January 01, 1996, he was entitled to be given the 1st and 2nd A.C.P pay scale by counting his service as Draftsman. To make it more clear, if the petitioner was promoted as Head Draftsman, which is the next promotional post after Draftsman, and had remained on this post for ten years as on January 01, 1996, he would have

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been given the 1st A.C.P scale of the post of Head Draftsman on January 01, 1996.

7. For the aforesaid reasons, this writ petition is allowed, the impugned order dated October 20, 2004 (Annexure P-2) is set aside and the Nigam is directed to fix the pay of the petitioner in 1st and 2nd A.C.P scale by counting his service of 10 and 20 years with effect from April 13, 1983, when he was promoted to the post of Draftsman. The petitioner will be entitled to all the consequential benefits flowing from such fixation of his pay. There shall be no order as to costs.”

12 It is further submitted that the above said Division Bench judgment was also followed by the Single Bench of this Court in the matter of **Mohinder Kumar Vs. the Chairman, Haryana Vidyut Prasaran Nigam Limited, passed in CWP No.18757-2003 vide judgment dated 27.03.2012 and reported as 2012 (3) S.C.T 401.** The relevant extract thereof reads thus:-

“4. The application of the benefit can be made only on what the provision itself contains and it shall be impermissible to apply a general principle to deny a person the higher scales by the only fact that he had obtained a promotion after the period mentioned in the circular or that before 20 years, he had already earned a promotion. If the circular dated 27.02.1998 prescribed a particular cut-off date as relevant for consideration of whether a person could be said to have stagnated in the post then, the facts elicited it would be clear that on 31.12.1995 (the date which the circular dated 27.02.1998 prescribes) the petitioner had not earned promotion for 20 years. Consequently, the scales as provided under the circular ought to be applied to him, no

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matter that he earned promotion subsequent to the 20 years period or before 20 years he had already earned a promotion.

*5. This issue of entitlement to the ACP scales with reference to the very same rule has also been considered by a Division Bench of this Court in **Ramesh Dahiya v. UHBVN** in its decision dated 04.04.2008. The Division Bench was holding that if a person had not earned promotion within the period specified in the notification then, ACP scales will have to be applied. As an illustration, the Division Bench had also observed that even a person had earned a promotion as a Chief Draftsman and stagnated in that post for 10 or 20 years, would be entitled to the ACP scales. The issue relating to the applicability of the ACP scales cannot be only by a reference to whether the petitioner had during his service obtained any promotion. The very fact that a person had obtained a promotion, cannot disentitle him with reference to the fact that such promotion had come in his way before or after the 10 years or 20 years period. If within the said period of 10 or 20 years, a person had not earned a promotion, the denial of ACP scales to him shall be unjustified. The contention of the respondents, therefore, that the petitioner had earned promotion after his initial entry of service as disentitling him to ACP scales is not correct and is rejected.*

6. The notification makes possible the higher scales to be effective w.e.f. 01.01.1996. The ACP scales shall be notionally worked out from 09.02.1983 on the completion of 10 years for the 1st ACP and from 09.02.1993 on the completion of 20 years upto 01.01.1996. The arrears shall be worked out from 01.01.1996 to the day when he was offered the higher post on 26.09.1997 and the same shall be released to the petitioner

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within a period of 12 weeks from the date of receipt of copy of the order.”

13 Neither any other argument was raised nor any other judgment was cited by the counsel appearing for the respective parties except noticed above.

14 I have heard the learned counsel for the respective parties and have also gone through the documents available on record.

15 Undisputedly, the sole controversy revolves around Rule 5 of the ACP Rules of 1998. Even though an ardent effort has been made by the learned State counsel to contend that the respondent-plaintiff would not be entitled to the benefit of ACP on account of the promotion having already been granted to him prior to 06.01.1994 i.e. much prior to 31.12.1995, and the respondent-plaintiff already being in a pay scale higher than the functional pay scale as a fresh entrant into a direct recruitment service i.e. Patwari, he would not be covered under the ACP Rules of 1998. It is however, not in dispute that the said aspect has already been taken into consideration not only by the Division Bench of this Court in the matter of **Ramesh Dahiya** (**supra**) but was also followed by the Single Bench of this Court in the matter of **Mohinder Kumar** (**supra**). The interpretation of the Rule by a specific illustration, has also been laid down by the Single Bench as per which even if a person who, has been granted second promotion, yet, on completion of 10 years of service against the said post, he would be entitled to ACP under the ACP Rules of 1998.

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16 Learned State counsel is not in a position to dispute that the said judgment has attained finality and has not been set aside in any other subsequent judgment.

17 Under the said circumstances, the interpretation of Rule 5 of the ACP Rules of 1998 as held by the Division Bench of this Court in the matter of **Ramesh Dahiya (Supra)** is binding on this Court. Thus the submissions advanced on behalf of the appellants-State cannot be accepted at this juncture since the proposed interpretation of Rule 5 of the ACP Rules of 1998 is contrary to the interpretation given by the Division Bench.

18 Under the given circumstances, I do not find that the argument of the State is well founded on merits. The same is accordingly rejected.

19 The present appeal is accordingly dismissed. The judgment and decree dated 16.12.2016 passed by the Civil Judge (Jr. Divn.), Sirsa, as upheld by judgment and decree dated 21.08.2017 by the Additional District Judge, Sirsa, are affirmed.

20 Pending, misc. application(s), if any shall also stand(s) disposed of accordingly.

January 16, 2025.
raj arora

(VINOD S. BHARDWAJ
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No